



KEMENTERIAN DALAM NEGERI

# ROYAL COMMISSION OF INQUIRY REPORT

ON THE DISCOVERY OF TRANSIT CAMPS  
AND GRAVES AT WANG KELIAN, PERLIS

## 2019



**GENERAL REFERENCE  
OF THE ROYAL COMMISSION OF INQUIRY  
REPORT ON THE DISCOVERY OF TRANSIT CAMPS AND  
GRAVES AT WANG KELIAN,  
PERLIS  
2019**

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# LIST OF ABBREVIATIONS

4WD	:	4-wheel drive vehicle
NADA	:	National Anti-Drugs Agency
ACTIP	:	ASEAN Convention Against Trafficking in Persons Especially Women and Children
AKSEM/MBCA	:	Malaysian Border Control Agency
APMM/MMEA	:	Malaysian Maritime Enforcement Agency
LRP	:	Low Ranking Personnel
ASEAN	:	The Association of Southeast Asian Nations
MAF	:	Malaysian Armed Forces
BICAM	:	Border Information Cooperation Agencies Meeting
CEDAW	:	Committee on the Elimination of Discrimination against Women
CRC	:	Convention on the Rights of the Child
CRPD	:	Convention on the Rights of Persons with Disabilities
CCTV	:	Closed-circuit television
DNA	:	Deoxyribonucleic acid
DVI	:	Disaster Victim Identification
FELCRA	:	Federal Land Consolidation and Rehabilitation Authority
FELDA	:	Federal Land Development Authority
GBC	:	General Border Committee
HR	:	Human Remains
ICQS	:	Immigration, Customs, Quarantine and Security Complex
IPD/DPH	:	District Police Headquarters

IPK/CPH	:	Contingent Police Headquarters
DIM	:	Department of Immigration Malaysia
RMC	:	Royal Malaysian Customs
RTD	:	Road Transport Department
PWD	:	Public Works Department
JUEM/DSMM	:	Department of Survey and Mapping Malaysia
MOHA	:	Ministry of Home Affairs
Camp	:	Undocumented immigrants temporary settlement camp
PIC	:	Police Inquiry Case
KESBAN	:	Security and Development
MOH	:	Ministry of Health
MDTCA	:	Ministry of Domestic Trade and Consumer Affairs
SDR	:	Sudden Death Report
MAPO	:	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants
MAQIS	:	Malaysian Quarantine and Inspection Services Department
MARTEK	:	Tactical Base
NGO	:	Non-Governmental Organisation
NST	:	New Straits Times
PUA	:	Person Under Arrest
PATI	:	Illegal Immigrant
UN	:	United Nations
RMP	:	Royal Malaysian Police
PERHILITAN	:	Department of Wildlife and National Parks
GOF	:	General Operations Force
PKK	:	Regulatory and Enforcement Division, Ministry of Home Affairs

SPO	:	Senior Police Officer
POCA	:	Prevention of Crime Act 1959 [Act 297]
MPF	:	Marine Police Force
IGSO	:	Inspector General of Police Standing Order
RELA	:	Malaysian Volunteer Corps Department
ROA	:	Refer Other Agency
RV	:	Rendezvous point
SIAP/EAIC	:	Enforcement Agency Integrity Commission
SOP	:	Standard Operating Procedure
SOSMA	:	Security Offences (Special Measures) Act 2012 [Act 747]
SUHAKAM	:	Human Rights Commission of Malaysia
UNHCR	:	United Nations High Commissioner for Refugees
UPP	:	Anti-Smuggling Unit

# CHAIRMAN'S MESSAGE

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*Bismillahir-Rahmanir-Rahim*

*Assalamu'alaikum warahmatullahi wabarakatuh and greetings*

1. All praises is due to Allah, Most High, as it was by His grace and permission, the Royal Commission of Inquiry on the Discovery of Transit Camps and Graves at Wang Kelian, Perlis, was successfully conducted.
2. It cannot be denied that the Wang Kelian tragedy of 2015 has left a black mark in the history of the country with regard to the entry of migrants. The key duty entrusted upon the Commission was to unravel the truth of what happened at Wang Kelian and the factors that gave rise thereto. Consequently, the Commission has attempted to identify the perpetrators involved in the human trafficking and smuggling of migrants that became the cause of such a cruel and inhumane tragedy at Wang Kelian.
3. In relation thereto, the Commission surveyed the Wang Kelian forest reserve to see for themselves the remains of the camps and graves, as well as to observe the Malaysia-Thailand border in the state of Perlis.
4. As a whole, the members of the Commission were truly saddened and affected by witnessing the remains of the transit camps and traces of graves in the middle of the lush jungle. The cruelty of such acts committed against those innocent people by the syndicate involved solely for profit could not be imagined.

5. This then raised the question as to how such a tragedy could have occurred undetected by any of the agencies responsible for the security of our borders. At the time, I realised how easily it was for our borders to be breached.

6. Through the publication of this report, it is the hope of the Commission that all questions that have arisen will be fully answered. This is to enable all parties, both local and international, to evaluate for themselves the actual events of Wang Kelian.

7. I would like to take this opportunity, on behalf of members of the Commission, to record our highest appreciation to the Government for giving us the honour and opportunity to continue serving the country through the establishment of this Commission and for the confidence in my appointment to be its head.

8. This report is the product of extraordinary effort, sharing of knowledge and hard work of all parties involved in carrying out the tasks allotted in the period of six months from 5<sup>th</sup> March to 4<sup>th</sup> September 2019.

9. The Commission expresses its appreciation and gratitude to all those who were involved, especially Mr Yusran Shah bin Mohd Yusof, Secretary to the Commission, who was its driving force. Due to Mr Yusran Shah's commitment and hard work, the Commission was able to carry out its duties swiftly and properly.

10. In addition, our appreciation extends to the Secretariat and Reporting Officers comprising officers from the Ministry of Home Affairs, who played important roles in facilitating the administration and running of the public and closed hearings of the Commission.

11. We also express our respect and appreciation to the Attorney General's Chambers for assigning two of their officers, Mr Khairul Anuar bin Abd Halim and Mr Saiful Hazmi bin Mohd Saad, who acted as the Operations Officers to the Commission. Due to their assistance and hard work, the Commission was able to discharge its duties as swiftly as was required.

12. We would also like to record our appreciation to the Investigating Officer, Superintendent Woon Tan Seng, who carried out his duties professionally. Our appreciation also extends to the additional investigating officers who assisted us in carrying out further investigations of this incident.

13. Our highest appreciation is also extended to the Ministry of Home Affairs, the Royal Malaysian Police, the Malaysian Border Control Agency, the Department of Immigration Malaysia and other Departments as well as Agencies that assisted in the administrative matters related to the official visit of the Commission to Wang Kelian and Padang Besar, Perlis, as well as to Pengkalan Kubor and Rantau Panjang, Kelantan.

14. Finally, it is the Commission's hope that this report satisfactorily details the tragedy of Wang Kelian specifically and assist policy makers as well as implementers in aiding the protection of the country's borders to ensure the security and sovereignty of our cherished nation.

I conclude this message with my best wishes.

*Wassalamu'alaikum warahmatullahi wabarakatuh.*

**TUN ARIFIN BIN ZAKARIA**

CHAIRMAN

# EXECUTIVE SUMMARY

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## BACKGROUND

1. The discovery of the camps and graves at Wang Kelian, Perlis, garnered the attention of many and stunned the nation. These camps and graves on the border of Malaysia and Thailand gave rise to an outcry that resulted in the competency of the enforcement agencies specifically and the Government in general to be questioned.

2. The governments of Malaysia and Thailand conducted investigations and took action against those responsible. However, the involvement of Malaysians in this incident led to many questions. Since the discovery garnered attention in May 2015, it continued to become the topic of discussions in the media, both within the country and abroad, prompting the government to establish a Royal Commission of Inquiry on the Discovery of Transit Camps and Graves at Wang Kelian, Perlis, on 26<sup>th</sup> October 2018.

3. The Duli Yang Maha Mulia (DYMM) Seri Paduka Baginda Yang di-Pertuan Agong appointed 7 members of the Commission from various backgrounds to enable a comprehensive investigation to be carried out and for recommendations of improvements to be presented in order to take into account all aspects to ensure such an incident is never repeated. The establishment of this Commission marks the Government's seriousness in combatting such crimes and reflects an openness towards improving any gaps in the current processes and procedures, including legislation currently in force.

4. A total of 8 terms of reference were fixed for the Commission, which covered examination of documents and evidence, investigation of current procedures, conduct of inquiry, ascertainment of any implications for the country and recommendation of actions of improvement to the Government.

5. In ensuring that the terms of reference were met, the Commission adopted several approaches by conducting visits to the transit camps to gain an actual picture of the crime scene, including its topography, as well as visits to the points of entry at the Malaysia-Thailand border to understand the entry and exit processes, including the scope of responsibility of the agencies involved at the Immigration, Customs, Quarantine and Security Complex (ICQS). Visits were also made to the Malaysia-Thailand border in Kelantan, with Golok River as its divider, to compare the work processes, threats and challenges faced by enforcement agencies in dealing with issues of human trafficking and smuggling of migrants.

6. The Commission also conducted public hearings and meetings with the public. Public hearings were held for 17 days between 17<sup>th</sup> April to 18<sup>th</sup> June 2019 at the Ministry of Home Affairs involving 48 witnesses with various documents being presented as evidence, including Minutes of Meetings, Standard Operating Procedures (SOP) and written statements.

7. In addition, the Commission also studied domestic and international legislation including related convention to examine the implementation of the country's agreed obligations.

