

**Malaysia 4th Cycle Universal Periodic Review
North South Initiative (NSI)**

I. Introduction

1. The North-South Initiative (NSI)¹ is a " *Youth-Adult Partnership (YAP)* " which was set up in Malaysia for the purpose of building collaboration between the northern and southern parts of the country in addressing human rights, social justice, and sustainable development issues.
2. It was set - up in 2011 through a small grant from the British Embassy in Malaysia to run a training program for the Youths of Patani in the deep south of Thailand. In 2015, NSI operate autonomously as a full-fledged civil society organization which collaborates with an extended network of community partners - including grassroots migrant groups, farmers, refugees, youth groups. On the other hand, NSI also works through international business alliances to provide services to companies that seek auditing services on the treatment of migrant workers in global supply chains.
3. In this report, three issue relating to freedom of association, speech and discriminatory practices towards the foreign workers in Malaysia are discussed to highlight the challenge faced by NSI of the last 3 years to be legally recognized by the Malaysian government along with broader legal and policy issues that negatively affect foreign workers in Malaysia.

II. Implementation Of Accepted Recommendations

A. Multiple Rejections Of NSI By The ROS (Registrar Of Societies) To Be Registered As A Human Rights Organization

4. In early 2020, NSI began to register itself as a human rights organization with the ROS (Registrar Of Societies), an national body which governs the registration and affairs of societies in Malaysia . One of the procedures to be registered as a human rights organization is for it to be referred to the Special Branch of the Royal Malaysian Police for a security review or check.
 5. All 6 of NSIs attempts to be registered as a lawful society were rejected on the ambiguous grounds that its founders Mr. Adrian Anthony Pereira and Ms. Anne Beatrice Jacobs do not pass the security clearance of the Special Branch.
 6. Further attempts to register was made in 2023 without the names of Mr. Adrian Anthony Pereira and Ms. Anne Beatrice Jacobs, however it turned - out to be still unsuccessful. The reason given was that Mr. Mohamad Iqram Bin Ismail and Mr. Aaron Dinesh Monteiro, two individuals whose names were chosen to replace the former and latter were also rejected due them being blacklisted by the ROS. When NSI inquired the ROS (Selangor State branch) on this the reply was that such matter was only privy to the Special Branch personnel.
 7. As for many other CSOs/NGOs in Malaysia such as SUARAM (Suara Rakyat Malaysia)², the NSI is registered under the Registrar Of Commerce which entitles it to operate as a business enterprise. It is because of this status that the NSI has loss many funding opportunities over the years to sustain its operations to combat force labour, human trafficking and in the long term create a society that prioritises Social Justice.
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8. The work/advocacy of NSI is in actual fact a great service to the country, unfortunately it is suspected that there some people in the Special Branch who view it in negative light. Despite the rejections, NSI is committed to its mission to empower those at the margins and is open to collaborate with the government on creating awareness and brainstorming sharper methods to combat Human Trafficking and Force Labour for the purpose of making it have a good name amongst investors which will result in economic vibrancy.
9. Currently, Malaysia (2023) has gone up to Tier 2 in the US State Department TIP (Trafficking In Persons) report³. This is an improvement from the last 5 years of being on Tier 2 Watch list (2018 - 2020) and Tier 3 (2021 - 2022). If the Malaysian government does not get its act together of fight human trafficking and forced labour vehemently, crippling economic sanctions will be imposed against it.
10. Some of the general narratives that are circulated about NGOs critical of the government are that they serve the interests of foreign powers to destabilize the ruling government, tarnish the countries reputation or to Christianize the Malaysian state/society as well as promote liberalism amongst the Malay people (dominant ethnic group).
11. The terms Liberal and Liberalism in Malaysia are somewhat pejoratives used by mainly conservative state or non - state actors on their opponents who are deemed to be ' western ' or ' democratic ' with regards to their socio - cultural - politico thought or idealism.

