

Regional Recommendations

In the course of this study into the issues surrounding arrest, detention and deportation, it became increasingly obvious that the existing legal migration channels in the GMS are too restrictive and/or expensive for the majority of poor people to access. Thus, migrants are effectively forced to seek illegal channels of migration even if this involves the risk of facing exploitative recruitment practices, having to pay bribes, and braving the physical danger involved in crossing the border illegally. Even when migrants register with the government of their host country, their immigration status remains a pseudo-legal mechanism to monitor and restrict their movements. Under such systems, migrants remain vulnerable to the risk of arrest, detention and deportation.

It is essential that all parties concerned address the administrative systems that leave migrants with little option but to seek illegal employment, which inevitably involves bribes, illegal brokers and illegal recruitment practices. Any policy of managed migration should aim to create an enabling social and political environment where migrants can seek a safe and fair migration channel subject to their own life choices rather than enforcing restrictions on individuals' mobility. Migrants who escape from exploitative employers are often referred to by the authority as 'runaways'; it is they who are seen as the problem, rather than their abusive employers. However, what seems to be missing is any sort of governmental response to the issues that are pushing migrants to "run away", such as exploitation in the workplace, the lack of labour rights, and poor occupational health and safety (OHS) standards.

In order to address the human rights issues raised by the routine arrest, detention and deportation of migrants, we would urge governments in the region to: 1) cease the criminalisation of migrants; 2) promote decent working and living conditions in order to prevent situations where migrants become subject to arrest, detention and deportation; and 3) reform the procedures of arrest, detention and deportation to make them more humane, transparent and subject to independent legal oversight.

Recommendations to prevent the criminalisation of migrants

Migrants have a right to mobility in their destination country. There should be no restriction imposed on this right. There are also a large number of people in the GMS who are stateless. These individuals are particularly vulnerable to arrest, detention and deportation.

In this regard, we submit the following set of recommendations to be implemented by governments in the GMS:

1. That GMS governments immediately repeal restrictions placed on the mobility of migrants imposed by Cabinet Resolutions.
2. That all peoples in the GMS have a right to be recognised as citizens in their country of origin.
3. That national legislative bodies issue recommendations that promote decent working and living conditions in order to prevent situations where migrants are subject to arrest, detention, deportation.

4. As explained above, migrants are always at risk of arrest, detention and deportation in absence of access to proper channels of legal migration. Therefore it is recommended that GMS governments provide proper channels for all people to legally migrate for the purposes of work.
5. Many migrants are arrested despite being registered with the authorities, if for example they fail to carry their identification documents. We recommend a halt to such arrests.
6. For the GMS government agencies to rigorously enforce the law that prohibits the confiscation of personal identification documents and to hold anyone who confiscates migrants' documents accountable. Migrants should not be criminalised if their documents have been confiscated.
7. Relevant immigration and employment laws should provide for migrants who are forced to leave the employer with whom they are registered because of abuse.
8. That the GMS governments recognise migrants' right to join and/or form trade unions, and to allow these trade unions to be registered when formed.
9. That GMS policy makers to standardise working conditions, including those relating to minimum wages and working hours, through legally enforceable labour laws and contracts.

Recommendations to ensure procedures of arrest, detention and deportation more humane and transparent

In circumstances where arrest, detention and deportation are unavoidable, the following recommendations should be implemented to ensure that the process is more humane and transparent.

Throughout the ADD processes

Addressed at all GMS countries:

10. For all GMS governments to ensure that no mandatory HIV tests are carried out in the course of the deportation and return process.
11. That the relevant government authorities in the GMS make information relating to the laws, policies and procedures governing arrest, detention and deportation publicly available and accessible to migrants throughout the region.
12. For migrants facing abusive circumstances, the government authorities should provide a channel whereby they can seek assistance without fear of arrest, detention and deportation.
13. That GMS governments grant migrants leave to remain in their host country for the duration of any pending litigation where for example migrants pursuing an employment law matter through the courts.

14. We urge all guilty parties to cease the extortion and blackmailing of migrants during the processes of arrest, detention and deportation. We recommend that the authorities provide greater oversight into enforcing discipline in the behavior of their officials and transparency in their practices.

Addressed at receiving countries:

15. That the concerned authorities in the GMS ensure that migrants are immediately released and receive compensation in cases where migrants are unlawfully detained (i.e. those arrested with legal status or during the tsunami.)
16. When migrants decide to return to their home country and request assistance from the authorities, they should provide protection and facilitate their safe return. We recommend relevant international agencies, such as the IOM, to coordinate with relevant governments on this matter.
17. That all GMS governments prosecute with the full force of the law those who physically and/or sexually abuse migrants during the arrest, detention and deportation process.

Arrest

Addressed at sending countries:

18. We encourage the embassies of migrants' home countries to appoint labour attachés with sufficient funding, staffing and a clear mandate to protect the country's migrant workers.
19. We recommend that labour attachés be trained on migration, labour rights and counseling skills in order to promote the rights of their compatriot migrant workers.

