

Pathways to Migrant Protection: A Mapping of National Practice for Admission and Stay on Human Rights and Humanitarian Grounds in Asia and the Pacific

United Nations Human Rights Office of the High Commissioner

**Pathways in the Asia Pacific –
Sub-regional Discussion of Opportunities
and Challenges – 5 July 2022**

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Additional provisions from the Federal Constitution

- ▶ Article 8(1) states that all persons are equal before the law and entitled to its equal protection. In the case of *Ali Salih Khalaf V Taj Mahal Hotel*¹⁴, the Industrial Court held that Article 8 uses the word ‘person’ and not ‘citizens’, and that the rights guaranteed by its equality is extended to documented and undocumented migrants.
- ▶ Article 5(1) of the Federal Constitution states that “No person shall be deprived of his life or personal liberty save in accordance with law” and subsequent articles provide the right to a legal counsel and the right to appear in court within 24 hours. However, the article differentiates the right of liberty with respect to non-citizens who, pursuant to the proviso to the Article, can be detained up to 14 days for immigration offences. Similarly, freedom of movement under Article 9 is confined to citizens only and silent on their application to non-citizens.

Special Pass

- ▶ A Special Pass is a temporary pass issued to a person who wishes to remain in Malaysia “for any special reason.” The pass is valid for one month, and may, at the immigration officer’s discretion, be extended subject to a monthly administration fee of RM100.22 Special passes are issued to migrant workers whose VP (TE)’s have expired or been cancelled by the employer but who wish to stay in Malaysia, for example to pursue a legal case.
- ▶ “Special reason” – medical, renewal of passport or work permit, pursuing a case as the plaintiff or witness, trafficked victims. Unsure if given to those with conflicts in home country

Recalibration Programme for Repatriation of Illegal Immigrants

- ▶ 16 Nov 2020 to 30 Jun 2021 – extended to 30 June 2022
- ▶ Payment of fine ranging from RM300 to RM500
- ▶ All sectors

Trafficked victim shelters - CSOs

- ▶ 2 shelters – operated by Tenaganita and Global Shepherd for women - provides a safe haven whilst plans are put into place to seek a resolution to their situation and/or facilitate their return home.

<https://www.goodshepherd-asiapacific.org.au/project/234>

<https://tenaganita.net/shelter-for-women-in-crisis/>

Victims under a Protection Order are given a monthly allowance

Refugees and Asylum seekers

- ▶ an order may be made exempting them from penalization – only issued once under the Australia – Malaysia swap deal
- ▶ status determination of refugees. (asylum seekers)

Recommendation

- ▶ Address root cause of irregular migration - lack the proper documentation and pertinent information to make an informed decision to migrate. False promises and narratives that irregular migration is safe and that smuggled migrants can be legalised upon arrival convince some people to take this route as well
- ▶ For COOs and CODs to adopt rights-based bilateral labour agreements (BLAs) and ensure fair and ethical recruitment, including zero recruitment fees and employer pay model. Pre-departure orientation training and model employment contracts are also useful tools to ensure safe migration and prevent human trafficking
- ▶ For states to ensure rescue, protection, rehabilitation, and reintegration of human trafficking victims by extending crucial support such as shelter, treatment, legal, counselling, among others
- ▶ For states to cease the criminalization and detention of migrants and instead provide regularization options and safer pathways
- ▶ For states to effectively address the drivers of migration such as poverty, war/violence, persecution, and climate change as well as the root causes of migrant smuggling such as lack of regular pathways, exorbitant recruitment and migration costs, lack of information, among others.

Reference

- ▶ Migrant Workers' Access to Justice

<https://www.malaysianbar.org.my/article/about-us/committees/migrants-refugees-and-immigration-affairs-committee/migrant-workers-access-to-justice-in-malaysia-launch-of-report-27-sept-2019#:~:text=The%20Migrant%20Workers'%20Access%20to,workers%20who%20have%20been%20wronged>

- ▶ ILO Gap Analysis on Forced Labour

https://www.ilo.org/asia/projects/WCMS_650658/lang--en/index.htm