## **FINDINGS OF THE COMMISSION**

8. The Commission found that the Government had taken action to investigate the discovery of camps and graves at Wang Kelian, Perlis. Various legal action was taken against those involved, pursuant to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 and the Immigration Act 1959/63. The Government had also submitted an extradition application to the Governments of Thailand and Bangladesh to obtain suspects who could help in the investigation of the case. However, to date, no positive feedback has been received.

9. 18 camps were discovered on the Malaysian side of the border at Genting Perah and Bukit Wang Burma in Wang Kelian, Perlis. These camps were believed to have been set up by a syndicate of Thai nationals based on similar built structures found on the Thai side. The topography on the Thai side, which is less steep, facilitated access to the camp, compared to the Malaysian side, which is steeper and densely forested.

10. Witnesses' statements confirmed that the syndicate bringing in illegal migrants into Malaysia through Thailand comprised of Thai, Myanmar and Bangladeshi nationals, whereas the undocumented migrants involved were from Myanmar and Bangladesh.

11. The court in Thailand had convicted Thai nationals comprising army officers, public officers, members of the public and foreign nationals involved in human trafficking and smuggling of migrants into Thailand. No Malaysian citizens were charged in Thailand.

12. Based on the evidence, there is no proof to link Malaysian nationals or enforcement and public officers to any human trafficking and migrant smuggling syndicates.

13. The Malaysia-Thailand border is currently patrolled by the General Operations Force and the Malaysian Armed Forces, in accordance with the areas stipulated by the National Operations Planning Committee. There are 20 patrol posts constructed along the country's borders between Bukit Kayu Hitam and Wang Kelian, three of which are inactive.

14. The number of personnel deployed on the border is inadequate, in addition to the shortage of apparatus and equipment, especially vehicles for patrolling. Border fences and walls have not been comprehensively built resulting in areas of the border that are open. Assets are not well-maintained.

15. The issue of migrant smuggling and the discovery of these camps were reported in an inter-agency meeting at state level. However, there are no records to show that these issues have been discussed regularly and have not been part of the agenda in discussions with Thailand. The enforcement agencies have displayed a failure to take notice of, analyse and understand the incoming trend of illegal migrants, as well as taking a relaxed attitude to the obvious influx of illegal migrants from 2012 until the discovery of the said camps and graves in 2015.

16. The Commission found that enforcement officers and personnel involved lacked the understanding and experience needed to handle cases of human trafficking and migrant smuggling. Public awareness and comprehension of these issues were also seen to remain at a low level.

17. The issue of security is the main driving factor forcing the ethnic Rohingya to search for other alternatives in order to survive. The ethnic cleansing targeted at the Rohingya people in Myanmar, specifically in the Rakhine region, has impacted neighbouring countries including Malaysia. This situation is also influenced by the presence of the UNHCR office in Malaysia, which provides protection to refugees and asylum seekers.

18. With regard to the issue of illegal migrant (PATI) treatment and migration, the policies and stand of the Government appear to be inconsistent and continually changing.

## **RECOMMENDATIONS FOR IMPROVEMENT**

19. Although the Government took action to investigate the discovery of the camps and graves at Wang Kelian, Perlis, it is clear that this incident greatly impacted the country's image. Various parties began to question the competency and capability of the authorities, resulting from the failure to act immediately and take appropriate action.

20. Several weaknesses have been identified in the enforcement of laws, implementation of action and conduct of investigation procedures, which may be summarised as an organisational dysfunction. The Commission views these weaknesses as highly critical and that they need to be addressed immediately and holistically. Based on the facts obtained, there is room for improvement required to be carried out by the Government, especially in terms of policy, human capital, assets, Standard Operating Procedure (SOP), border control and coordination, international cooperation, as well as public awareness.

21. It is imperative Malaysia has a single foreign worker policy that is clear and consistent. The open-door policy with regard to foreign workers should be continued but controls at points of entry into the country must be properly implemented to prevent easy intrusion by undocumented migrants (PATI).

22. Moreover, the Government should possess a clear policy to attract the local people population to enter the 3D sectors, meaning, difficult, dirty and dangerous jobs, to reduce employment of foreign workers in such sectors. Towards this end, it would be appropriate for the Government to provide suitable vocational education, incentives and better salary levels.

23. It is the Commission's view that the Government should fix a ceiling price that may be imposed by employment agencies to prevent them from reaping excessive profits, while at the same time monitor the employment of foreign workers by agents. In addition, the Government should also review the employment process, the time period taken and the costs imposed so that employers will not be burdened while at the same time not being detrimental to the country's security.

24. In line with the country's aspiration to achieve a knowledge-based economy, the Government should re-examine the industry's dependence on foreign workers. Payments of incentives to companies that are able to reduce their dependence on foreign workers could be implemented by the Government.

25. Furthermore, it is necessary that the Government to formulate and establish a comprehensive National Border Management Policy to serve as a guide and reference for all levels of agencies involved in the country's border management.

26. In terms of human capital, there are two elements that require attention: training and human resources. The Commission recommends that training on

cross-border crime be provided to enforcement agencies in a comprehensive manner. In this matter, it is recommended that inter-agency joint training be implemented to enable the sharing of expertise and skills. Personnel to be deployed at the border must be equipped with pre-deployment training and this must be carried on a continuous basis for the personnel on duty. Enforcement officers must also be exposed to issues related to human rights, in order to always be sensitive and aware of them.

27. For border control management, the strength of personnel needs to be of prime importance and staffing fulfilments must be given priority. In relation to this, the Commission suggests that enforcement agencies study staffing requirements based on the complexity of duties to ensure optimum and efficient use of human resources. In addition, to guarantee the integrity and competency of enforcement agencies the job rotation of officers must consistently be in operation by taking into consideration deployment at the border, which leaves one at risk and exposed to practices of corruption and abuse of power.

28. Personnel on duty at the border face challenges and difficulties arising from the topography of much of the area there. Hence, security control at the border must be enhanced by counterbalancing the insufficiencies of human resources. In this matter, the Commission recommends that assets and infrastructure at the border be repaired, upgraded and improved.

29. In realisation of the fact that improvement of assets and infrastructure requires great financial allocation, the Commission urges the Government to consider and provide sufficient allocation. The Commission also fully supports the recommendations for improvement highlighted by the Enforcement Agency Integrity Commission to the Government.

30. In terms of compliance with standing orders, current directives and Standard Operating Procedures (SOP), the Commission found that there exist non-

compliance and gaps in work processes related to case management. Thus, the Commission stresses the need for the immediate updating of existing SOP, fully encompassing the field of investigation. The communication plan and monitoring mechanism with regard to compliance with standing orders, current directives and SOP are also critical aspects that need to be consolidated and given due attention.

31. The Commission found that the lack of any single agency entrusted to coordinate and direct agencies at the border renders the task of coordination between agencies difficult. Lessons must be learnt from several incidents that occurred at the border and it is high time for the Government to establish a sole agency to enable such issues arising at the borders to be addressed. In relation thereto, the Commission recommends that the Malaysian Border Control Agency (AKSEM) be empowered as the said sole agency, taking into account best practices implemented in several other countries in terms of border control management.

32. As a short-term remedial action, the National Security Council is urged to streamline the coordination of action for the country's security issues and formulate policies that are holistic in nature, as a reference and guide for all enforcement agencies tasked with protecting the security of the country's borders. Existing platforms such as the Anti-Trafficking In Persons and Anti-Smuggling of Migrants Council (MAPO) must be utilised to more effectively coordinate inter-agency functions.

33. In terms of strengthening border security controls, the Commission also suggests that abandoned logging roads be cleared and security roads along the borders be built so that the security forces may conduct security patrols regularly and more effectively.

34. It cannot be denied that Malaysia is truly committed to discharging the obligations agreed at regional and international levels. In fact, Malaysia has also provided humanitarian aid for refugees despite not being a member to the

Convention Relating to the Status of Refugees 1951 and/or Protocol 1967. The Commission is of the view that it is necessary for the Government to take a firmer and more vocal stand for the country in relation to security issues in the region, especially those that affect Malaysia. The cooperation of ASEAN members and the international community is needed to put pressure on a particular country to resolve its internal conflicts, which cause negative implications to neighbouring countries.

35. Raising Public awareness of the implications regarding entry of illegal migrants is an aspect necessary to be improved upon, as the Commission found that such awareness among the public is still minimal, especially among communities residing at the border. The Commission is of the view that the Government needs to enhance awareness and make the issue widely known at the border, on a continuous basis.

## **CONCLUSION**

36. Cross-border crime is serious and the uncontrolled entry of illegal migrants brings significant implications for the country. It is hoped that this report will answer all the issues and defects raised, and that the recommendations of the Commission contained herein be seriously considered by the Government.

# CHAPTER 1 PREFACE

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## 1.1 INTRODUCTION

1.1.1 The discovery of the transit camps (camps<sup>1</sup>) of Illegal Immigrants (PATI<sup>2</sup>) (for the purposes of this report, "PATI" shall include victims of human trafficking) and graves at Wang Kelian, Perlis, shook the nation provoking various reactions from the public and the international community. The discovery uncovered human trafficking and migrant smuggling criminal activity in the country, which had been totally undetected, much to the surprise of all.

1.1.2 This human tragedy was against everything the country stands for, as it takes a firm stand against crimes such as these. However, the reality is that such crimes continue to occur and come under global scrutiny. These crimes reduce human beings to the level of "goods" to be exploited for monetary gain by criminal syndicates and must be totally eradicated. The establishment of this Commission by the Government is one of the efforts towards this end.

