

**NARRATIVE REPORT**  
**Fact Finding Mission on**  
**Undocumented Migrant Workers and**  
**Their Families in Sabah, Malaysia**  
**JUNE 11-16, 2009**

**A Project by the Asia Pacific Mission for Migrants**  
**in cooperation with TENAGANITA**  
**and Migrante International**

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## Part I. Executive Summary

It was the worsening state of migrant workers in Sabah, Malaysia that brought eleven people from various organizations and backgrounds there to hold an independent fact finding mission this 2009. Basing on the recent developments in talks between the Malaysian government and migrant-sending governments of Indonesia and the Philippines, this mission aims to know of the progress in these joint initiatives to address the situation of migrant workers and their families there.

While past missions have put forward recommendations in alleviating the lives of migrant workers, especially the undocumented, the Malaysian government relentlessly conducts rows of arrests, crackdowns and deportations. Maltreatment and other human rights violations in relation to these crackdowns have not only been reported on the media but documented and submitted to higher authorities.

Nonetheless, the situation of undocumented migrant workers and their families, with special attention given to the children born in Malaysia, has not changed. Or has it?

It is on this pretext that this fact finding mission was conducted.

Organized by the Asia Pacific Mission for Migrants in coordination with Tenaganita of Malaysia and Migrante International of the Philippines, the fact finding mission held on June 11 to 16, 2009 yielded answers to objectives set for the mission, namely:

1. Establish concrete facts on the human rights violations committed against migrants and refugees given the limited information released by the governments of Malaysia, the Philippines and Indonesia;
2. Establish a network with groups in Malaysia as a support mechanism, for continued cooperation and monitoring on the rights and welfare of undocumented workers;
3. Set a foundation for a sustained campaign given the trend of crackdowns in Malaysia;
4. Establish facts on the effects on the mechanisms set forth by the RP-Malaysia Working Group on Migrant Workers;
5. Establish facts on the conditions of the reported 72,000 Indonesian children born to illegal migrants and are also made to work in plantations;
6. Establish facts on the situation of hundreds of Indonesian teachers brought to Sabah to teach 28,000 of the children; and

7. Document and publish a report for submission to a regional consultation among different stakeholders (i.e. governments, NGO's, employers, community representatives, among others) to find a regional solution through the ASEAN process.

In brief, the findings that the mission has obtained point to the following conclusions:

**1. Migrant workers, both documented and undocumented, continue to be exploited and oppressed.**

From the moment they enter Malaysia, migrant workers are pulled into a vicious cycle of debt and deceit where both recruitment agencies and employers impose illegal and ridiculously high charges on them. Rendering these payments almost impossible to pay, they gradually fall into bonded labor, a phenomenon that is prevalent in Malaysia.

They become undocumented in the process primarily due to the non-renewal of their documents. These documents, from passports to visas or legal working permits, are in the hands of their employers – a practice which is apparently common and even legal in Malaysia.

The migrant workers we have interviewed, majority of whom are undocumented, relayed stories of abuse from their employers (e.g. subhuman wages, illegal deductions, hard labor and no paid days-off) and even government authorities, such as the police, RELA and members of immigration.

There is limited access for migrant workers to health services, legal assistance and other needs such as refuge.

**2. Malaysia, with its repressive policies and agencies whose reputation on protecting human rights remains in question, has become the worst place for any migrant worker.**

Cases of corruption and abuse of power on the part of Malaysian authorities in Sabah, in particular the Immigration authorities stationed in Nunukan as well as members of the Malaysian police and the paramilitary force RELA have been reported. These cases range from demanding bribes from entering migrants and those caught on the streets to stealing property from homes of arrested migrant workers.

Suhakam, Malaysia's National Commission on Human Rights, admits its limited powers in effecting change with regard to protecting migrant workers. As its representative in Sabah stated, the Malaysian government does very little in resolving the problem and has, in turn, actually become part of the problem.

The Malaysian government, to this date, has not signed and ratified the International Convention for the Protection of Migrant Workers and Their Families.

**3. While temporary working offices of the Philippine Consulate in Sabah have been determined, the presence and effectiveness of the support that they provide to migrant workers is miniscule, if not insignificant.**

It is the contention of the Philippine government's claim to Sabah that hinders the establishment of an office in the state.

As members of the Philippine Consulate are deployed on a rotational basis, the services are reliant on the availability, if not whim, of the appointed personnel.

Note-worthy is the fact that a private enterprise provides passport services to Filipino migrant workers in Sandakan, where a four-person team has been deployed by the Philippine Consulate to provide the same service. Another worthy of notice is the fact that the head of the government team and the businessmen are colleagues.

With regard to the status of the joint working committee between the Malaysian and Philippine governments, both representatives of Suhakam and the Philippine government's representative in Sandakan have denied any knowledge.

**4. The situation of undocumented children, better termed as stateless children, has become a growing concern not only among their parents but to institutions and organizations who all aim to provide support and protection to migrant workers.**

Statistics-wise, both the Indonesian Consulate and Sekolah Indonesia Kota Kinabalu stated that there are an estimated 24,000, not 72,000, stateless children in Sabah. Despite this clarification, however, the situation of stateless children remains critical. They have very limited access to education and health services. They are not provided legal documents by the Malaysian government upon their birth.

While there are more school-age children and youth in plantation areas than urban centers, the provision of education is much more difficult due to a number of reasons: the sheer distance that hinders accessibility among hired Indonesian teachers, lack of resources, lack or absence thereof of electricity, etc.

**5. The Indonesian Consulate admits limited capacity to provide assistance to migrant workers, something that migrant workers themselves vouched.** There is inconsistency and

limited reliability in the support provided by the Indonesian Consulate to their constituents in Sabah.

**6. While the establishment of Sekolah Indonesia Kota Kinabalu is a recognized development in both the Malaysian and Indonesian governments' initiative to provide education to Indonesian children, no light has been shed on the situation of Indonesian teachers placed in plantation areas, except for two things:**

- a. Indonesian teachers in plantation areas are directly under the responsibility of Humana, and not the Indonesian Consulate. The Indonesian Consulate itself has declared no accountability over them.
- b. The salaries received by Indonesian teachers in plantation areas are lower than those received by teachers employed in SIKK.

**7. Worth to note is the rampant trafficking of women and children that came out from interviews made with various entities (i.e. migrants, government representatives, church leaders).**

**8. Institutions of faith (e.g. Roman Catholic, Anglican) with its organizations are the only existing groups in Sabah that provide assistance and refuge to migrant workers.** Aside from the team by Tenaganita based in Tawau, there are no non-secular organizations that cater to the demands and needs of migrant workers.

The general conclusions presented here are drawn from information gathered, analyzed and processed from six days of interviews, meetings and engagements that the eleven-people team conducted with various government institutions, organizations, churches and migrant workers.

In Kota Kinabalu, meetings were held with Suhakam, the Indonesian Consulate in Sabah, and Sekolah Indonesia Kota Kinabalu. For two consecutive meetings, the team visited two migrant colonies in Inanam where many migrant workers and their families resided. Majority of those we interviewed are undocumented.

Yohanes, a known personality among Indonesian and Filipino migrant workers in Kota Kinabalu, has been interviewed as well.

On the fourth day, June 14, the group separated into two as each went to a separate province in Sabah.

A group of five, mostly Filipinos, went to Sandakan to meet with migrant Filipinos and Indonesians. The meetings with the migrants were held within the auspices of mainly Catholic parishes. Meetings were likewise held with Bishop Julius Dusin Gitom of Sandakan, priests and other lay people, all of whom were supportive of the migrants' cause.

A meeting with Mr. Dicasaran Acraman, administrative officer of the Philippine Embassy in Malaysia and head of the four-man team in Sandakan, also ensued.

A six-people team, on the other hand, went to Tawau to meet with the following: migrant workers, mostly undocumented, in Tawau proper and Semporna; church leaders in Tawau; and Filipino and Indonesian migrant workers in See Hoy Plantation. They were joined and accompanied by three Tenaganita staff based in Tawau.