Recommendations

12. Bureaucratic procedures such as what is being practiced by the ROS hampers the existence of human rights groups to operate as funded non - profit entities. There is a long history since the cold war whereby the ROS was used to deny the existence of civil society groups based on political motives. The ROS must therefore be free of political influence and evaluate groups who seek to be registered based on their purpose rather than the political or social inclination of the people involved.
13. Although understandable that some form of security check is required to spot potential threats to national integrity and public safety, the authorities should be narrower in their approach in evaluating national threats based on people who have direct involvement and strong evidence of committing severe crimes against the state or in another country for example, members of organized crime organization/syndicates or terrorist groups.

III. Unresponsiveness Of The Malaysian Government On The UN Special Rapporteur On The Situation Of Human Rights Defenders (2022)

12. Rayhan Kabir was a Bangladeshi migrant worker in Malaysia who was featured in a documentary produced by Al - Jazeera on the Immigration departments raids and mistreatment of migrant workers in Malaysia during the Covid - 19 Lockdowns in March and April 2020.
 13. The documentary titled ' *Locked Up In Malaysia`s Lockdown* ' (2020)⁴ was released on 3rd of July 2020. The criticism of Rayhan Kabir were of the way the Immigration Department and Malaysian authorities raided and detained migrant workers and foreigners in the early stages in the lockdown. Out of this a lot of hostility and hatred from the government and the Malaysian public (significantly on Social Media) was directed at migrant workers.
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14. Rayhan Kabir, besides his full - time work as head of marketing at Malik Streams, was a committed in being a helping hand for migrant workers specifically those who are Bangladeshi. His service to the Bangladeshi migrants in Malaysia made him familiar and insightful of the hardships that they had to go through. He mainly utilized his language and communication skills to liaise with the embassy and local authorities to make complaints on various labour violations against migrant workers.
15. A manhunt⁵ for Rayhan Kabir was launched on 6th of July 2020. After two weeks of searching for him, he was finally arrested on 24th of July 2020. He was then subjected to investigation of his involvement in the documentary before being deported to his native Bangladesh on 19th August 2020 without being charged in court.
16. According to Section 9 of the Immigration Act (1959/63), the Immigration DG (Director - General) has the power to take action on an foreign individual who are deemed ' unwanted ' in the country.
17. A UN Special Rapporteur Report On The Situation Of Human Rights Defenders which was published on 11th Of July 2022 mentions as Rayhan Kabir as one of those who are considered human rights defenders due to his community work for Bangladeshi migrants in Malaysia.
18. In most countries which has a big migrant worker population such as Malaysia and Singapore, civic rights for migrants are very much curtailed and make it difficult for them to lodge complaints against the violations of their rights.
19. In the previous year (16th February 2021) in a letter from Mandates of the Working Group on Arbitrary Detention : the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression : the Special Rapporteur of the situation of human rights defenders and the Special Rapporteur on the human rights on migrants was presented to the Malaysian government to inquire on the violation of rights of Rayhan Kabir dan Al - Jazeera as a Journalistic organization.
20. There, however was no response from on the inquiries/concerns that were highlighted.

Recommendations

21. Review and Reform all laws that constrain the civic freedoms of migrants in Malaysia which includes freedom of speech on matters that directly affect their communities. The problem of securitizing migration has led to the migrants to psychologically be fearful of fighting for their rights and voicing out the clear offences that the Immigration department or against them. The almost non - existence of migrant led migrant rights groups which are able to engage and advocate for fairer treatment of undocumented migrants is result of this curtailed civic rights atmosphere.
 22. The heavy - handed approach of the government in handling crisis was one which created a lot of distrust between the migrants and the authorities. The security approach from the part of the government is one that is problematic and therefore must be review and replaced with a humanistic and comprehensive approach. The migrant workers would cooperate with the authorities is the fearful environment is dispelled and more innovative techniques are in place to help them in solving their status of being undocumented.
 23. Constructive criticism of other parties by the government must not be viewed so negatively where the ' teaching people a lesson ' approach becomes the primary way of response. The criticism must be studied and used as inputs for further developments in streamlining or upgrading procedures and standards.
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IV. Foreign Workers Restriction Of Holding Leadership Positions In Trade Unions

- 24.** Migrant workers in Malaysia are restricted by the Trade Union Act (1959)⁶ to be elected in the top leadership position of Trade Unions. Their representation is present only at the subcommittee level and serves a bridge between the local leadership of the Trade Unions and the migrant workers to discuss work related issues.
- 25.** This discrimination against migrant workers to hold a leadership position according to some Trade Unionist in Malaysia is not so important because their work contracts usually do not go beyond 3 years. In contrary to this there are many migrant workers who are working in the same factory/company or sector for more than 3 years. There are also those who exhibit strong leadership qualities out of their own work experience or background.