## 1.2 BACKGROUND

1.2.1 The issue of entry of illegal migrants (PATI) through the Malaysia-Thailand border in the district of Wang Kelian, Perlis, began to capture public attention in May 2015 following the discovery of camps and graves at Wang Kelian in January at Bukit Wang Burma, as well as in March and May 2015 at Genting Perah

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<sup>1</sup> "camps" refer to "illegal immigrants (PATI) transit camps".

<sup>2</sup> According to section 55E(7) of the Immigration Act 1959/63 [Act 155], "illegal immigrants" refers to any person, other than a citizen, who contravenes of section 5, 6, 8, 9 or 15 of the Immigration Act 1959/63 or Regulation 39 of the Immigration Regulations 1963.

1.2.2 The discovery of camps at Wang Kelian was the result of operations conducted by the Royal Malaysian Police (RMP) and media reports from both countries. The incident brought about a feeling of public anxiety, raising issues related to human trafficking and migrant smuggling within the international community. All quarters demanded serious action be taken by the Government in dealing with the issue.

1.2.3 This matter was closely-linked to a similar incident in Thailand. On 1<sup>st</sup> May 2015, 30 corpses were found in a transit camp in Southern Thailand as a result of a joint operation conducted by the Thai police and army<sup>3,4</sup>. Police reports stated that the victims were ethnic Rohingya from Myanmar, and Bangladeshis who died of hunger or disease, whilst in custody. The Thai authorities took action against the individuals involved, including high-ranking public officers. 102 persons were prosecuted for crimes related to human trafficking, including 21 public officers<sup>5</sup>. 62 persons were convicted and were sentenced in 2017, including a Lieutenant-General<sup>6</sup> in the army.

1.2.4 Similarly, the Malaysian authorities also investigated and prosecuted 4 foreign nationals for the offence of smuggling of migrants, and the accused were convicted and sentenced to imprisonment. Various parties voiced their dissatisfaction with the action taken by the Malaysian government as no action had been taken against local citizens, including public officers, in contrast to that taken in Thailand, as well as against the delay in action taken by the authorities

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<sup>3</sup> "Mass Graves of Rohingya Found in Trafficking Camp", *Human Rights Watch Thailand*, 1 May 2015  
<https://www.hrw.org/news/2015/05/01/thailand-mass-graves-rohingya-found-trafficking-camp>.

<sup>4</sup> "Mass graves unearthed at human-trafficker camp in Songkhla", *Bangkok Post*, 1 May 2015  
<https://www.bangkokpost.com/thailand/general/548439/mass-graves-unearthed-at-human-trafficker-camp-in-songkhla>.

<sup>5</sup> "Thailand convicts traffickers after 2015 mass graves discovery", *The Guardian*, 19 July 2017  
<https://www.theguardian.com/world/2017/jul/19/thailand-convicts-dozens-of-traffickers-after-mass-graves-discovery>.

<sup>6</sup> "Guilty verdicts for Rohingya trafficking deaths", *Al Jazeera Media Network*, 20 July 2017  
<https://www.aljazeera.com/news/2017/07/thai-court-deliver-verdict-people-smuggling-case-17071902450630.html>.

in conducting investigations. On 28<sup>th</sup> March 2019, Al Jazeera, an international media agency, reported regarding the issue as to why after 4 years had passed, no member of the enforcement agencies had been convicted<sup>7</sup>. The matter continued to be a topic of discussion in reports issued including by the Guardian<sup>8</sup>, the New Straits Times (NST)<sup>9</sup>, the Star<sup>10</sup> and the Malaysian Human Rights Commission (SUHAKAM)<sup>11</sup>, as well as being mentioned in the United States of America, Department of State, Trafficking in Persons Report (US TIP Report)<sup>12</sup>.

1.2.5 These developments prompted various international parties and Non-Governmental Organisations (NGO) to urge the Malaysian Government to take action in finding those responsible for the existence of the camps and graves at Wang Kelian.

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<sup>7</sup> "Groups urge Malaysia ensure accountability for 2015 mass graves", *Al Jazeera News Network*, 28 March 2019 <https://www.aljazeera.com/news/2019/03/groups-urge-malaysia-ensure-accountability-2015-mass-graves-90327131552825.html>.

<sup>8</sup> "Malaysia mass graves: villagers tell of migrants emerging from secret jungle camps", *The Guardian*, 26 May 2015 <https://www.theguardian.com/world/2015/may/26/malaysia-mass-graves-villagers-tell-of-desperate-migrants-emerging-from-jungle-camps>.

<sup>9</sup> "[EXCLUSIVE] The secrets of Wang Kelian exposed" *New Straits Times*, 20 December 2017 <https://www.nst.com.my/news/exclusive/2017/12/316339/exclusive-secrets-wang-kelian-exposed>.

<sup>10</sup> "No light shed on Wang Kelian", *The Star*, 28 March 2019 <https://www.thestar.com.my/news/nation/2019/03/28/no-light-shed-on-wang-kelian>.

<sup>11</sup> Suruhanjaya Hak Asasi Manusia Malaysia and Fortify Rights, "Sold Like Fish" (Malaysia, March 2019).

<sup>12</sup> United States of America, Department of State, Trafficking in Persons Report June 2016 (United States: United States Department of State Publication Office of the Under Secretary for Civilian Security, June 2016).

## 1.3 BASIS OF ESTABLISHMENT OF THE COMMISSION

1.3.1 A Cabinet Meeting convened on 26<sup>th</sup> October 2018 to discuss the issue in which it was decided that a Royal Commission of Inquiry be established pursuant to the Commissions of Enquiry Act 1950 [Act 119] to investigate and gather actual facts pertaining to the discovery of camps and graves in Wang Kelian, Perlis.

1.3.2 The Government also allowed the Commission to study the possibility of involvement of local authorities and subsequently recommend improvements to be implemented to ensure that the country's border controls may be enhanced. The establishment of this Commission demonstrates seriousness and transparency on the part of the Government to identify issues and prevent misunderstanding and doubt among the public and international community.

## 1.4 ESTABLISHMENT OF THE COMMISSION

1.4.1 The proposal to establish the Royal Commission of Inquiry on the Discovery of Transit Camps and Graves at Wang Kelian, Perlis, was submitted by the Institutional Reforms Committee in a report dated July 2018 and was subsequently tabled during the Meeting of the Special Cabinet Committee on Anti-Corruption, which was chaired by the Prime Minister on 13<sup>th</sup> August 2018. The meeting agreed to the said proposal and decided that the Ministry of Home Affairs (MOHA) should prepare a Memorandum of Cabinet Ministers to be submitted for the Cabinet's approval.

1.4.2 The Cabinet Meeting on 26<sup>th</sup> October 2018 agreed to the proposal to establish the Royal Commission of Inquiry on the Discovery of Transit Camps and Graves at Wang Kelian. This proposal then received the assent of the DYMM Seri Paduka Baginda Yang di-Pertuan Agong on 29<sup>th</sup> January 2019.

1.4.3 This Commission was established with the objective of presenting a balanced report through public hearings, in light of the negative impressions and claims amongst local and international NGOs with regard to the failure of the Government in conducting a transparent and comprehensive investigation.

1.4.4 The establishment of this Commission and appointment of its members according to the requirements and purposes of section 2 of the Commissions of Enquiry Act 1950 are as follows:

Tun Arifin bin Zakaria	-	Chairman
Tan Sri Norian Mai	-	Deputy Chairman
Tan Sri Razali bin Ismail	-	Member
Dato' Noorbahri bin Baharuddin	-	Member
Datuk Junaidah binti Abdul Rahman	-	Member
Dr Tan Seng Giaw	-	Member

1.4.5 In addition, to assist the Commission the DYMM Seri Paduka Baginda Yang di-Pertuan Agong also appointed a Secretary and Operations Officers as follows:

Mr Yusran Shah bin Mohd Yusof	-	Secretary
Mr Khairul Anuar bin Abdul Halim	-	Operations Officer
Mr Saiful Hazmi bin Mohd Saad	-	Operations Officer

## 1.5 COMMISSION TERMS OF REFERENCE

1.5.1 The terms of reference of the Commission are as follows:

- i. Examine all documents and evidence related to the case regarding discovery of transit camps and graves at Wang Kelian, Perlis;
- ii. Investigate the incident regarding discovery of transit camps and graves at Wang Kelian, Perlis;
- iii. Investigate the procedures taken by the authorities during and after the incident;
- iv. Conduct an investigation (inquiry) of the investigating officers, witnesses and any other individuals where deemed necessary;
- v. Investigate whether improvements have been implemented towards enforcement procedures following the incident;
- vi. Identify the post-incident implications on the country (image, finance, bilateral relations and human rights);
- vii. Recommend actions and improvements that may be taken by the Government; and
- viii. Submit a report of the Commission's investigation to the DYMM Seri Paduka Baginda Yang di-Pertuan Agong.

## 1.6 METHODOLOGY OF INVESTIGATION

1.6.1 Conduct visits to the sites of the camps and graves at Bukit Wang Burma and Genting Perah, including the surrounding areas in Wang Kelian, Perlis, for the purposes of obtaining an actual picture of the stated areas.

1.6.2 Conduct an inquiry regarding the discovery of the camps and graves at Wang Kelian, Perlis.

1.6.3 Consider any report/information related to the incident and, if necessary, call on the author or any person mentioned in the said report/information to give evidence.

1.6.4 Analyse laws, legislation, international conventions and protocols relevant to the terms of reference of the Commission, in terms of whether they are sufficient in eradicating cross-border and other related crimes.

1.6.5 Identify the Government agencies responsible for the security of the Malaysia-Thailand border, and in specific, the Wang Kelian area. Identify the jurisdiction of the operations area and standard operating procedure adopted by related agencies in handling human-trafficking cases or other related crimes.