On the evening of June 15, the two groups recouped at Kota Kinabalu to collate all gathered data, deliberate and draw conclusions as well as make the necessary recommendations.

The eleven-person team is made up of the following:

- |   |                  |
|---|------------------|
| 1. Roy Anunciacion of Migrante International (Philippines)      | Went to Sandakan |
| 2. Rey Asis of Asia Pacific Students and Youth Association (HK) | Went to Sandakan |
| 3. Aurelio Estrada of Asia Pacific Mission for Migrants (HK)    | Went to Tawau    |
| 4. Ade Ahmed Faidullo of Asia Pacific Mission for Migrants (HK) | Went to Tawau    |
| 5. Cong. Luzviminda Ilagan of Gabriela Women's Party (Phils)    | Went to Sandakan |
| 6. Fajar Kurniawan of Lumbaga Banduan Hukum (Indonesia)         | Went to Tawau    |
| 7. Baseer Naweed of Asian Human Rights Commission (HK)          | Went to Tawau    |
| 8. Steven Ng of Tenaganita (Malaysia)                           | Went to Sandakan |
| 9. Antonio Salcedo of Osan Migrant Center (South Korea)         | Went to Sandakan |
| 10. Florida Sandanasamy of Tenaganita (Malaysia)                | Went to Tawau    |
| 11. Amy Sim of Hong Kong University (HK)                        | Went to Tawau    |

## Part II. Area Reports

### Kota Kinabalu

#### 1. Meeting with Suhakam

“Suhakam exists not only just for Indonesians or Filipinos but all humans.” This is the opening statement of Jasmih Bin Selamat, assistant secretary for Suhakam Sabah when the meeting ensued with him. The following relays the perspective of Malaysia’s human rights commission on the ongoing crackdown of undocumented migrant workers and the migrant workers themselves.

*On Migrant Workers.* Suhakam Sabah receives complaints from migrant workers on a daily basis. Admitting no capacity to provide legal assistance, they refer them to the police and/or legal aid service. The complainants, however, would back out their complaints when they learn that their cases will be referred to the police. Apparently, most of the migrants are undocumented.

Anyone can submit cases or complaints, even other parties like non-governmental organizations or private individuals. While the commission acts immediately on the complaints, the most that it can do is submit these cases or complaints to the concerned authorities recommending for the latter to take action.

While the main office of Suhakam (based in Kuala Lumpur) has released a report on these cases, the Sabah branch has not. There is admission that they cannot provide statistics or date with regard to the number and type of cases submitted to their office.

*On the Crackdown.* Suhakam admits a limited scope in making interventions with regard to government-instigated crackdowns. Visitations they initiate have yet to be properly coordinated with the Malaysian police and immigration. Unless these requests for visitation have been approved, they cannot come.

Neither is Suhakam privy to government orders to conduct raids and arrests or even special courts held in detention centers. Should they be informed of any case of abuse (e.g. railroaded cases against undocumented migrants, children deported back without their

parents), they can only do so much by submitting reports to the Ministry of Foreign Affairs for attention.

“The police are considered part of the problem, not the solution,” as aptly stated by Mr. Salamat as he highlighted cases of corruption and bribery reported to them.

The RELA, on the other hand, has been linked to several cases of abuse or violations committed against migrants. RELA, or Ikatan Relawan Rakyat Malaysia (Volunteers for Malaysian People), is a paramilitary civil voluntary corps assisting the police and immigration in checking on migrant workers across Malaysia. While RELA has no powers to arrest migrant workers, this privilege is given by Immigration authorities. Members of RELA can aid the police in raiding suspected communities of undocumented migrants and supervising detention centers.

Arrests and deportations, Mr. Salamat relayed, should be processed on a daily basis, not once every three years.

*On Undocumented Children.* Expressing concern for the undocumented children, Suhakam stipulates that these children should be protected at all times and should not be deported back without their parents. As some educational programs are being provided, Mr. Salamat made mention of some vocational training given so that these children and youth can do the work that Sabahans (name for people living in Sabah) “do not want to do”.

*On Malaysia working with Indonesia and Philippine governments.* While admitting the relations that Malaysia has with both governments, Mr. Salamat declares that he is unaware of any memorandum of understanding that the Malaysian government has with the Philippine government in addressing the situation of migrant workers.

## **2. Meeting with the Indonesian Consulate**

Umbara Setiwan, vice consul of the Indonesian Consulate in Sabah, represented the said government institution during the interview. He expounded on the situation of Indonesian migrant workers, the state of undocumented children, the assistance the Consulate provides, and the current development in the development of the Sekolah Indonesia Kota Kinabalu.

*On Migrant Workers.* There are 300,000-350,000 Indonesian migrant workers in Sabah, 70% of which are working in plantations and are undocumented. Many enter Malaysia legally but eventually turning into illegal or undocumented migrants due to either one of two possibilities:

- a. Their employers, who hold their passports and legal documents, do not renew their legal working permits. The Memorandum of Understanding between the Malaysian and Philippine governments permits employers to confiscate passports and documents of their migrant workers.
- b. Their employers will hire them even though they enter Malaysia as tourists BUT will not apply for their working permits.

Undocumented migrants are different from illegal migrants as the former refer to those who enter Sabah as tourists and go on becoming workers without proper documents while the latter are those who enter Sabah with legal working documents that have not been renewed in the duration of their employment with their respective companies or employers.

The wages of migrant workers vary from RM15 to RM30 a day. This is not necessarily reflected on the working contracts that most recruitment agencies or employers submit to the Indonesian consulate.

*On the Crackdown and Cases Against Migrant Workers.* In 2008, the Consulate has reported handling 1,700 cases, mostly about migrant workers unable to obtain their salaries. Nonetheless, this does not cover the fact of the consulate's ambivalence on the migrant workers' concerns. While hotline numbers may have been made available to migrant workers, the Indonesian consulate has limited capacity to assist. For one, they cannot punish erring recruitment agencies in Malaysia. Neither can they do anything on the arrest and detention of migrant workers as this is "the Malaysian government's policy and we do not intervene."

The Malaysian government is pinpointed as the one to blame for taking a one-sided look at the migrants' condition. As migrant workers are punished for being undocumented or illegal, not one employer has been charged for hiring them.

Despite the crackdowns, migrant workers keep coming back to Malaysia. Considered as "a country of hope", many deported migrant workers return to Sabah for either economic independence (more job opportunities in Malaysia compared to Indonesia) or filial relations (most of their relatives are already based in Malaysia). (Most of the migrant workers that the mission members have interviewed have been deported at least once in the past.)

*On the Memorandum of Understanding.* Two Memorandums of Agreement have been signed between the Malaysian and Philippine governments: the 2004 MOU for migrant workers in general while the 2006 MOU is solely for Indonesian domestic workers. However, both revisions have yet to be made on both MOUs and these recommended revisions have been submitted to the Malaysian government albeit the latter has not responded.

*On Undocumented Children and the Education Program.* The Indonesian consulate states that there are only 24,000, not 72,000, stateless children in Sabah.

The Indonesian government, through the Department of Education, developed an education program for them. One is the program being run by HUMANA, a non-governmental organization. This program develops schools in Sabah for Indonesian children, especially those in plantation areas. The education given in these schools is not formal. The subjects taught are Mathematics, writing and reading.

In 2008, 144 Indonesian teachers have been deployed while an additional 55 was sent in 2009. The consulate denies any knowledge about reported problems faced by teachers as the said program is run by the Indonesian Education Department and is not being coordinated with them (the consulate).

This year, the Indonesian Consulate initiated the establishment of a formal school – the Sekolah Indonesia Kota Kinabalu (or Indonesian School in Kota Kinabalu). The SIKK is said to be recognized by the Indonesian education system. It currently has 300 children and seven teachers.

*On the Issue of Trafficking.* Around 80-90% of workers in Malaysia are trafficked. By definition, trafficking is when: 1) the workers have been lied to with regard to a number of things, including the salary; and 2) debt bondage at high interest rates.

