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The Editor
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letters@nstp.com.my

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AMNESTY INTERNATIONAL INTERNATIONAL
SECRETARIAT
Peter Benenson House, 1 Easton Street
London WC1X 0DW, United Kingdom
T: +44 (0)20 7413 5500 F: +44 (0)20
7956 1157
E: amnestyis@amnesty.org W: www.amnesty.org

Dear Editor

On 6th July 2009, your paper reported a statement by the Immigration Department's Director General that only those who entered the country illegally were subject to being caned or whipped, as provided by the country's Immigration law. This is not so, and even if it were true, it would still place Malaysia in violation of international human rights law.

First, Amnesty International would like to reiterate its objection to caning and whipping in all circumstances. Caning and whipping always constitute cruel, inhuman and degrading punishment, which is prohibited absolutely under international law, a prohibition that is reflected in Article 5 of the Universal Declaration of Human Rights. It is humiliating and causes such pain that recipients have been known to faint or bear physical or psychological marks for a long time. Due to the severity of the pain inflicted, caning and whipping as practised in Malaysia may in some cases amount to torture.

In addition, since 2002 Amnesty International has documented several cases where persons entering Malaysia legally have nevertheless been caned or whipped. To give just five examples:

- In June 2003, a Bangladeshi worker who had entered the country legally was whipped. At the time he was prosecuted, his passport was being held by the Malaysian Immigration department while he was pursuing a case pending in the Industrial Relations Court against his employer.
- In March 2005, a Nepali migrant was arrested, charged and later whipped under the Immigration Act. In July of the same year, the courts overturned the conviction and ordered his immediate release from prison following the surfacing of evidence that he was a documented legal worker. His passport had been withheld by his employer, together with back wages.
- In September 2007, a migrant worker from Bangladesh legally arrived in Malaysia and had his passport taken by his employer. He was arrested on the 21st November 2008 by the Peoples Volunteer Corps (RELA) because of his employer's failure to renew his work permit. He was subsequently caned and lost consciousness for a day as a result of the caning.
- In November 2007, a migrant worker from Bangladesh who also legally arrived in Malaysia was later abused by his employer. Despite paying the employer for the renewal of the work permit, the document was not renewed. He was arrested on 15th November 2008 by immigration officials and given three strokes of the cane. He received no medical treatment after the caning.
- In November 2007, another Bangladeshi arrived in Malaysia through legal channels for work with a Malaysian Company. He was received by his potential employer at the airport, and had his passport taken away. He was unemployed for about 4 months. He was then given some work but was not paid any wages and had to depend on others for food. His employer later failed to renew his work permit. He was subsequently arrested and given three strokes of the cane.

Many migrant workers have entered the country legally but subsequently become undocumented due to vague and opaque recruitment procedures, work permit renewal procedures and other procedures and policies. The latter three examples above were documented by Amnesty International following the implementation of the immigration biometric record keeping system.

The Malaysian Immigration Act criminalises migrant workers for what amounts to administrative, or procedural offences, for which punishments include caning, whipping and imprisonment. Where such offences are concerned, imprisonment should be allowed, if at all, only as a last resort in extraordinary, narrowly defined circumstances.

Studies have shown that caning and whipping do not act as a deterrent. Undocumented workers are often ignorant of procedures and are themselves often victims of deceit at the hands of migrant worker traffickers or unscrupulous employers. Contrary to the statement by the Director General, in addressing the issue of trafficking, imposing such severe penalties against the victims of traffickers does not address the problem.

We reiterate our call for the Malaysian authorities to abolish caning and whipping and review the laws, policies and practices governing the treatment of both documented and undocumented migrant workers, with a view to bringing them in line with international human rights standards.

Sam Zarifi
Asia Pacific Director
Amnesty International