1.6.6 Analyse national policies regarding the entry of foreigners (legal and illegal) and the impact on human-trafficking and migrant smuggling criminal activities.

1.6.7 Submit recommendations for improvements to the Government in efforts to boost control of the country's borders to prevent intrusion, while at the same time prevent a repeat of the incident or suchlike.

## CHAPTER 2 WORKING VISIT OF COMMISSION MEMBERS

*Witnessing for ourselves the traces of the camps and remains of many graves sparked an indescribable feeling of sadness and regret.*

*- Members of the Commission*

### 2.1 INTRODUCTION

2.1.1 From 14<sup>th</sup> to 17<sup>th</sup> March 2019 and also the 1<sup>st</sup> to 3<sup>rd</sup> May 2019, members of the Commission conducted working visits to Bukit Wang Burma and Genting Perah, Wang Kelian, Perlis for the following purposes:

- i. to conduct site visits to obtain an actual picture of the camps, graves and conditions of the jungle, hills, and topography at Wang Kelian, specifically at Bukit Wang Burma and Genting Perah, Perlis;
- ii. to conduct unofficial interviews with local residents to obtain input on the activities of illegal immigrants (PATI), the discovery of the camps and graves at Wang Kelian, Perlis; and
- iii. to observe and obtain a picture of the conditions of the security and development road (KESBAN) on the Malaysia-Thailand border.

2.1.2 Members of the Commission also conducted visits to the Malaysia-Thailand border in Kelantan, to the location shown in Map 1 on 20<sup>th</sup> to 21<sup>st</sup> July 2019, for the following purposes:

- i. to observe border control activities at Pengkalan Kubor and at the Rantau Panjang Immigration, Customs, Quarantine and Security Complex (ICQS);
- ii. to observe and obtain an actual picture of the country's border at Golok River, Kelantan; and
- iii. to observe and obtain an actual picture of the infrastructure and composition of enforcement officers on the Malaysia-Thailand border.



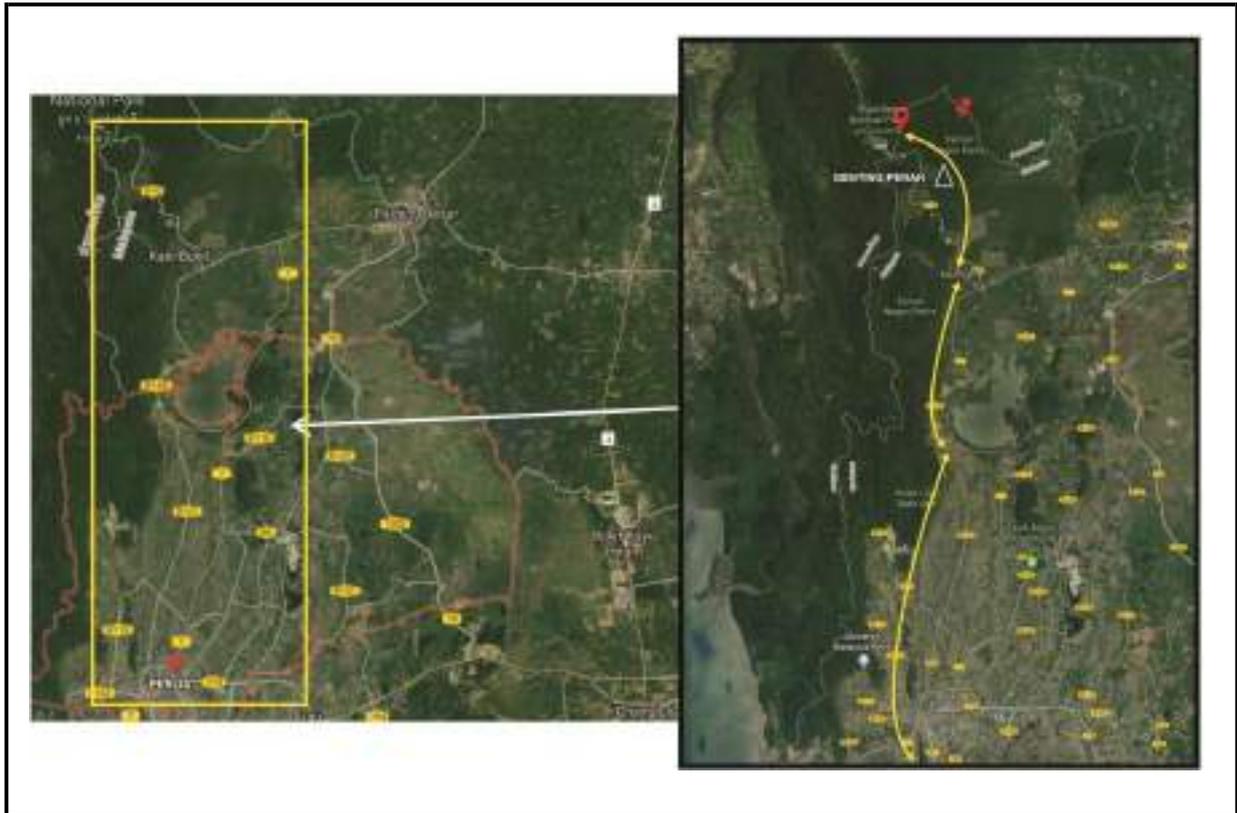
Source: Google maps

**Map 1:** Locations of visits to the Malaysia-Thailand border, Kelantan

## 2.2 SITE VISIT TO CAMPS AT BUKIT WANG BURMA, WANG KELIAN ON 15<sup>TH</sup> MARCH 2019

2.2.1 The visit commenced with a helicopter flight from the Perlis State Assembly to a temporary helicopter landing site at Bukit Wang Burma, Wang Kelian. The journey by helicopter took approximately 15 minutes and the aerial route was as indicated in Picture 1. From the helicopter landing site, members of the Commission hiked up Bukit Wang Burma towards the location of the discovery of the camps. Some of the observations made throughout the visit were as follows:

- i. as the helicopter hovered above the camp site, it was noticed the jungle canopy was thick and obstructed the view to the jungle floor;
- ii. the distance from the temporary helicopter landing site to the camp site was approximately 400 meters and the journey there took approximately 20 minutes on foot;
- iii. the terrain throughout the journey was steep and necessitated climbing in wooded areas;
- iv. there was a stream at the hillside with clear water and rubber hose;  
and
- v. there were traces of abandoned canvas and run-down wooden structures believed to be tents and a detention site.



Source: Google maps

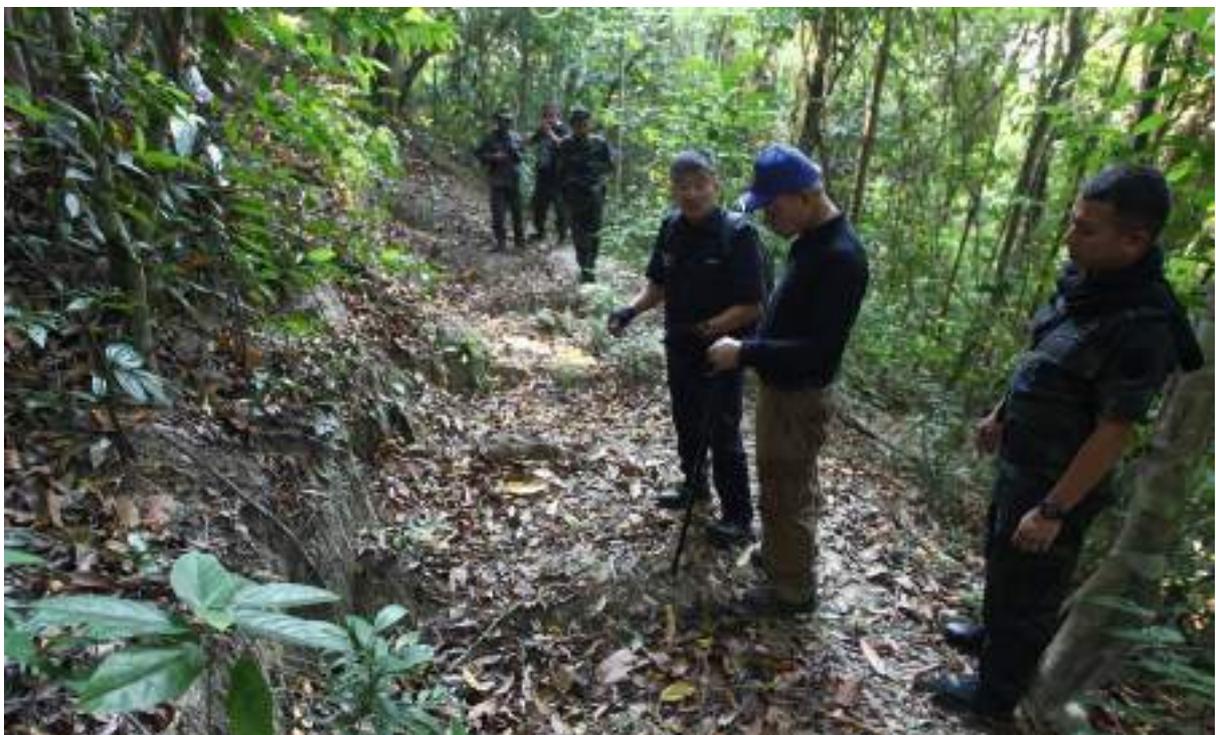
**Picture 1:** Map of aerial route

2.2.2 The members of the Commission subsequently moved on from the camp site to the site of the graves (Pictures 2 and 3). The following were some of the observations by the members:

- i. the graves were located next to the camp site approximately 2 minutes away by foot;
- ii. there were 9 grave structures that could clearly be seen;
- iii. some of the structures were still not filled in while others contained earth and leaves; and
- iv. the graves were facing the same direction, thought to be the direction of the *qiblah* (the direction in which Muslims pray, towards Makkah).