### **3. Visit to Sekolah Indonesia Kota Kinabalu**

The next in the mission's itinerary is the Sekolah Indonesia Kota Kinabalu, part of a school program initiated by the Indonesian Consulate to provide primary education to children outside Indonesia. Established on December 1, 2008, the SIKK is the 15<sup>th</sup> Indonesian school set up by the Indonesian government and the first in Sabah.

This school has a capacity for 288 students based on the Malaysian guideline of a maximum of 36 students per class. There are two sessions a day: Grades 1 to 3 in the morning from 7-10:30am, with one teacher for every class teaching all subjects; and Grades 4 to 6 in the afternoon from 11am-4pm, with one teacher for every class and teaching one subject each. The school year runs from July to June.

Situated on the second level of a department store, the school has seven teachers, with one of them being the principal, Mr. Dapang Hermawan. Mr. Hermawan represented the school in the interview.

*On School-Age Children and the Education Program.* There are more than 24,000 Indonesian children in Sabah and SIKK is not enough to accommodate all of them. Hence, temporary schools in plantations have been set up by Humana while SIKK seeks to provide assistance to them. There are 6,000-8,000 children in Humana plantation schools.

More civil servants are being recruited in Indonesia and 44 more teachers for Humana schools. The schools expansion program is expected to be rolled out by July 2009 and more will be sent to Sabah.

In SIKK, there are seven teachers with one head teacher/principal. There are now 271 students (134 males, 137 females) with another 326 on the waiting list (all children of migrant workers). In Kota Kinabalu, there are about 1,000 children who need education. SIKK cannot accommodate all of them and is encouraging Malaysians to help.

Students registering here are assigned to their various grades on the basis of age. They provide education for grades 1 to 5:

Age	Grade
7 years of age	1
8 years of age	2
9-10 years of age	3
10-11 years of age	4
13-13 years of age	5

The students in SIKK get full subsidies, including tuition, books, uniforms, excludes transport and food. Transportation is paid for by the students (or their parents). There is a school bus that brings the children to and from school. The payment per child, depending on the distance from the school, ranges from RM60-100 per month.

The Indonesian government aims to expand the schools but need to get permission from the Malaysian government in terms of building more schools. The limitation to accommodate other children stems from the strict regulation of Malaysia to register schools. And the fact that many children are undocumented.

*On Students and the Amnesty Program.* During the Amnesty Registration, a program initiated by the Malaysian government for all undocumented migrants to register, the SIKK found out that 175 of the 271 students are undocumented. These children, however, have become documented through either one of two things: their parents have applied to the amnesty registration or the school has processed their student pass with the Malaysian Immigration. The yearly renewal fee for the student pass is RM90 while the Indonesian passport costs RM20-30.

Most of the students, if not all, have parents who work in construction, poultry or chicken farms. Many of them are undocumented.

*On Teachers in SIKK and in Humana Schools.* SIKK seeks to get funding from the National Education Department in Indonesia for teachers. All teachers who are or will be hired in SIKK are already teachers in Indonesia.

These teachers' fares are paid for to come for their 3-year contracts. They receive a monthly salary of Rp8 million plus an additional Rp2 million for the salaries that they usually receive with their profession in Indonesia. The salaries do not include housing.

Teachers hired in Humana schools only receive Rp6 million a month.

#### **4. Meeting with Migrant Workers**

The mission visited two migrant communities in Inanam: one was in Titehana where 48 families of about 450 people resided, and another in an unnamed poultry farm where around 100 Indonesian and Filipino migrant workers live. Most of the Indonesian migrant workers are undocumented.

The Indonesians hail from Flores in East Nusa Tenggara, Indonesia while the Filipino workers come from either Antipolo, Rizal or the Palawan Islands, both situated in the Luzon Islands.

##### *Getting into Malaysia*

Most of the Indonesian migrants entered Malaysia through Nunukan, one of the main entry points to Sabah. They have to make a loan of around Rp2-3 million from a landlord or a big businessman in order to pay an agent who is supposed to ensure their employment in Sabah. One of the preconditions of the lender is that the migrant signs an agreement stating that the loan will have to be paid in a year but for twice its original amount. Failing to do so would mean that the lender can take all the migrant's properties.

Before crossing the border, migrants have to pay RM50 to the Indonesian immigration and RM10 to the Malaysian immigration. Although by law, any Indonesian can cross the border even without an agent, the Malaysian immigration can refuse their entry and possibly have them detained even if their passports are still valid. The migrants claimed that they know some migrants who were detained from 12 days to six months even if the latter had valid passports. The detained migrants would then be deported back to Nunukan without any due process.

The agent made them sign a lot of documents before entering Malaysia. The migrants stated, however, that they were not aware of the contents of these documents. They just gave their full trust on their agent who promised that they will be paid RM15 a day for the job the agent has placed for them. It was only after 2002 that a policy is enacted requiring Indonesians to go through an agent in order to enter Malaysia.

Employers pay their agents RM1,000 for every worker the latter deploys to Malaysian companies. From the interviews, it is a common practice for an agent to recruit 20 workers for one company at once although distributed to various companies or plantations once the migrants enter Malaysia. There are cases where migrants are forced to change their names or other personal details since Malaysian immigration does not allow them to work in Malaysia after five years.

The processing costs for each migrant worker are as follows:

- a. Passport – RM60
- b. Levy – RM360
- c. Visa – RM15
- d. Processing – RM10

While this is the actual cost, recruitment agencies usually overcharge migrant workers (usually RM645) as do employers. The employer of those working in the poultry farm deducts RM53.75 from each worker per month.

#### *Working in Malaysia*

Most of the migrant workers with legal documents predict themselves to become undocumented. While a few did not want to shoulder anymore the huge salary deductions made for the levy payment, others only become aware of their status after they find out that their employers have not applied or renewed their working permit.

While they know for a fact that employers are responsible for the payment of the levy, they would dare not complain because doing so would mean the loss of their jobs. As one claimed, “As long as our employers want us, we will not leave Malaysia.”

The net monthly salaries would range from RM350 to RM1,200. This is not enough, they said, as payments have to be made to the following: land rental, house rental, education of their children, food, electricity, among many other things. Those in the poultry farms work for ten hours every day. They receive a daily wage of RM10-15 but are not paid for overtime work. There is a stipulation of “no work, no pay” as there is no paid rest day.

Every month, the employer deducts RM50-100 from their salary for the levy and an additional of RM50 for five years (for those who passed through an agent who was charged additional fees, as alleged by the employer). The migrants also shoulder the monthly electricity (RM40 per house) per household.

Most of them send remittances to Indonesia but only once a year at an average of one million Indonesian Rupiahs.

The employer holds all their documents: contract, working permit and passport.

In the poultry farm, a police officer would reportedly visit to monitor them.

#### *Situation of the Indonesian Migrant Women*

Most of the Indonesian women are working in Malaysia. As many of them found their husbands in Malaysia, a few have stopped working and become housewives.

The women with jobs work for eight hours but receive RM10 a day. Their employer usually deducts RM5 for the documents. Some of them found out, however, that upon retrieval of their passports, their passports have no “government chops” meaning they have not been documented even they get salary deductions for payment of these permits or documents.

During raids, they would run to the forest or jungle and stay there for a night. They feel that their situation in the workplace is unstable because they do not have legal documents.

#### *On the Situation of Their Children*

One of their major concerns is the education of their children, many of whom are not accepted in Malaysian schools simply because they are undocumented. Should there be schools accepting them, tuition and other school fees would be expensive and hence unbearable.

Health services are also expensive for children of undocumented workers. Public health services are not allocated to undocumented while private hospitals charge very high. For children born in private clinics, they have to pay RM1000 for a birth certificate. Migrant workers with legal documents only need to pay RM60.

Regarding SIKK (Sekolah Indonesia Kota Kinabalu), most of the migrants express joy with the establishment of the school. They pointed out, however, the limited number that the school can accommodate and the distance of the school from their community. Some of them had to pay RM80-150 a month for the transportation costs of only one child.