Addressed at receiving countries:

The following recommendations are addressed to receiving countries where there are presently no standard procedures concerning the arrest, detention and deportation of migrants. Currently migrants are not subject to any clearly laid out procedures. Consequently, they have very different experiences in relation to the reasons surrounding their arrest, how they are arrested, when they are arrested, and what happens to them after arrest.

Procedures

20. That the police, immigration, and border control officers to develop standard procedures in collaboration with migrant groups and civil society to support migrants from the GMS and disseminate information concerning arrest, detention and deportation among migrant communities.
21. That relevant authorities develop clear standards that apply to all individuals including migrants regarding their stop and search policies e.g. in the checking of ID documents

and in searching for drugs and other contraband. These policies should be in line with the internationally accepted standards of professional practice such as those contained in the UN basic principle on the Use of Force and Fire Arms by Law Enforcement Officials and the standards set by the National Human Rights Commission, etc.

22. That the respective authorities ensure that their practices and procedures do not leave migrants subject to arbitrary arrest. There must be a clear policy and mechanisms protecting migrants against unreasonable arrest and seizures of their belongings.
23. That the governments of receiving countries set up independent institutions where migrants can raise complaints about arrest procedures.
24. That the relevant GMS governments provide arrested migrants with access to appropriate legal aid and support services, including services provided by NGOs and consulate staff.
25. That relevant authorities employ professional interpreters at their police stations in areas where there are large numbers of migrants. In other areas, they should be in contact with NGOs or embassies that can provide interpreting services when needed.
26. That the relevant authorities cease the practice of night-time arrests and dawn raids. In cases where such actions are deemed necessary and appropriate they must be subject to rigorous legal oversight.
27. That relevant authorities ensure migrants' belongings are returned if confiscated.
28. That all the parties concerned ensure that arrested migrants are paid in full the wages and benefits owed to them.
29. That all governments instruct law enforcement officials, during basic training and all subsequent trainings, on the provisions of national legislation in accordance with the UN Code of Conduct for Law Enforcement Officials, as well as on basic international human rights standards applicable to law enforcement officials.

Detention

Addressed at sending countries

30. That embassies provide consular services, including the provision of necessary documentation for migrants.
21. That embassies of migrants' home countries play more active roles in assisting migrants held in IDCs.¹

Addressed at receiving countries

32. That the authorities of receiving countries improve the sanitary and other facilities at their detention centres. To ensure that migrants are provided with clean toilets, drinking water, decent bedding, appropriate space, and food, when subject to detention.
33. That the authorities provide separate quarters for male and female migrants held in detention, in addition to making appropriate arrangements for families.
34. That the authorities facilitate the provision of appropriate services and medical care to children, pregnant women and migrants with health needs at the IDCs.
35. That the authorities minimise periods of detention.
36. That the authorities immediately refer migrants to the UNHCR if they identify themselves as refugees, or if they describe circumstances that signal that they may be in need of international protection.
37. That the authorities at detention centres prevent abuse from occurring among detainees, particularly resulting from the practice of using long term detainees as prison leaders.
38. That the authorities ensure that all detainees are treated humanely in accordance with international principles and standards governing the use of administrative detention.
39. That the authorities provide bi-lingual social workers with appropriate language skill in response to the needs of the detainees.
40. That the authorities allow regular visits by independent organisations, such as representatives of civil society groups, the UNHCR, welfare institutions, NHRCs, etc.
41. That the authorities assign appropriate numbers of female immigration and police officers to police stations and IDCs.

Deportation*Addressed at sending countries*

42. That governments of sending countries negotiate an end to mass deportations.
43. That governments of sending countries negotiate on behalf of migrants for humane conditions during the deportation process, and to ensure that deportation are carried out in a humane and safe manner.
44. That sending countries respond swiftly with appropriate services when mass evacuation of migrants is required (e.g. in cases of natural disaster or war.)

Addressed at receiving countries

All deportations must be carried out in a way that respect the human dignity and safety of the deportee, including ensuring they are given toilet stops and that appropriate forms of transportation are guaranteed.

Mass deportation

45. The mass deportation and systematic or repetitive expulsion of migrants constitute a violation of human rights under international law. Such actions leave those expelled subject to unchecked abuse and danger. We urge governments to halt mass deportations and systematic expulsions of migrants.

46. That the governments of receiving countries grant amnesties to migrants to avoid situations where mass deportation are considered necessary.

47. That governments explicitly declare that mass deportations are illegal and to prohibit them under domestic law, policy and practice.

Other forms of deportation

48. That governments cease to collect fees from migrants in order to pay for their own deportation.

49. That host governments never deport migrants if they cannot guarantee the deportees' safety and security in their countries of origin.

Addressed at countries of origin:

50. When migrants have been deported or have returned voluntarily to their countries of origin, we urge their governments not to treat them as criminals and subject them to punitive sanctions such as fines and imprisonment.

Endnotes

¹ The term IDC in this section is used to cover all forms of detention facilities used to hold migrants including police holding cells, immigration holding cells, and immigration detention centres.