**Picture 2:** The remains of one of the grave structures already excavated. All the graves were thought to be facing the direction of the *qiblah*.



**Picture 3:** Several remains of the grave structures already excavated. Each grave contained one body.

2.2.3 The members of the Commission then descended from the grave site towards the temporary helicopter landing site by way of the same camp site, but via a different route. The following were some of the observations by the members:

- i. an open area was seen, thought to have been used as a detention area for the illegal immigrants. The area was fenced off with wire and also barbed wire that had rusted and were covered in undergrowth (Picture 4);
- ii. wire netting was noticed in a larger open area surrounded by barbed wire that had rusted and were covered in undergrowth, which was also thought to have been used as a detention area for the illegal immigrants (Picture 5); and
- iii. there were remains of plastic packets and empty food tins with labels in Thai (Picture 6).



**Picture 4:** Illegal Immigrants' detention area.



**Picture 5:** Barbed wire and wire netting used as an illegal immigrants' detention area



**Picture 6:** Remains of plastic food packets with Thai labelling.

2.2.4 The members of the Commission then moved down from the temporary helicopter landing site to the tarred road at the foot of Bukit Wang Burma. The following were some of the observations by the members:

- i. the route was very steep and parts of the terrain were rocky;
- ii. there was a telecommunication transmission tower situated approximately 50 metres from the foothill (exiting the jungle). It was thought the tower was still in operation as there were flickering lights and transmission dishes (Picture 7);
- iii. there was a rubbish dump thought to have been a waiting area before the illegal immigrants were transferred to unknown locations; and
- iv. the distance from this area to the General Operations Force Post was 1.0 km.



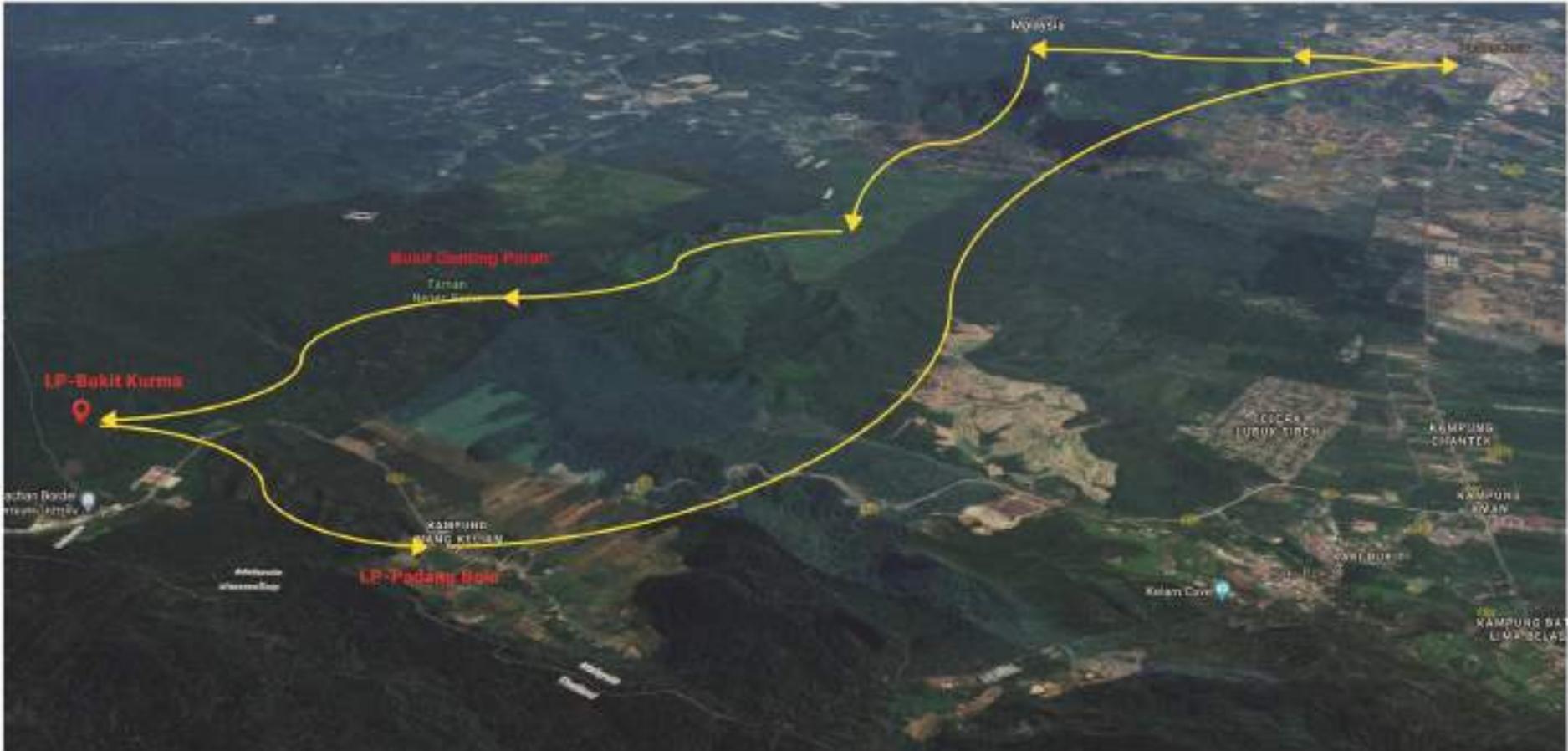
**Picture 7:** The telecommunication transmission tower situated approximately 50 metres from the foothill, exiting the jungle.

## 2.3 SITE VISIT TO CAMP AT GENTING PERAH, WANG KELIAN ON 16<sup>TH</sup> MARCH 2019

### Observations by aerial survey

2.3.1 Members of the Commission conducted an aerial survey in a Royal Malaysian Police helicopter, which took off from Kampung Wang Kelian football field heading for Genting Perah. The survey took approximately 30 minutes by way of an aerial route, as shown in Picture 8. The following were some of the observations by the members:

- i. the location of Genting Perah was in close proximity to the Malaysia-Thailand border, adjacent to Bukit Wang Burma (Picture 8);
- ii. the topography of the area of Genting Perah was hilly, with thick vegetation and a jungle canopy that prevented members of the Commission from viewing the jungle floor. Despite the helicopter hovering directly above the camp site, they were not able to see the camp site (Picture 9); and
- iii. there was a difference in the topography of the Malaysian side, as compared to the Thai side, which was more level, not covered by dense jungle and contained rubber plantations (Picture 10).



Source: Google Maps

**Picture 8:** Aerial route from Kampung Wang Kelian to Genting Perah.



**Picture 9:** Aerial survey of the Malaysian side.



**Picture 10:** Difference in topography of the Malaysian and Thai territories.

## Observations by jungle access

2.3.2 A reconnaissance team comprising of Operations Officers, Investigating Officers and Secretariat to the Commission surveyed the area of Genting Perah, from Simpang 5 General Operations Force Post to the Simpang 5 Check-point on foot over a period of 30 minutes at a distance of approximately 5km. The team then hiked from Simpang 5 to the site of Grave 24, which took about 1 hour 40 minutes (Picture 11). The following were some of the observations by the reconnaissance team:

- i. the topography of the route constantly altered between gradual, steep, very steep and level;
- ii. it was thought there were several other routes connecting the Malaysia-Thailand border to the grave and camp sites (Picture 12);
- iii. an open area covered in secondary jungle, which became a temporary helicopter landing site during the operation (Picture 13);
- iv. grave structures that were still unfilled, whereas other graves were covered with earth and contained leaves and water (Picture 14);
- v. the graves faced the same direction, thought to be the direction of the *qiblah*;
- vi. one of the graves was slightly bigger (approximately 1.5 times bigger) than the other structures. The Investigating Officer informed us that 3 bodies were found in this grave;
- vii. throughout the journey, there were black-coloured water pipes (believed to be high density polyethylene) still in good condition; and

viii. there were remains of canvas throughout the route (Picture 15).



**Picture 11:** Trail heading towards the site of Grave 24



**Picture 12:** Surroundings of the Rendezvous (RV) point, which was the operations and assembly centre during the operation to exhume graves in the Operation *Wawasan Khas* in 2015.



**Picture 13:** The temporary helicopter landing site, which was cleared during the operation to exhume graves, now covered in secondary jungle.



**Picture 14:** The water-filled grave structure of Grave 24.



**Picture 15:** Remains of tent canvass along the route to the site of Grave 24.

2.3.3 The reconnaissance team continued from Grave 24 to the camp site. The following were some of the observations by the team:

- i. the camp area was covered in remains of wood and canvass from the tents and guard tower, and was situated close to the area surrounded by barbed wire (Pictures 16, 17, 18, 19 and 20);
- ii. plastic packets and empty food tins labelled in Thai were found (Picture 21); and
- iii. there were recognisable structures and materials left behind such as:
  - a. tables;
  - b. tied up bamboo mats;
  - c. a *surau* (prayer room) with wooden pillars that were still strong (Picture 22);
  - d. prayer mats in the *surau* (Picture 23);
  - e. a hut structure which served as a medical treatment place (Picture 24), where medical items such as Eye-Mo and Paracetamol were found;
  - f. an abandoned generator labelled in Thai (Picture 25);
  - g. 2 x 2-pin plug extensions (Picture 26);
  - h. a water hose (Picture 27); and
  - i. a water catchment area with a stream.