### *On the Consulate*

The Indonesian consulate, according to the migrant workers, does very little to alleviate their situation. Most of the time, the consulate declares inability to assist (“their hands are tied”) and serves merely as apologist for the Malaysian government (It is the Malaysian government’s policy and the Indonesian consulate could not do anything about it).

There is little trust they give on the Indonesian consulate as they have not heard of any single case being resolved by the consulate in terms of problems involving the payment of the levy, the confiscation of their passports and the harassment they experience from the RELA. *“They only when they need something from us, like during elections.”*

Their employment contracts are usually with the Indonesian Consulate who, according to them, would only act if there is a labor dispute. Noted in the employment contract notarized by the Indonesian Consulate is the migrant workers’ daily wage of RM20.

### *On the Crackdown and the Amnesty Registration*

Most of the undocumented would like to avail of the amnesty but they cannot afford to pay the levy. According to the law, the levy costs only MR360 but in reality this is not so. Usually, their employers would deduct RM800 for plantation workers while RM1,200 for construction, manufacturing and service workers. Apparently, employers would have to pay an agent who processes their visas. The agency usually charges them RM22 for the processing and RM600-700 for the documents.

Some do not avail because it will only mean a loss in income and incurring new debts. They said that after signing up for the amnesty registration, they have to go back to Indonesia and wait for six months before they can go back to Malaysia again. There are no jobs in Indonesia that will ensure their family’s livelihood, they attested.

When asked about the RELA, many of them have experienced harassment and physical assault from them. There were instances in the past wherein members of the RELA would raid their houses, round them up and arrest them and steal their belongings after they have been brought to the detention centers. There are many instances where RELA asked for money, around RM500 so that the migrant workers will not be arrested. The last time that the RELA visited them was in 2005.

### *Going Back to Indonesia*

Going back to Indonesia may be a lot easier if they have families back there. Some of them, however, have built their own families in Malaysia. Aside from this, going back also entails a

lot of money, in particular an estimated amount of RM150 to pay the police in check points they have to go through until Nunukan. Non-payment would mean arrest and detention.

#### *About the Filipino Migrants*

All of the 15 Filipino migrants, 14 are men while one is a woman, entered Malaysia as tourists and acquired their working visas only upon employment. They were recruited by a Filipino who is already working in the poultry farm.

Their employer lent them RM4,000 each for their travel expenses from the Philippines to Malaysia. This is in turn deducted from their salaries including the expense incurred for the levy. Around RM100 is deducted for the travel expenses and another RM50 for the levy. Only RM150 is left in their salaries after the deduction.

Their daily wage is RM11. They work seven days a week, from 7-11AM, 1-5PM. No work-no pay scheme is being applied to them without overtime pay.

The employer provides free accommodation to them. They live in a bunker made of galvanized iron. It is impossible to withstand the heat during sunny days. They pay for their own food. To resolve this, they contribute weekly for the food budget for all Filipinos.

Normally, they remit Php1,000 a month to their families. This remittance they get through salary advancement or loans requested from their employers.

#### *On the Issue of Trafficking*

Arlene, the only woman of the 15, said that she entered Malaysia through the Zamboanga-Sandakan ferry route. She was promised to work as a waitress in Labuan but discovered that it was a night club she would work in. She received very low wages and was forced to return to the Philippines. During her stay in Labuan, she learned of 50 women working in one club, many of whom were minors. She learned that most of the women came from Pampanga and were allegedly “trafficked” from there to Kota Kinabalu. (There is an airport in Pampanga, Clark Air Base, which used to be an American military base.) Labuan is an island off Sabah.

# Sandakan

## 1. Meeting with Indonesian Migrant Workers at St. Mark's Church

The first stop was St. Mark's Church, a little over an hour away from the city proper. One could immediately tell that this church will have migrant workers for attendees as a yellow Western Union stall was conspicuously set up just outside the church's gate with around six young adults distributing brochures and flyers to church-goers.

The church's history states that its establishment over a few years ago was a result of many lay leaders and priests to provide church service to migrant workers in the area, many of whom were undocumented. Most of the migrant workers are Catholic and the nearest church would be in the city proper. Traveling to the heart of the city, we have learned, will be a major risk as police detachments have been set up along the highway to check on undocumented migrants.

A discussion with the migrant workers ensued right after the mass. More than 75 Indonesian migrants attended the event, many of them women and children. It was our first time to witness migrant workers gathering in a public space and engaging in discussions albeit most of them admitted themselves to be undocumented.

From the sharing, we have learned that the largest group of Indonesians arriving in Sandakan was in the 1990s. Many of them work in plantations where they receive a daily wage of RM10.

While some of them were brought by their parents or relatives, some have entered Malaysia through middle persons. With this, the middle persons' charges are added to the deductions made by their employers from their salaries.

Because of the levy and other deductions, most, if not all, of the migrant workers enter into a never ending cycle of debt which binds them to work for their employers for a long period of time.

With their status, their children have limited education. Only non-formal education is available to them and that this non-formal education only reaches Year 5 of primary education (or known as Form 5). Health provision for migrants, especially for children, is also expensive.

They also averred that business establishments and government institutions know that migrants converge in churches like St. Mark's. It is for this reason that police authorities in Sandakan set up detachments along the highway leading to the church so that they can allegedly extort money from the migrant workers.

Nonetheless, they find the church as space for them to vent their grievances and even seek refuge.

## **2. Meeting with Philippine Consulate's Administrative Officer Dicasaran Acraman**

Mr. Dicasaran Acraman, with the help of a companion, was able to meet us for a brief interview.

According to Acraman, two teams have been set up by the Philippine Embassy in Sabah to provide assistance to Filipino migrant workers: one was a five-person team in Kota Kinabalu and another team of four set up in Sandakan. He was the head of the team in Sandakan.

He was quick to retort that the main objective of this four-person team in Sandakan was to issue passports to Filipinos living and working there. The four-person team was established last November 2008 and was originally stationed in Sanbay Hotel, which we learned to be an upscale hotel situated 30 minutes away from the city proper.

Due to the amnesty program that is currently being conducted by the Malaysian government, the four-person team is now hastening their work for migrant workers.

When asked about the status of Filipino migrant workers in Malaysia, he said that an estimated 250,000-350,000 Filipinos, are based in Sabah. However, due to the political contentions the Philippine government has with Malaysia on the Sabah islands, Mr. Acraman said that they cannot offer any concrete assistance to migrant workers. All they could set up was temporary workplaces in both Kota Kinabalu and Sandakan.

All throughout the conversation, he mentioned that he was simply an administrative officer and could not officially represent the Philippine Embassy. Neither was he aware of any ongoing programs or policies that the said embassy has for migrant workers in Sabah. When asked about the working group that both the Philippine and Malaysian governments have established, he denied any knowledge of it.

When asked about providing support to the undocumented migrant workers, he said that a solution to this is becoming a member of the Overseas Workers Welfare Administration (OWWA), to which benefits and necessary protection will be given to them. We said, however, that membership is per contract and that it costs US\$25 a person, and with that, it will be much better for both the OWWA and the Philippine Embassy to give due consideration to the status of the undocumented migrant workers. He said that US\$25 is a small amount to pay for the sheer protection that migrant workers will be receiving.

Furthermore, Mr. Acraman admitted that they are not allowed to visit or even get to detention centers where arrested migrant workers are placed. With this, our session with Mr. Acraman was concluded.

In our meeting with lay people of the Catholic Church and some Filipino migrant workers in Sandakan, we learned that the man accompanying Mr. Acraman actually owns several businesses one of which was a travel/recruitment agency that provides passport service to Filipino migrant workers. Some migrant workers even mistook the business enterprise to be the satellite office of the Philippine Embassy in Sandakan.

### **3. Meeting with Bishop Julius Dusin Gitom**

The interview with His Revd. Julius Dusin Gitom, bishop of the Diocese of Sandakan, provided the mission's participants with a glimpse into the independent work that church-based institutions have with migrant workers.

Bishop Julius said that, while they cannot provide legal assistance to undocumented migrant workers, the Catholic churches in Sandakan have given other forms of support, like scheduled visitations in plantations.