Recommendation

- 26.** As the workforce in Malaysia comprises a large portion of migrant workers it is rightful that they hold leadership positions at their workplace. The local Trade Unions should organize more leadership trainings for all workers in Malaysia to be aware of their rights and responsibilities as workers in Malaysia. Also, the Trade Union leadership must encourage solidarity amongst workers instead of dividing them between locals and migrants.
- 27.** Local NGOs and Pro - Migrant Trade Union/ist in coalitions such as LRC (Labour Reform Coalition) must continue lobbying and campaigning for greater rights for migrant workers in the Trade Union and Labour laws.
- 28.** The introduction of anti - discrimination measures and the removal of restrictions in the law, rules and regulations which prevents migrant workers from being Trade Union leaders. Amongst the local Trade Unionist there could be resistance towards the migrant workers from holding leadership positions. If cases such as this do occur the Trade Union department or the relevant lawful bodies must stop that discriminatory practice.

V. Collective Agreement Benefits

- 29.** Migrant workers in Malaysia, who are not members of their respective Trade Unions are at most times not automatically entitled to their benefits which are stated in their workplace CA (Collective Agreement). Only migrants who are Trade Union members gain the immediate benefits from the CA.
- 30.** It is critical to relate this issue to the bigger problem of Unionization of the workplace in Malaysia. Unionization of the workplace in Malaysia is 5.8 %⁷ making it one of the lowest in the world. Without strong unions in terms of its membership and liveliness, the collective rights or demands of the workers will not be met in the fullest.

Recommendation

- 31.** Clear provisions in the law must be put in place so that non - members of the trade unions can enjoy the same benefits as workers who are members of Trade Unions.
 - 32.** Pre and Post- arrival training for newly recruited migrant workers must include modules on Trade Union activism and workers rights in Malaysia.
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33. In a large part, the normalization of the labour rights of both local and migrant workers in Malaysia will cause workers to be effective in expressing their grievances and opinions on improving safety standards and work conditions. In the long term this will create a motivated workforce which immensely contributes to the national economy through higher productivity.

Endnote

1. North South Initiative (n.d), Retrieved 14 July 2023, from <https://nsinitiative.net/about/>
2. SUARAM (n.d), Retrieved 14 July 2023, from <https://www.suaram.net/background>
3. United States Department Of State (n.d), Trafficking In Persons Report (2017 -2023), Retrieved 14 July 2023, from <https://www.state.gov/trafficking-in-persons-report/>
4. Al - Jazeera, ' Locked Up In Malaysia`s Lockdown' (3 July 2023) Retrieved 14 July 2023, from <https://www.aljazeera.com/program/101-east/2020/7/3/locked-up-in-malaysias-lockdown>
5. Yunus A , New Straits Times (NST), ' Rayhan Kabir`s Employer Under Probe, Dewan Rakyat Told ' (4 August 2020), Retrieved 14 July 2023, from <https://www.nst.com.my/news/nation/2020/08/613987/rayhan-kabirs-employer-under-probe-dewan-rakyat-told>
6. Pereira A, Benedict J (18 December 2019), ' Migrant Workers Continue To Be Denied Their Civic Freedoms', Malaysiakini, Retrieved 14 July 2023, from <https://www.malaysiakini.com/news/504053>
7. Goh E, Hin O K & Ahmad Khairil (26 May 2023) , ' What Do You Need To Know About Unionization In Malaysia' Retrieved 14 July 2023, from <https://www.centre.my/post/what-you-need-to-know-about-unionisation-in-malaysia>