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PRESS STATEMENT

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UNDOCUMENTED, SCAPEGOATED & HUNTED DOWN BY THE HOME MINISTRY: STOP THE CRACKDOWN ON MIGRANT WORKERS

The Home Minister Ahmad Zahid Hamidi's assertions that the Malaysian government needs to launch a 'massive operation' on undocumented migrants in order to address the increase of "crime, drugs, prostitution and other illegal activities that may cause a threat to the country's security" is as malicious as it is misleading, as his Deputy, Datuk Wan Junaidi Tuanku Jaafar reported in Parliament on the 8th of July 2013 that only one percent (1%) of crimes in the country were committed by foreigners¹. When 99% of crimes are perpetrated by Malaysians, why is the Home Minister expending the energy & limited resources of the enforcement agencies to hunt down migrants who have come to our country to work for us? Are migrants being used, yet again, as scapegoats by the State?

With 39 gun-related deaths in Malaysia between January and May 2013 alone², and other forms of crimes such as trafficking in persons (including children) on the rise, it is unacceptable that the Home Minister attempts to create an illusion on being 'tough on crime' by going after the population of people least responsible for crimes in the country. It is important therefore as Malaysians to ask why the State is choosing to do this. What is preventing the enforcement agencies from taking action against the real perpetrators of crime, drug dealers and human traffickers in Malaysia?

This inhumane attack on migrants is even more despicable since migrants often become undocumented as a result of State policies or State sanctioned practices. The Immigration Department's own policy states that only the employer or the agent can obtain a work permit for migrants. Since it is a policy by the Home Minister that leaves migrants without control over whether or not they are documented while in Malaysia, it is the Home Minister who should take responsibility for creating this situation of undocumented migrants. The Master Builders Association Malaysia (MBAM) recently stated that it was the complicated processes of different Ministries and delays by the Immigration Department that left migrant workers in a state of being undocumented, especially since their passports are held by the departments for long periods of time while being processed, and copies of passports are not recognized by the enforcement officers³. Tenaganita supports this statement by MBAM and reiterates their concern for how this 'crackdown' is going to unfairly persecute migrants. Tenaganita is aware that when employers go directly to get their workers work permits

¹Parliament: Only one percent of crimes committed by foreigners, says Wan Junaidi. Retrieved 9th July 2013 from <http://www.thestar.com.my/News/Nation/2013/07/09/Parliament-crime-illegal-immigrants.aspx>

² Gun killings on the rise. Retrieved 5th August 2013 from <http://penangmonthly.com/gun-killings-on-the-rise/>

³ Immigration DG: It only takes 14 days to process foreign workers visas, permits. Retrieved 3rd August 2013 from <http://www.thestar.com.my/News/Nation/2013/08/02/Only-14-days-to-process-foreign-worker-visas-permits.aspx>

done, there are unnecessary delays in processing for the permit, a process that however can be expedited with 'added costs'. The 6P program, the last major attempt to 'grant amnesty & legalization' to undocumented migrants in Malaysia also turned out to be an absolute fiasco, a tragedy for thousands of migrants, and a profit-making machine for the agents and the Home Ministry. Almost 2 years ago, the Home Minister stated that 1.3 million undocumented migrants were registered with the Immigration department under the 6P. After paying hundreds of Ringgit - even more than RM4000 in many cases- to obtain their permits, many undocumented migrants remain undocumented due to fraudulent agents who had been granted approval by the Home Ministry and at the hands of purposefully limp enforcement agencies unwilling to act on these agents. More than one year ago, Tenaganita filed cases agents to the Home Ministry and other relevant agencies of several thousand migrants cheated through the 6P by 55 outsourcing, but no actions have been taken by the State to address these cases, see that justice is served to the migrants cheated and to hold the agents accountable. It is incumbent on the Home Minister to provide a detailed explanation as to why thousands of migrants remain undocumented, how much money was collected and spent by the State on the 6P exercise and why there remains a lack of transparency on the continued legalization process till today.

Home Minister Ahmad Zahid Hamidi has stated that this massive crackdown on migrants is needed to address crimes, including sex trafficking. One of the rising and poorly addressed crimes in Malaysia is trafficking in persons. It is ludicrous therefore to think that arresting migrants who are often the victims of these crimes will address the problem, not least of all because migrants are not trafficking themselves. How will arresting and deporting victims stop the trafficking of persons in Malaysia? Is it not the perpetrators who should be targeted by the State? It is the system of recruitment and employment particularly by outsourcing agents that has led to forced labor and the highest form of trafficking in Malaysia. The US Anti-Trafficking in Persons Report 2013 has placed Malaysia for the fourth time under the watchlist and has explicitly stated that the government has done very little to reduce modern day forms of slavery in labor and in the sex industry.

Tenaganita also expresses grave concern over the security of over 100, 000 refugees (including about 30, 000 children) who are seen to be 'undocumented' in the eyes of the State. In the absence of a clear and comprehensive policy on the recognition of refugees status and rights, refugees and asylum seekers remain at serious risk of arrest, detention and deportation.

Tenaganita is extremely concerned over how the rights of migrants will be protected and respected during this process. Our experience in monitoring the treatment of migrants during arrest, detention and deportation show a disturbing pattern of continuous human rights violations. Migrants have in the past reported facing physical and verbal abuse at the hands of enforcement officers, with migrant women facing the additional risk of sexual violence.

The Home Minister has stated that they are identifying 'new holding centres' to be used during the crackdown. It is incumbent on the Home Minister, in the interest of transparency and accountability to state what the SOPs of all holding & detention used are and to allow access to monitors in order to prevent to ensure human rights standards are met. Tenaganita also echoes the calls made by the Child Rights Coalition Malaysia (CRCM) for the release of all children from immigration detention centres, and for an immediate end to the arrest of children. Malaysia, as signatory of the Child Rights Convention would be in breach of international law if they continue to detain children.

There is also little opportunity for migrants who are arrested to access justice. Initial findings of Tenaganita's recent monitoring of 500 cases in 13 courts (Duta Courts Complex, Kuala Lumpur, Petaling Jaya, Shah Alam, Sepang and Lenggeng Detention Centre) reveal that in most cases, court processes did not adhere to basic standards of justice & human rights. Out of 500 cases, in only 4 cases were migrants represented by a lawyer, while 70% of migrants pleaded guilty, in many instances in the absence of a translator and when they clearly demonstrated being unable to understand the court processes or the charges levied against them. There were also cases where groups of migrants were charged and sentenced as a group, while in most cases, there was little probing on where or who held their passports. The passport is a key document of evidence that will show who is responsible for the migrant workers status in the country, yet neither the prosecutor nor the Judge appeared to deem it important to seek passports as evidence that will determine the due process for justice.

Tenaganita therefore calls for a moratorium on the arrest of migrants and calls upon the Home Minister to address the fundamental causes that have led to migrants becoming undocumented or trafficked in Malaysia. As repeated numerous times, Tenaganita restates its willingness to work with the Malaysian government to address these issues. We also call upon the governments and civil society of sending countries, especially the countries of Indonesia, Thailand and the Philippines whose nationals are being specifically targeted by the Home Ministry, to place pressure on the Malaysian government to stop violating the rights and dignity of its nationals and to end this scapegoating of migrants in Malaysia. Migrants are NOT the cause of the crimes in the country but are more often than not the victims. Muhyiddin Yassin as Deputy Prime Minister and head of the cabinet committee on migrant workers must display leadership, transparency and honesty in addressing corruption and the abuse of migrants in Malaysia, and must step up in enacting a long-overdue effective labour policy that treats all workers equally, with respect for rights & dignity.

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