Even though the diocese is fairly new (two years old), it has established connections with the archdiocese of Kota Kinabalu and the Religious of the Good Shepherd in setting up programs for migrant workers. There are also plans of putting up a shelter in the near future.

When asked about the treatment of migrant workers, he admitted that the harassment of migrant workers happens throughout the whole state. He mentioned accounts of migrant workers being made to pay by police authorities so that they can be released.

When asked about the RELA, he responded that while it is legal, one cannot deny the harsh treatment committed by members of the RELA on migrant workers.

He also suggested that the Malaysian government should come up with a policy that is beneficial for both. Apparently, the existing policy does not benefit the migrant workers at all.

### **4. Meeting with the Filipino Pastoral Committee (at St. Mary's Church)**

After the brief meeting with Bishop Julius, we proceeded to meet with the Filipino Pastoral Committee (FPC), a church-based group of Filipinos and non-Filipinos who attend to the

rights and welfare needs of Filipino migrants in Sandakan. Most of those who attended the meeting were Filipino women.

#### *Working in Malaysia*

Most of the women in the FPC are either domestic helpers or are married to migrant Filipinos working in timber or construction companies. Many of them have been staying in Malaysia for an average of ten years.

Domestic workers in Sandakan receive an average of RM300-400 a month with many of them being “asked” by their employers to shoulder half of the employment levy.

The majority of Filipino migrant workers in Sandakan reside in Kampung Bisaya. Situated just off the Sandakan airport, Kampung Bisaya is a colony of makeshift houses on stilts. Most of the Filipinos living here are undocumented.

#### *Immigration Quirks*

Getting a residency in Malaysia has always been difficult for them. While registration for migrant workers has been conducted for more than a decade (the amnesty registration for 2009 is apparently not a new phenomenon), one migrant worker has to go through the eye of a needle to be even given the refugee identification called IMM13, or more popularly known as the yellow card.

The IMM13 is only issued to migrant workers who are married to Malaysian Muslims. Hence, some of them have shifted from Roman Catholic to Islam in order to avail the IMM13. The IMM13 is effective only for a period and henceforth needs to be renewed.

#### *On Getting a Passport*

They have purported that the Filipino passport is unimportant as long as they have legal working documents in Malaysia. However, this allegedly does not stop the police from making arrests. There have been cases of documented migrant workers being arrested simply because the police officer allegedly did not recognize the legal document.

Applying for a Filipino passport is just as difficult, they said. As direct application for a passport costs RM192.50, the average range for renewal of passport is RM230 and lost passport is RM250. One even mistook a travelling agency to be the Philippine consulate since that is where they apply for passport renewal.

### *On the Crackdown*

While most of them were “documented”, they asserted that they are not spared from the harsh policies of the Malaysian government against migrant workers. Many of them immediately turn into undocumented migrants either because of the high fees they have to pay for the levy and other processing of their work permit or the fact that their passports are being held by their employers until their permits expire.

### *On Their Children and Education*

One of the major concerns among the Filipino women migrants was the education provided for their children. Only a few of the children of these Filipino women are given the Malaysian citizenship as their fathers are Malaysian citizens (although this is not generally true for all). Many, however, are not given birth certificates.

With that, the “provision” of education is reliant on the status of the children and their parents. Undocumented children can only go as far as Grade 5 in primary and are forced to enter private schools and pay RM80 a month. As many of the children have no birth certificates, bringing them to the Philippines for education is second to impossible as the education given in Malaysia, usually non-formal, is not recognized in the Philippines.

# Tawau

## **1. Meeting with Migrant Workers at Tawau (June 14) and Semporna (June 15)**

A group of 25-30 Indonesian and Filipino church lay leaders and members met with the Tawau group in a Holy Trinity Catholic Church in Tawau while there were about 15 in Semporna. All of those from Tawau had gone through an agent when they entered Sabah. They said that it is impossible to get into Malaysia without an agent (applicable for Indonesians only).

### *Their Legal Status in Malaysia*

Some have become Malaysian residents through their parents who have been living and working in Malaysia for the past 40 years. For those who do not have relatives or who have come a lot later, they could not get the residency permit even if some of them have paid either the Malaysian immigration or the agent to process their documents.

Apparently, the Malaysian government does not give working permits to people beyond 45 years of age. Some of the migrant workers do not have legal documents as they are above the age limit. Others have resorted to changing their birthdates so that they can avail of the working permits.

Without legal documents, they cannot travel anywhere outside Tawau. The Philippine Consulate used to send their staff to Tawau to renew or process their passports but has stopped the service. They know that there is a team being sent by the Consulate to Sandakan but they cannot travel because of their situation.

The passport is important to them but this is immediately taken away from them once they enter Sabah. When the amnesty registration was announced by the Malaysian government, they could not apply since their employers insist that they “make new ones.” Having a valid passport is important since they will not be able to access health services without one.

### *Their Concerns about Their Children*

For Indonesians, one of their concerns is their children. Children born in Malaysia may have birth certificates but are required to go to Nunukan to get a “passport”. Even when they are born in Malaysia, they are not recognized by the Malaysian government and are hence required to have a passport. Once the children are issued passports, the Malaysian

immigration requires them to go back to Indonesia and, in the process, stamps a “chop” on their passports prohibiting the children from coming back to Malaysia.

Both Filipino and Indonesian migrants want to know the real status of their children born in Malaysia. While many can get birth certificates for their children, they are not aware of the nationality provided by the Malaysian government to them. The Malaysia-born children of migrants are called “orang asing”, or foreigners. They ask: if the child’s parents pass away, what happens to the children? Their children, without proper documents, can neither go to school nor find work.

#### *Their wages and salary deductions*

Those working at construction sites are paid RM15 a day, those in plantations RM15 a day, in some factories, RM8. Payment of the levy applies to them which would range from RM1,000 to as high as RM2,000 especially those working in factories

#### *Perceptions of the migrants on the services provided by their consulates*

In 2008, the Philippine Consulate went to Tawau three times but they only knew about it through word of mouth. They did not receive any notice or announcement from the Consulate about the dates of their visit.

During these visits, the consulate staff would stay at an agent’s office. While there was an attempt from the consulate staff to simplify the process for passport renewal, it was the agent who apparently controlled most of everything, from photocopying, documents, etc.

For Indonesians, they said that their consulate is “playing with us”. According to the migrants, it only acts on cases of Indonesians that the consulate knows or is familiar with but will not attend to those whom the latter does not know. If they want to marry for example, the consulate would require them to go to Nunukan.

## **2. Meeting with Migrant Workers at the See Hoy Palm Oil Plantation**

Of all the different groups and individuals that the Fact Finding Mission (FFM) met, there was only one pending case being handled both by the APMM and Tenaganita that one FFM team visited on June 14. These were the Filipino oil palm plantation workers of See Hoy Chan Company in Lahad Datu.

Since there was already a fact sheet made on the case and a limited time for the visit, the main purpose of the group was to gather documents proving that the workers were employed by the company and to confirm certain details needed to pursue their case. But

before going into that it is good to describe first how far the area is and the tension that ensued before and during the visit with the workers.

The oil palm plantation is four hours away from Tawau where the FFM team first met Catholic lay ministers after a flight from Kota Kinabalu. The last hour was a road being repaired and the dirt road inside the plantation itself.

Even before entering the plantation, the FFM team was advised not to take any pictures so that it would not be exposed prematurely as there was no permit from the management to go inside. The team then met Butch, the workers spokesperson in the main gate of See Hoy Chan up to the workers dormitory.

Just a few minutes after meeting the workers, an Indonesian guard popped up looking at the scene but the workers said it was okay. Subsequently 2 SUV's passed by at different intervals with management officials inside but they just stopped for awhile to take a look. All throughout the interview with the workers, the 2 Indonesians in the team were interacting with their compatriots working there including the guard.

The FFM, however, was able to obtain what they needed.