**Picture 16:** Barbed wire found at the camp.



**Picture 17:** Collapsed guard tower.



**Picture 18:** Destroyed tents in the camp area.



**Picture 19:** Remains of tents in the camp area.



**Picture 20:** Remains of tents in the camp area.



**Picture 21:** Food tins with Thai labels found in the camp area.



**Picture 22:** *Surau* structure in the camp area.



**Picture 23:** Prayer mats found near the *surau* structure in the camp area.



**Picture 24:** Structure of medical treatment place within the camp area.



**Picture 25:** Generator labelled in Thai found in the camp area.



**Picture 26:** One of the 2-pin plug extensions found in the camp area.



**Picture 27:** Water hose found in the camp area.

2.3.4 The reconnaissance team continued their hike from the camp site to the Malaysia-Thailand border stone (Pictures 28 and 29). The following were some of the observations made by the team:

- i. the walk took approximately 10 minutes;
- ii. the route was slightly steep;
- iii. the journey passed through a jungle trail that was devoid of light and not clear; and
- iv. part of the reconnaissance team by chance met 3 officials from the Malaysian Department of Survey and Mapping at the border stone. The officials informed them that they were conducting maintenance of Malaysia-Thailand border stones. They added that on that day, they had entered the location via Thailand and were escorted by Malaysian and Thai security teams.



**Picture 28:** The Malaysia-Thailand border stone located approximately 10 minutes away from the camp site.



**Picture 29:** The Malaysia-Thailand border stone located approximately 10 minutes away from the camp site.

2.3.5 The reconnaissance team then moved down the border to Simpang 5 General Operations Force Post (Pictures 30 and 31). The journey took them through the same route and there were no additional observations.



**Picture 30:** Simpang 5 General Operations Force Post.



**Picture 31:** The surroundings of Simpang 5 General Operations Force Post.

## 2.4 MEETING WITH RESIDENTS OF KAMPUNG WANG KELIAN ON 17<sup>TH</sup> MARCH 2019

2.4.1 The members of the Commission held a meeting with 5 of the residents of Kampung Wang Kelian at the Wang Kelian Police Station, Perlis, at 10.20 am. The outcome of the meeting was as follows:

- i. it was discovered that none of them had any knowledge of the camps and graves discovered at the top of Bukit Wang Burma and Genting Perah. As usual, they had carried out their daily activities doing work in the village such as rubber-tapping, working as security guards and minor contract work.
- ii. Prior to the discovery of the camps by the authorities, the Wang Kelian area was very busy with business and a heavy influx of outside visitors. On weekends, this concentration of visitors and vehicles reached a peak compared to other days, sometimes bringing in around 50 buses per day.
- iii. However, one of the villagers had seen 2 foreigners whom he believed to be Bangladeshis walking in the street twice in 2012 and 2013.



**Picture 32:** Meeting session with one of the residents of Kampung Wang Kelian.

## 2.5 SITE VISIT TO CAMP AT GENTING PERAH ON 1<sup>ST</sup> MAY 2019

2.5.1 On 1<sup>st</sup> May 2019, members of the Commission conducted a working visit to Genting Perah, Wang Kelian, Perlis. The visit began with the members departing from their accommodation in Kangar towards the junction of the entrance to FELCRA, Lubuk Sireh, Wang Kelian, Perlis, a journey of 39km that took 45 minutes. Upon arrival at the location, the members of the Commission were brought via an Isuzu D-Max Cargo 4WD vehicle to the Simpang 5 General Operations Force Post (Pictures 33 and 34). The following were some of the observations made by the members of the Commission:

- i. the left and right sides of the road were covered in rubber trees, cogon grass, banana trees and undergrowth;
- ii. the road was accessible to 4WD vehicles and 1-tonne lorries (Picture 33);

- iii. situated there were the General Operations Force security post, supply storage and rest areas (Picture 34); and
- iv. there was a stream at the opposite end of Simpang 5 General Operations Force Post.



**Picture 33:** Journey to Simpang 5 General Operations Force Post.



**Picture 34:** Simpang 5 General Operations Force Post.

2.5.2 The members of the Commission were given a special briefing by the VAT 69 Field Commanding Officer of the movement towards Camp 6, Genting Perah, at Simpang 5 General Operations Force Post, before commencing the hike to the camp known as Camp 6 at Genting Perah (Picture 35). The following were observations made by members of the Commission during the 4.9km hike to Camp 6:

- i. the jungle area was covered with ferns and remains of logs across the trail (Picture 36); and
- ii. during the journey, the members stopped at the RV (Rendezvous) point after an ascent of 3 hours. The RV point was used as a temporary collection site for the human remains of Illegal Immigrants during the Wawasan Khas Operation in 2015 (Picture 37).



**Picture 35:** Special movement briefing by the VAT 69 Field Commanding Officer, RMP, at Simpang 5 Post, before proceeding towards Camp 6 at Bukit Genting Perah



**Picture 36:** Jungle covered with ferns and logs obstructing the trail to Camp 6, Bukit Genting Perah.



**Picture 37:** Briefing at the RV point which was used as a temporary collection site for human remains of Illegal Immigrants during the Operation *Wawasan Khas* in 2015.

2.5.3 The members of the Commission then ascended a further 500 metres to the Malaysia-Thailand border stone (Pictures 38 and 39). From there, they hiked a further 1.4 km to Camp 6. The following were some of the observations made by members of the Commission:

- i. the hike took 1 hour and 30 minutes, and the terrain was slightly steep, with most of the area gradually sloping;
- ii. the area along the route was covered with undergrowth and ferns, and dense jungle;
- iii. throughout the route close to the location of the camp, tins and rice sacks were found with labels in Thai (Pictures 40 and 41);
- iv. at the location of Camp 6 were some remaining pillar structures that were still solid and canvass used as camp roofing (Pictures 42, 43, 44 and 45);

- v. there were ground structures used as a water catchment area;
- vi. an area around the camp was surrounded by barbed wire (Picture 46);
- vii. within Camp 6 was an area divided into two sections: one section with a structure made of bamboo thought to have been used as a medical treatment area and *surau*, as well as a *sepak takraw* court and another section of bamboo structure thought to have been a cooking, eating and toilet area. Next to the cooking area was a section that resembled a detention area surrounded by barbed wire thought to have been used to detain illegal immigrants who were rebellious and refused to follow commands; and
- viii. there were 10 ground structures believed to have been graves, unfilled and empty, and covered in leaves. The surrounding area was covered in undergrowth.



**Picture 38:** The members of the Commission ascended a height of 500 metres to the Malaysia-Thailand minor border stone.



**Picture 39:** The Malaysia-Thailand border stone located 1.4 km from Camp 6.



**Picture 40:** Some of the remains of rice sacks with labels in Thai found on the hike close to Camp 6.



**Picture 41:** Some of the remains of food tins with labels in Thai found near Camp 6.



**Picture 42:** Some of the structures made of bamboo thought to have been a medical treatment area, *surau* and *sepak takraw* court in Camp 6.



**Picture 43:** Some of the structures built of bamboo and canvas in Camp 6.



**Picture 44:** Some of the structures built of bamboo and canvas in Camp 6.



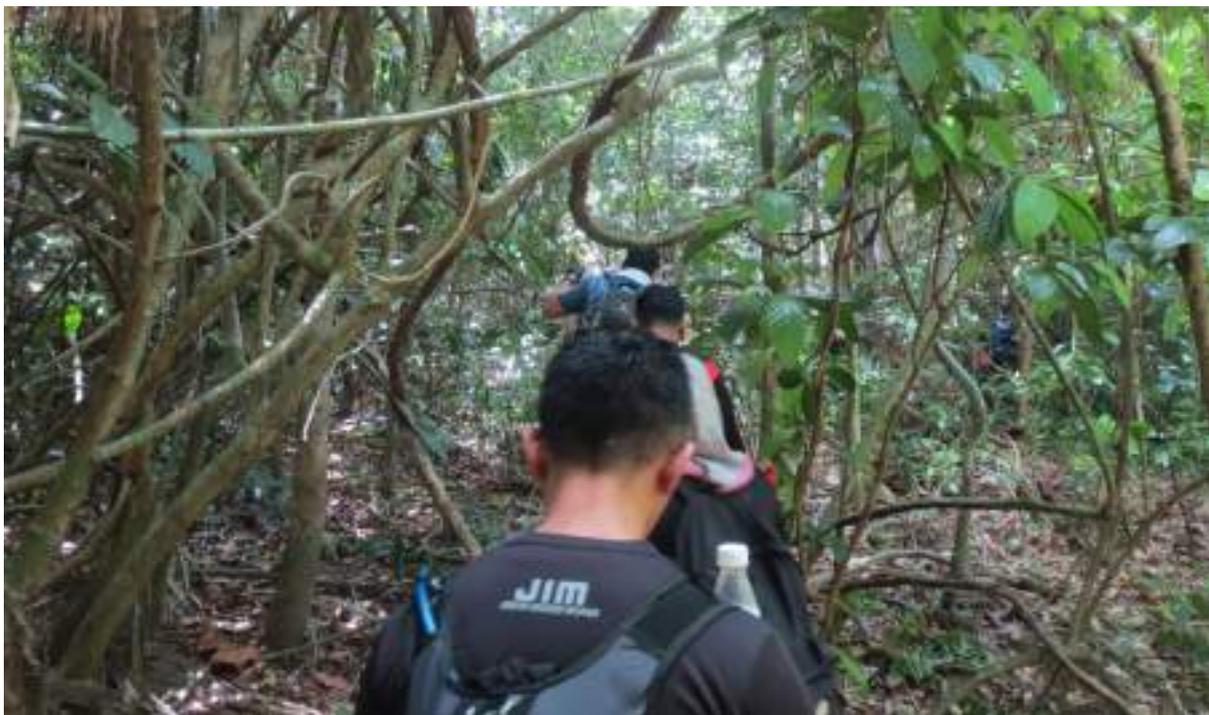
**Picture 45:** Some of the structures built of bamboo and canvas in Camp 6.