1. The workers were illegally terminated from their home province called Iloilo and some were promised a salary of RM700 a month with no deductions.
2. Of the three workers that had their passports with them, only Butch Pastolero had a working permit. The rest of the workers' passports were held by their employer.
3. Initially there was some confusion with Butch's legal documents because he had a single entry visa dated on Feb. 18, 2009 and a work permit dated on the same day even if he originally entered Sabah on Dec. 12, 2008 and can only stay up to January 10, 2009. Florida of Tenaganita surmised that the management might have applied amnesty for Butch during such a period.
4. In May, one group of 6 workers headed by Butch were paid by the company RM2587 but were deducted RM1744 for their food and other supplies from a company owned store. What was left was an average of RM140.5 (P1931) each. Their take home pay should have been an additional RM49 each but these were deducted as well from their wages.
5. Essentially the workers are in debt bondage as they are paid between RM100 – RM500 a month but are deducted RM125 a month for a levy and work permit and another RM200 plus for food and other supplies in a store owned by the company. An additional RM200 was deducted from each of them for their working tools.
6. Their levy only costs RM600 including additional costs but they were being charged RM1800 each for this through monthly deductions.
7. Also reconfirmed is the fact that Mr. Gangco T. Punguinaguina, assistant-in-charge of the Philippine Consulate to Malaysia's Assistance to Nationals desk and assigned personnel to Sandakan on a rotation basis, called them up and told them the following:
  - a. That their case will be reported to the police and immigration authorities of Malaysia;
  - b. That they will need to pay for their own travel fares to the Philippines;

- c. That those undocumented will be penalized; and
- d. That they cannot file any labor case as they did not pass through the Philippine Overseas Employment Administration.

### **3. Meeting with Church Leaders**

We met with various church leaders in Tawau: Pastor Nui Au Sze of Basel Christian Church of Malaysia Tanjung, Hilary of St. Patrick's Church Tawau, Melin of FCC and Gabriel. In the group discussion that transpired, this is what we obtained:

#### *On Their Advocacy*

Most of the church leaders, many of them lay people, provide support to migrant workers. If the migrant workers have problems with their employers, they try to intercede. However, on the issue of undocumented migrants, they say that it all depends on migrant worker.

The church responds to migrants' problems and relates with the Malaysian government through proper channels, i.e. the National Council of Churches of Malaysia. Apparently, they have not brought up any migrant workers' issues at this level as it takes time for government policies to change. Instead, they would prioritize addressing the immediate needs of migrant workers.

#### *Perceptions on Migrant Workers*

Many of the migrant workers in Tawau are undocumented. Despite the amnesty registration and several crackdowns in the past, migrant workers keep coming back to Sabah because: 1. their families are all there; and/or 2. there is no source of living found in either Indonesia or Philippines.

From what they know, workers leave their employers because the former are dissatisfied with the workload (overworked) and wages (underpaid). They think that documents are not important to migrant workers as these can be easily replaced.

#### *Perception on Malaysian government's policies*

There is a lot of dissatisfaction with government policy, especially with the rampant raids. They think that this is unfair and should not be done. They likewise think that the Malaysian government is taking a backward step with regard to pursuing the repressive immigration policies. "Sabahans have to accept that migrant workers are here to stay."

## Part III. General Conclusions

### 1. General Conditions of Migrant Workers

The fact-finding mission leads the participants to conclude that Malaysia is one of the worst places for migrant workers to be in. From slave-like wages to debt bondage, long hours of hard labor to non-existent benefits, a flurry of stringent immigration policies to massive crackdowns, migrant workers in Malaysia are caught in an environment where their rights are almost not recognized.

Reiterating that the Malaysian government has not ratified the International Convention for the Protection of Migrant Workers and Their Families, it is worth to point that the following rights of migrants are grossly violated:

- a) the right to just and timely compensation
- b) the right to humane working and living conditions
- c) the freedom of mobility
- d) the right to free association or union
- e) the right to legal assistance when apprehended
- f) the right to avail of basic social services, such as medical and educational assistance
- g) the right not to be tortured or subjected to similar acts by apprehending authorities

The situation of undocumented migrant workers remains at the lowest level with the Malaysian government continuing to pursue crackdowns – from arrests to detention to eventual deportation – in a cycle of every three years. Despite the triennial amnesty registration programs conducted for undocumented migrants, government agencies, in particular the immigration department together with the Malaysian police and RELA, continue to hunt down migrant workers, documented or not.

All three government departments have been accused of corruption, abuse of power and maltreatment of migrant workers. Suhakam, on the other hand, has confessed its inutility to act on complaints and grievances submitted to them by migrant workers and others supportive of migrants' cause.

With bad conditions they confront in urban centers, the situation of migrant workers in plantations are far worse wherein their salaries are far below subhuman, salary deductions plunge them into debt bondage and any arena for redress, governmental or not, is absent.

## **2. Conditions at the Working Place**

On or before migrant workers can even enter the workplace, their passports and other legal working documents have been confiscated from them by their employers. Only a few employers would provide photocopies of these documents.

Prevalent are the overcharging for levy fees (as much as three times the actual cost, if not more) as well as deduction of other charges (such as food costs, electricity, etc.) from the meager salaries received by migrant workers.

There is no way for migrant workers to know if their employers are paying their levies or renewing their work permits. Usually, migrant workers are forced to take the direction of being undocumented or illegal so as no more deductions are made on their salaries (which range from RM350-400 a month).

As they remain as favorite targets for arrests and detention, not one from the employers or recruitment agencies are penalized or punished for their accountability to the already deplorable conditions they have plunged the migrant workers into.

A system of taxation within the plantations adds to the web of unnecessary fees charged by recruitment agencies on migrant workers further putting them into a quagmire of debts hence leading to bonded labor, or in new terms, modern-day slavery.

The absence of legal documents proves detrimental to migrant workers when faced with failing health or hospital attention. Access to education for their children is a major concern, not to mention the poor living conditions that many of them are in.

## **3. The Problem with Immigration**

Those coming from Indonesia bring with them proper documents but are turned away by Malaysian Immigration authorities at entry points, specifically in Nunukan. They are forced to produce new documents that they can only get from either Malaysian or Indonesian agencies. Most of these documents cost US\$300 each, already forcing their foot into eventual indebtedness.

Women become victims of trafficking as they are tricked by middle persons and even dubious recruitment agencies who promise high paying jobs but subsequently charged with unbearable charges and fees.

Being undocumented in Malaysia is a criminal offense with so much power given to authorities, like the police and the RELA, to raid, ransack and arrest any migrant worker's home. Apparently, however, some communities have already been identified by authorities as homes of undocumented migrants but are protected through constant extortions and bribery.

There is little reliance in Suhakam to act on and even possibly prevent further assaults committed against migrant workers in Sabah. It leaves a question in the participants' minds as to the inability of the Sabah section of Suhakam to produce a report on the conditions of migrant workers in the specific state, much less a statistics on reported cases and complaints that their office has received.

#### **4. The Accountability of the Sending Governments**

For the Philippine government, the Philippines-Malaysia working group seemed to be working on simply abstract things when no concrete actions have been taken to address and alleviate the conditions of migrant workers.

While the diplomatic ties between two governments are strained by the Sabah issue, it should not inhibit the Philippine government, and henceforth the Philippine Embassy in Malaysia, to provide assistance to their nationals, whether documented or not. The endless contention that undocumented migrants are at fault and should not be helped has been proven fallible.

Worth to note is the involvement of private enterprises in Sandakan with regard to providing passport services when this should be entirely the responsibility of the Philippine government. The government's dependence on private enterprise to provide not only passport services but communication obstructs the expected communication and coordination between the government and its constituents.

For the Indonesian government, errors in the Memorandum of Understanding between two governments have been pointed out, in particular the permission of employers to seize legal documents of their migrant workers. Pointed out as well are the inconsistencies in the Indonesian consulate's procedure to assist migrant workers as well as in the transparency of its services.

## **5. Educating the Undocumented**

The efforts to create educational programs and institutions for undocumented Indonesians in Sabah are recognized yet there is more to be done. With the sheer number of Indonesian children in Sabah, not to mention that most of them are undocumented (or stateless), access to education proves so close to impossible as their situation is tied to the inability of their parents to bring them to school.