**Picture 46:** An area in Camp 6 surrounded by barbed wire thought to have been used to detain Illegal Immigrants who were rebellious and refused to follow commands.

2.5.4 The members of the Commission then descended from Camp 6 to the Perlis State Park (Picture 47). The following were some observations made by the members:

- i. the distance between Camp 6 and the Perlis State Park was estimated to be 4km and took 2 hours to reach the foothills of the Perlis State Park;
- ii. during the route, the members of the Commission waded through a stream that gradually sloped but was easy to traverse;
- iii. the jungle and undergrowth were less dense compared to the hill top area of Camp 6; and
- iv. towards the end of the descent to the foothills of the Perlis State Park, 300 metres of the hike was through a rocky and slightly steep terrain.



**Picture 47:** Descent to the Perlis State Park from Camp 6.

## 2.6 VISIT TO THE MALAYSIA-THAILAND BORDER SECURITY AND DEVELOPMENT ROAD (KESBAN) ON 2<sup>ND</sup> MAY 2019.

2.6.1 Members of the Commission conducted a visit to the Malaysia-Thailand border security and development road (KESBAN) on 2<sup>nd</sup> May 2019. The journey began at 11.00 am from FELDA Mata Ayer, Padang Besar, Perlis, from the Taman Razi SJR (Roadblock) Post heading towards the Tangga 100 Post. The 13-kilometre journey to the Tangga 100 Post took 25 minutes. The members were then briefed by Battalion 1 of the General Operations Force, Ulu Kinta, who were on duty at the border at the time, regarding the situation at the border and the deployment of security forces conducting patrols and border inspection (Picture 48). The following were some of the observations by the members:

- i. starting from Taman Razi SJR Post, FELDA Mata Ayer, Padang Besar, Perlis, following the border, the topography of the area contained very steep hills between Malaysia and Thailand up to kilometre 6.4;
- ii. starting from kilometre 6.4 up to the Tangga 100 Post along the Malaysia-Thailand border was a concrete wall at an estimated height of 10 feet with barbed wire on top (Picture 49);
- iii. along the wall on the Thai side were rubber trees planted very close to the border wall such that the branches of the trees touched the border wall;
- iv. on the Malaysia side, there was a space between the wall that was the security and development road (KESBAN), approximately 20 metres from the wall; and

- v. there were only 4 posts and 3 observation towers containing personnel and officers of the General Operations Force:
  - a. Taman Razi SJR Post, FELDA Mata Ayer, Padang Besar, Perlis with 3 members of the General Operations Force;
  - b. At kilometre 10 was a small post and an observation tower with 2 members of the General Operations Force on duty;
  - c. At kilometre 11.6 was a post known as TS 9 Post and an observation tower. At this post, officers and personnel would rest and have their meals (Picture 50); and
  - d. At kilometre 13 in Tangga 100 Post was an observation tower with 2 members of the General Operations Force on duty (Pictures 51 and 52).



**Picture 48:** Operational briefing by an officer of the General Operations Force to the Commission delegation regarding deployment at the Malaysia-Thailand border security and development road (KESBAN).



**Picture 49:** Malaysia-Thailand border wall along Tangga 100 area at a height of approximately 10 feet and topped with barbed wire.



**Picture 50:** TS 9 observation tower manned by General Operations Force personnel on duty at KESBAN.



**Picture 51:** Tangga 100 Post area on the Malaysia-Thailand border security and development road (KESBAN).



**Picture 52:** Tangga 100 Post observation tower on the Malaysia-Thailand border security and development road (KESBAN).

2.6.2 The members of the Commission then proceeded towards Bukit Kayu Hitam via the security and development road (KESBAN). Throughout the journey border walls and fences constructed along the Malaysia-Thailand border were seen and there were also several General Operations Force security posts along the border. Starting from the Taman Razi SJR Post at FELDA Mata Ayer, Padang Besar, Perlis, the 40-kilometre journey heading towards Bukit Kayu Hitam took approximately 45 minutes. The following were some of the observations made:

- i. commencing from the Taman Razi SJR Post, FELDA Mata Ayer, Padang Besar, Perlis, all along the route were jungle and hilly areas on the Malaysian side;
- ii. there was two-tier wire fencing along the border, parts of which were very dilapidated (Pictures 53 and 54);
- iii. sections of the two-tier fencing were highly dilapidated with signs of tampering and damage, and there were large holes at several places along the border (Picture 55);
- iv. the holes were covered solely with wood and zinc planks to prevent incursion, without any detailed repairs being carried out;
- v. along the Thai side, was a two-lane road next to the Malaysia-Thailand border fence (Picture 56); and
- iv. At kilometre 13.3 was a Thai residential area located very close to the border fence. A housing area car park, children's playground and commercial buildings were located directly adjacent to the wall (Pictures 57, 58 and 59).



**Picture 53:** Two-tier security fencing along the Malaysia-Thailand border security and development road (KESBAN).



**Picture 54:** Dilapidated two-tier security fencing along the Malaysia-Thailand border security and development road (KESBAN).



**Picture 55:** Damaged two-tier security fencing along the Malaysia-Thailand border on the way to Bukit Kayu Hitam.



**Picture 56:** On the Thai side was a two-way road along to the Malaysia-Thailand security fence.



**Picture 57:** Thai housing development very close to the Malaysia-Thailand security fence.



**Picture 58:** Thai residential area very close to the Malaysia-Thailand border security fence.



**Picture 59:** Commercial buildings constructed close to the Malaysia-Thailand border security fence near BKC 7 Post.



**Picture 60:** Security patrol on motorcycles on the Malaysia-Thailand border security and development road (KESBAN) by the General Operations Force personnel.



**Picture 61:** BKC 7 Post, General Operations Force.



**Picture 62:** General Operations Force Patrol Post on KESBAN with observation tower.



**Picture 63:** Visit by the Commission delegation to the KESBAN road concluded at AKSEM (Malaysian Border Control Agency) Headquarters, Bukit Kayu Hitam, Kedah.

## 2.7 SUMMARY OF WORKING VISIT TO BUKIT WANG BURMA, GENTING PERAH AND THE SECURITY AND DEVELOPMENT ROAD (KESBAN)

### Bukit Wang Burma and Genting Perah

2.7.1 Working visits by members of the Commission to Bukit Wang Burma and Genting Perah from 14<sup>th</sup> to 17<sup>th</sup> March 2019, and on 1<sup>st</sup> May 2019, found that at the border area the topography was steeper on the Malaysian side with more gradual sloping on the Thai side. This was observed during an aerial survey of the area. In addition, the jungle on the Malaysian side was dense whereas on the Thai side it was seen to be less dense, and included rubber plantations.

2.7.2 For the journey to the camp sites at Bukit Wang Burma and Genting Perah, the ascents on the Malaysian side were difficult and the jungle was dense. In contrast, the access from Thailand was sloping more gradually and easier to access the camp, according to information obtained from officials of the Malaysian Department of

Survey and Mapping. The members met these officials by chance at the Malaysia-Thailand border stone in Genting Perah.

2.7.3 When visiting the Malaysia-Thailand border, it was found that the area was easily accessed from the Thai side as there was no fencing, walls or barbed wire. Only border stones were placed as the demarcation between the two countries. Throughout the hike, black water pipes were seen, which were believed to have been the water source to the camp. A stream was also noticed close to the camp sites. There were no signs of trees felled along the hikes to Bukit Wang Burma and Genting Perah, as well as at the camps. Therefore, it may be concluded that the construction materials used to build the camps were brought in from Thailand.

2.7.4 The camp sites visited were located far from villages on the Malaysian side, but were found to be close to the Malaysia-Thailand border.

2.7.5 Within the camp sites visited, discarded items such as plastic food packets and empty food tins with Thai labels were discovered, as well as a generator labelled in Thai and a 2-pin plug extension typically used in Thailand. Based on these discoveries, it was believed that the items were brought in from Thailand for use at the camp.

2.7.6 In addition, remains at the camp sites of canvas, solid wooden pillars and areas fenced off with barbed wire among others, were also observed during the visit to the sites. Members of the Commission also found evidence of graves located close to the camp sites.

## The Security and Development Road (KESBAN)

2.7.7 From observations made, the members of the Commission concluded that there were infrastructure weaknesses that needed to be improved and upgraded, such as repairs to the dilapidated fencing and security posts, as well as building walls at the sections of the border deemed critical and appropriate in terms of security to prevent incursion.

2.7.8 In addition, the location of houses and roads on the Thai side adjacent to the border fence enables easy intrusion and smuggling activities.

## 2.8 WORKING VISIT TO THE MALAYSIA-THAILAND BORDER IN KELANTAN ON 20<sup>TH</sup> JULY 2019

2.8.1 The Commission conducted a survey of the Malaysia-Thailand border at Golok River, Kelantan, starting from Pengkalan Kubor up to the Pengkalan Pulau Post, with a view to obtaining an overall picture of land border controls in order to assist the Commission in making recommendations for improvement.