Indonesian, and even Filipino, children born in Malaysia continue to be denied birth certificates and hence remain to be stateless children. This ambiguous situation hinders them to avail of proper education, health services and even rights of residence and employment.

## **6. Working for Migrant Workers**

Aside from Tenaganita, the Malaysia-based organization attending to migrant workers' issues among other concerns, it is mostly church-based organizations in Sabah that deal with migrant workers. While no record of harassment or raid has been made on church institutions who harbor undocumented migrant workers, the church leaders, lay people and their respective organizations have very limited rights and space (in terms of mobility, independence and initiative, among others) in extending this support or assistance.

The mere use of the word "organization", for example, in the name of a group already puts them at risk. One instance is a migrant leader in Kota Kinabalu being brought for questioning by the Malaysian authorities since the former's group is called an organization. The word "organization" was later changed to "community".

Church-based organizations see the need for the establishment of independent non-governmental organizations who can provide all forms of support to migrant workers in Sabah. They are open in engaging and cooperating with both local and international organizations and groups with regard to uplifting migrants' conditions and protecting their rights and welfare.

## IV. Recommendations

It is through these findings and conclusions that we draw the following recommendations:

1. For the Malaysian government to:
  - a. Stop the crackdown and all human rights violations committed against migrant workers and refugees and immediately install a government mechanism that shall ensure their protection from any probable harm, abuse or discrimination;
  - b. Investigate reported cases of corruption and abuse of power on the part of immigration authorities specifically in entry points like Nunukan and among the police and members of the RELA who have been almost unanimously pointed as bribing and stealing away from migrant workers;
  - c. Disband the RELA as its formation is now very questionable. Having been formed by the Malaysian government during the state of emergency and to quell communist insurgents, there is no purpose whatsoever for the RELA to continue, not to mention the reported cases of abuse its members have committed.
  - d. Clamp down on employers and agents who: i) charge migrant workers 2-3 times the amount of government levy payable, ii) collect migrants' monies through salary deductions, iii) do not pay their levies, iv) do not renew their legal working permits;
  - e. Penalize recruitment agencies or individuals who engage in illegal recruitment and trafficking;
  - f. Review and amend the Labor Law of Malaysia by rescinding anti-migrant provisions (such as, that allowing employers to make unnecessary deductions from the salaries of migrant workers) and including ones that ensure the rights and benefits of migrants as well as full responsibility for the employers (such as paying for the levy);
  - g. Recognize and register all children born in Malaysia by issuing birth certificates. As a signatory to the International Convention on the Protection of the Child, it should ensure that proper attention, protection, education and other necessary services are provided to migrant children;
  - h. Provide Suhakam with the authority and capacity (enabling regulations and budgetary allocation) to investigate cases of abuse committed against migrants and refugees, visit without need of notice detention centers, court hearings and other areas where ongoing raids, arrests and other anomalies are reportedly committed, provide legal support and protection to migrant workers who seek redress;

- i. Ratify the International Convention on the Protection of Migrant Workers and Their Families and immediately legislate policies and concrete regulations to ensure rights and welfare of migrants;
  - j. Cooperate and coordinate with migrant organizations and non-governmental institutions working for migrants in developing legislation and mechanisms that help uplift the lives of migrants and their families in Malaysia; and
  - k. Ensure the provision of democratic space for individuals, institutions and organizations to put up offices and shelters or places of refuge as well as independently conduct programs beneficial to migrant workers and refugees and their families.
2. For the Indonesian government to:
- a. Produce a standard response and design standard procedures, through the Indonesian Consulate, that are clear and simple for Indonesian migrants to understand with regards to a number of their key concerns (e.g. birth registration, marriage, contract violations, etc.);
  - b. Provide legal assistance and protection to all migrant workers as well as ensure that those arrested and placed in detention centers are provided sufficiently and treated humanely;
  - c. Investigate and penalize, if proven true, erring agencies and individuals who overcharge, cheat and exploit Indonesians entering and working in Malaysia;
  - d. Review the memorandum of understanding it has signed with the Malaysian governments and make necessary amendments that prove detrimental to the rights and welfare of migrant workers (in particular, the institution of a minimum wage for migrant workers and the abrogation of the provision allowing employers to confiscate passports and legal documents of migrant workers; and
  - e. Hasten the establishment of education programs for Indonesian children not only in urban areas but in plantations, where majority of them are found.
3. For the Philippine government to:
- a. Without hesitation and delay set up a working office in Sabah that shall attend to the needs, grievances and welfare of Filipino migrant workers, documented or not;
  - b. Investigate on the apparent involvement of private business establishments with regard to the provision of passport services, among many other programs that the Philippine Embassy itself is responsible for;
  - c. Create concrete mechanisms that the Philippines-Malaysia working group can conduct in the primary objective of alleviating the lives and conditions of Filipinos living and working in Sabah; and

- d. Launch and send medical and relief missions to plantations and other areas where Filipino migrants are working or living in exploitative conditions.
4. For the ASEAN to:
- a. Conduct an independent investigation on the urgent matter of abuse of undocumented migrants in Sabah and institute necessary concrete actions that shall protect the rights of migrants and penalize all erring parties;
  - b. Initiate the development of a convention that shall protect the rights of migrants, refugees and their families; and
  - c. Develop mechanisms within the ASEAN where people's organizations, church groups and other members of the regional and international civil society can actively participate in to address, recommend and concretely establish programs and schemes for disadvantage sectors of society, in this case migrant workers.

## V. Appendices

### A. Concept of the Fact Finding Mission

**Fact Finding Mission on the Major Crackdown of Illegal Migrants” in Sabah; on the Effectiveness of the Measures Employed by the RP-Malaysia Working Group on Migrant Workers; and on the condition of 72,000 Indonesian children of illegal migrants working in plantations and the teachers assigned to them**

#### I. Rationale

In 26 August 2008, 8,838 Filipino refugees came from Sabah. A few weeks before the waves of deportations, Malaysian police raided 300 shanties of poor Filipinos at Kampong Karansangan. The undocumented Filipinos, all appearing seriously malnourished, were brought to prison in trucks. Barely fed, and short of drinking water, the prisoners to stave off hunger slept most of the time on the cement floor.

“That’s not the worst of it,” says Juwala, an undocumented Filipino in Sabah. “I watched six babies die from starvation among 200 or so prisoners during the 20-day imprisonment,” Juwala recounts in Tausug. According to him, his seventh child was brought to the hospital, where they cut her open and pulled out her innards. Presumably, that was an autopsy, although from his perspective, his child was butchered. “but I don’t know why,” Juwala says. To add to the family’s misery, his wife’s relative “went crazy, and that he remains in prison.”

In 2005, the Malaysian government again launched a massive crackdown on undocumented workers in Sabah conducting about 40 gestapo-like raids every night on migrant communities. After months of arrests, authorities were able to fill immigration detention centers in Sabah with about 30,000 undocumented workers and refugees.

The Malaysian Immigration law provides for six months in prison and up to six strokes of the cane for immigration violations. In practice, delays in processing travel documents led to the detention of many illegal immigrants in camps for more than a year. In its 2003 Annual Report, Amnesty International shared the story about a 13-year old girl, who was suspected to be a Filipino, was deported and then later found to be a Malaysian but only after she was reportedly raped in an immigration detention centre in Sabah by three policemen.

Such atrocities have attracted worldwide condemnation even from concerned UN bodies like the UN High Commission on Refugees, the UN Commission on Human Rights, Amnesty International, and the International Committee of the Red Cross, among others. The Philippine government has likewise had its share of criticism for its callousness and its failure to address the root causes of massive migration of Filipinos in Mindanao.

To defuse the international outrage, both the Philippine and Malaysian governments have decided to put up RP-Malaysia Working Group on Migrant Workers in 2005.

In 2008, the Malaysian government has announced, once again, a major crackdown on undocumented workers and refugees in August. Yet according to the report made by the Department of Social Welfare and Development (DSWD) in Zamboanga City, there are already 35,000 Sabah deportees during the first 8 months of this year and will be expecting more than 200,000 by the end of 2008.

Chief Minister Datuk Seri Musa Aman, however stated that in 2008 a total of 24,269 people were detained in temporary detention centers where 19,151 of them comprising 13,614 Filipinos, 5,278 Indonesians and 258 of other nationals had eventually been repatriated to their countries of origin.

Musa said 64 per cent of those repatriated had been brought before the Special Illegal Immigrant Court and received one-month jail sentence and two strokes of the cane each.

They have also taken action against 3,211 IMM13 holders who have broken the law by canceling their IMM13 document and subsequently repatriating them.

The caning penalty for illegal immigrants who have been brought to the court has been increased from two to four strokes.

Other than this there was a regularization exercise of illegal immigrants from Aug 1 until October 2008, which resulted in the registration of 312,837 of foreign workers and 21,156 employers. Of these 217,367 were Indonesians while 95,470 were Filipinos.

Sensing that the massive deportation would again attract protests and condemnations, the Philippine government for its part hosted the 5th RP-Malaysia Working Group on Migrant Workers last July 20-21, 2008. According to Foreign Affairs Undersecretary for Migrant Workers Affairs Esteban B. Conejos, Jr., head of the Philippine delegation, the meeting is timely with Malaysia's reported impending crackdown on illegal migrant workers, many of whom are Filipinos.

During the meeting, both sides discussed and agreed on the following:

- a. to cooperate closely so that there would be minimal adverse impact arising from the action to be undertaken by the Malaysian government;
- b. that the Malaysian government has established procedures for the humane and orderly conduct of the arrest, detention and repatriation of illegal migrants, and would endeavor to include measures to improve facilities for those processes;
- c. to step up efforts to regularize eligible migrants;
- d. that children unaccompanied by parents will not be placed under arrest but turned over to the care of appropriate authorities;
- e. that only those deportees who are medically fit would undertake the travel; and f. to facilitate travel documentation of deportees.

The meeting also agreed to redouble efforts for instituting long-term solutions to the problems of cross-border travel, work and migration, including a proposed bilateral Border

Pass Agreement and the possible deployment of Malaysian Immigration Attachés at the One-Stop Processing Center in Zamboanga.

Even with this development however, the organizers of the Fact Finding Mission remain pessimistic that the so-called working group of both governments would make an impact on the impending massive deportations. For one, the present crackdown has raised basic questions especially because its conduct has been violent and in direct violation of the basic rights of migrant workers. Secondly, there has been no word about what happened to the 2005 RP-Malaysia Working Group on Migrant Workers change the conduct of the crackdown and deportations? What impact would it make on the situation of Filipino migrants and refugees in Malaysia?

A delegation of Indonesian teachers that was sent to Sabah under an informal agreement between Indonesia and the Malaysian government had contacted INDIES. They said that they needed assistance regarding their problems in Sabah, like not receiving their salaries and the facilities that was promised by their government before. They number in the hundreds and were sent to Sabah to teach 28,000 children of Indonesian migrant workers who work in Sabah's plantations.

These children are part of the 72,000 kids of Indonesian migrant workers who are forced to work in the plantations but are not provided birth certificates or any other type of identity documents.

These children were also forced to work without regulated employment hours, meaning they were made to work all day long, he added.

Supposedly the local authorities are investigating their conditions with the Indonesian consulate general in Kota Kinabalu.

It is in this light that the Asia Pacific Mission for Migrants (APMM) and Tenaganita would conduct another Fact Finding Mission on the situation of Filipino and Indonesian migrants and refugees in Malaysia. This time around the mission will stress on the effectiveness of the mechanisms set forth by the Philippine and Malaysian governments' governments and look into the situation of the Indonesian children and teachers.

The result of the FFM will also be used to offer recommendations to the ASEAN on how to make a long term solution to this problem and will also be presented to the International Assembly of Migrants and Refugees as the alternative gathering for the Global Forum on Migration and Development in November, 2009 in Greece.

## **II. Objectives:**

1. Establish concrete facts on the human rights violations committed against migrants and refugees given the limited information released by the governments of Malaysia, the Philippines and Indonesia;
2. Establish a network with groups in Malaysia as a support mechanism, for continued cooperation and monitoring on the rights and welfare of undocumented workers; and

3. Set a foundation for a sustained campaign given the trend of crackdowns in Malaysia.

**For the Philippine groups and interested parties:**

1. Establish facts on the effects on the mechanisms set forth by the RP-Malaysia Working Group on Migrant Workers

**For Indonesian groups and interested parties:**

1. Establish facts on the conditions of the reported 72,000 Indonesian children born to illegal migrants and are also made to work in plantations  
2. Establish facts on the situation of hundreds of Indonesian teachers brought to Sabah to teach 28,000 of the children

**III. Expected Results and Outcome:**

1. Document and publish report of the Fact Finding Mission for submission to a regional consultation among different stakeholders (governments, NGO's, employers, community representatives and others) to find a regional solution through the ASEAN process.  
2. Launch Education forums on the rights of migrants and their families  
3. Publicize the results of the FFM through the media in Indonesia and the Philippines  
4. Develop publicity campaign on the issue and use the media as one of the tools for this.  
5. Make recommendations on how a long term solution can be found for this  
6. Organize national consultation among Malaysian NGO's on this issue  
7. Present the findings to the IAMR in Greece

**For the Philippine delegation:**

1. Urge Congress to conduct a thorough investigation in aid of legislation on the plight of undocumented migrants in Malaysia

**For the Indonesian delegation:**

1. Urge the Indonesian government to investigate the conditions of the teachers and the children  
2. Present the result of the findings to the parliamentarians

**IV. Methodology:**

1. The FFM is going to be conducted in Tawau and Sandakan in Sabah, Malaysia and will interview and document Filipino and Indonesian undocumented migrant workers. In addition to this, interviews with Malaysian officials and even with Filipino deportees in Balay Silungan in Kota Kinabalu, run by the Philippines' Department of Social Welfare and Development, will also be held.

2. The FFM team is going to be composed of 8 persons:

- a. Migrante International
- b. Asia-Pacific Mission for Migrants
- c. Dr. Irene Fernandez, TENAGANITA-Malaysia;
- d. Asian Human Rights Commission (AHRC);

- e. Rep. Luzviminda Ilagan of GABRIELA Women’s Party (Philippine Congress)
- f. LBH-Yogyakarta
- g. ATKI - Jakarta
- h. APWLD

3. The FFM team will interview inter-agency officials implementing the mechanisms set by the RP-Malaysia Working Group, the Malaysian Commission on Human Rights called SUHAKAM in Kota Kinabalu and NGO’s and other groups assisting migrant workers.

4. There would also be focus group discussions with the different communities

5. After the mission, the team(s) will consolidate its documentation and come up with a final report.

## B. Program Itinerary

June 11		Arrival of Delegates
June 12	8:00a	Breakfast and briefing
	9:00a	Meeting with Suhakam
	3:00p	Meeting with Indonesian Consulate
	7:00p	Meeting with migrant workers and their families
June 13	10:00a	Visit Sekolah Indonesia Kota Kinabalu
	3:00p	Assessment of June 12 activities
	6:00p	Meeting with migrant workers and their families
June 14	7:00	Leave for Tawau/Sandakan
		In Sandakan
	10:00a	Meeting with migrants at St. Mark’s Church
	3:00p	Meeting with Philippine Consulate representative in Sandakan
	6:00p	Dinner and meeting with church leaders and lay ministers
		In Tawau
	10:00a	Meeting with church leaders and migrants
	3:00p	Meeting with migrant workers at See Hoy Palm Oil Plantation
June 15		In Sandakan
	9:00a	Meeting with Sandakan Bishop Julius Dusin Gitom
	10:00a	Filipino Pastoral Committee of St. Mary’s Church
	2:00a	Group assessment of Sandakan trip
		In Tawau
	11:00a	Meeting with migrant workers in Semporna
	2:00p	Meeting with ecumenical leaders
		In Kota Kinabalu
	9:00p	Consolidation meeting of two groups
June 16		Departure