2.8.2 The visit began with members of the Commission leaving Kota Bharu for the Marine Police Office in Pengkalan Kubor, Kelantan. The members of the Commission were briefed on the operations of the Marine Police Force Operations Base in Wilayah Tiga, Pengkalan Kubor, Tumpat, Kelantan, in curbing cross-border and smuggling activities in the Pengkalan Kubor area (Picture 64), as follows:

- i. the Marine Police Force Operations Base in Pengkalan Kubor began operations on 12<sup>th</sup> September 2000 and is headed by an Assistant Superintendent of Police, with positions for 65 personnel, of which 55 are filled;
- ii. the assets of the Operations Base comprise 7 boats and the base is responsible for the areas from Kuala Takbai up to Kuala Tok Bali at a distance of 40.1 nautical miles, as well as the length of Golok River, from Kuala Takbai to Kubang Pak Itam at a distance of 20.27km and river breadth of 15m-30m;
- iii. smuggling activities that often take place in the area involve the smuggling of controlled and contraband goods such as fuel, cooking oil, flour, filtered cigarettes, liquor, rice, livestock and fireworks;
- iv. when there is high demand for such goods, smugglers bring them in. To avoid detection, 'lookouts' guide the smugglers' movements by observing the movement of enforcement authorities patrolling the said area; and

- v. from 2014 to 2018, a total of 2,026 smuggling cases were discovered and 416 persons were arrested with a total confiscated value of RM28,608,277.00 from various smuggling offences. Of the entire total, action under the Immigration Act 1959/63 was only taken in 8 cases against 9 persons only.

2.8.3 The members of the Commission were also briefed on Operation *Wawasan Kelantan* by the General Operations Force, as follows:

- i. Operation *Wawasan Kelantan* deployment was launched on 14<sup>th</sup> September 1995 and was taken over by the Malaysian Armed Forces from 15<sup>th</sup> November 2010 to 13<sup>th</sup> May 2012, and from 22<sup>nd</sup> November 2012 to 20<sup>th</sup> April 2019. On 20<sup>th</sup> April 2019, the General Operations Force took over the Operation *Wawasan Kelantan* deployment;
- ii. Operation *Wawasan Kelantan* encompasses 32km of Golok River, between the Pengkalan Kubor area to Rantau Panjang, with its main goal of maintaining the security of the country's borders as well as preventing incursion activities and cross-border crimes;
- iii. the General Operations Force maintains security control of the area at 17 static posts, conducting roadblocks at two locations, conducting Strike Force or, intelligence activities, conducting patrols by car, motorcycle or on foot and monitoring, as well as patrolling illegal jetties;
- iv. threats identified in the area consist of the smuggling of firearms, drugs, illegal immigrants and contraband, militant group activities, as well as other cross-border crimes such as vehicle theft;
- v. a total of 300 enforcement personnel comprising 13 officers and 287 lower-rank personnel are involved in the deployment. 5 or 6 members of the force are assigned to each static post;
- vi. the General Operations Force is also assigned to the ICQS complex to protect the security of the staff and the complex itself, with 18 members of the force assigned to ICQS Pengkalan Kubor, 19 members at the Rantau Panjang ICQS and 13 members at the Bukit Bunga ICQS.

- vii. since taking over Operation *Wawasan Kelantan* on 20<sup>th</sup> April 2019, the General Operations Force has uncovered 188 cases with a confiscated value of RM5,114,119.90 and conducted 192 arrests. On 27<sup>th</sup> April 2019, 42 Myanmar nationals (33 men and 9 women) were arrested by the Force in an operation at Jeram Perdah; and
- viii. although there are 3 official entry points in Kelantan, being the Pengkalan Kubor ICQS, the Rantau Panjang ICQS and the Bukit Bunga ICQS, illegal routes are still being utilised by individuals to cross the Malaysia-Thailand border for the following reasons:
- a. access through illegal points are closer to the locations they are headed for;
  - b. non-possession of valid passports or travel documents;
  - c. bringing in taxable goods or products that have not been approved;
  - d. bringing in prohibited goods such as fireworks and sparklers;
  - e. possession of family ties in Malaysia and Thailand. Some of them are said to have dual citizenship;
  - f. the absence of a border wall facilitating cross-border activities; and
  - g. the absence of a "buffer zone" or river reserve.



**Picture 64:** Briefing session at the Wilayah Tiga Marine Police Operations Base, Pengkalan Kubor, Tumpat, Kelantan.

2.8.4 The members of the Commission were also briefed by the Marine Police and the General Operations Force on the situation at the natural border, Golok River, which separates Malaysia and Thailand, as follows:

- i. the condition of Golok River, which is 95km long with a narrow width of between 20m – 50m makes the upholding of border security difficult and enables syndicates and individuals to take advantage of such conditions to conduct illegal activities;
- ii. 59 illegal jetties and stores have been identified along Golok River. These illegal entities have been built on private land possessing concrete walls approximately 3m in height, which makes it difficult for enforcement authorities to monitor activities of such premises;
- iii. these illegal stores are used as transit locations for goods to be smuggled in and out of Malaysia. The enforcement authorities also face difficulties in apprehending these smugglers and can only

confiscate the goods as when raids are carried out, only goods are found but no trace of the owners;

- iv. the enforcement authorities have always proposed that these illegal stores be demolished so that they may not be used again. However, monitoring by the local authorities is still less than satisfactory; and
- v. there exists areas that are uninhabited and beyond the control of the enforcement authorities, which have become illegal corridors for smuggling activities.

2.8.5 The members of the Commission then went aboard a Marine Police boat and travelled from the Pengkalan Kubor Operations Base to the Pengkalan Pulau Post, Kubang Pak Itam (an area under the jurisdiction of the Marine Police), traversing the length of Golok River, which took approximately 30 minutes following a distance of approximately 20km (Picture 65). The following were some of the observations made by members of the Commission of Golok River:

- i. the distance between the riverbanks on both the Malaysian and Thai side was narrow (Picture 66);
- ii. the river was fairly calm and easy for small boats to cross;
- iii. housing areas had been built near the river on both sides. Some of the dwellings had small boats or row boats believed to privately owned (Picture 67);
- iv. jetty structures for boats to moor have been built along the riverbank (Pictures 68, 69 and 70);
- v. new structures were seen on the Thai side, which could be structures for boats to moor (Picture 71); and
- vi. on the upstream journey from Pengkalan Kubor, it was observed that housing areas became gradually sparser, giving way to more thicket.



**Picture 65:** Pengkalan Kubor Marine Police Force Operations Base Jetty



**Picture 66:** Riverbanks on the Malaysian and Thai sides that are close together.



**Picture 67:** Dwellings built on the riverbank. There were small boats or row boats moored believed to be privately owned.



**Picture 68:** Jetty structure on the Malaysian side.



**Picture 69:** Jetty structure on the Thai side.



**Picture 70:** Jetty structure and boat on the Thai side.



**Picture 71:** New structure on the Thai side, which could be a place for boats to moor.

2.8.6 From the Pengkalan Pulau Post, the members of the Commission then boarded a vehicle heading to Rantau Panjang ICQS to be briefed on ICQS operations by the Director of Immigration Kelantan (Pictures 72, 73 and 74) as follows:

- i. Rantau Panjang is the main landbound entry point that connects Kelantan and Thailand, crossing Golok River (Picture 75). This entry point came into operation on 1<sup>st</sup> September 1949 as the Rantau Panjang Immigration Post;
- ii. The Department of Immigration Malaysia at the Rantau Panjang ICQS Complex has 66 staff members headed by a Grade KP42 Immigration Officer;
- iii. there are 13 inspection lanes as follows:
  - a. pedestrian lanes, with 2 entry lanes into Malaysia and 2 exit lanes into Thailand;

- b. lorry or bus lanes, with one entry and exit lane each;
  - c. motorcycle lanes, with 2 entry lanes into Malaysia and 1 exit lane into Thailand; and
  - d. car lanes, with 2 entry lanes into Malaysia and 2 exit lanes into Thailand.
- iv. there are 12 Immigration inspection counters that operate from 6.00 am to 10.00 pm. At this particular ICQS, there is also a counter for processing travel documents, which operates during office hours;
- v. in addition to the Department of Immigration, various other agencies also operate at this ICQS:
- a. Royal Malaysian Customs;
  - b. Travel Control Division, Royal Malaysian Police;
  - c. Department of Road Transport;
  - d. National Anti-Drugs Agency;
  - e. General Operations Force;
  - f. Malaysian Quarantine and Inspection Services Department;
  - g. Ministry of Health Malaysia;
  - h. Malaysian Volunteer Corps Department (RELA);
  - i. Department of Wildlife Protection and National Parks (PERHILITAN);
  - j. Pharmaceutical Enforcement Division, Ministry of Health Malaysia;
  - k. Regulatory and Enforcement Division, Ministry of Home Affairs;
- and
- l. Ministry of Domestic Trade and Consumer Affairs.

- vi. The Rantau Panjang ICQS employs passport scanning machines, biometric scanners, an autogate system, the MyIMMS system and an FID printer;
- vii. The complex area is equipped with security features such as:
  - a. Perimeter wall of 11 feet in height;
  - b. 3 floodlights and 30 of street lights;
  - c. 30 closed-circuit television (CCTV) cameras which at times are not fully-functional;
  - d. 1 generator set that will function automatically when there is a disruption in the electric supply; and
  - e. iron grilles on all doors into the main office.
- viii. The number of entries at the ICQS have been found to have decreased since 2014, with a significant drop from 2016 to 2017 of 44%. The Department of Immigration Kelantan has announced that this decrease was caused by the strict enforcement of laws by the Malaysian Border Control Agency (AKSEM) during those years;
- ix. 7 people were arrested under the Immigration Act 1959/63 from 2018 to June 2019, for offences of not being in possession of valid travel documents, overstaying and forgery or alteration of travel documents;
- x. amicable cooperation between Malaysia and Thailand exists through working visits, meetings and dialogue sessions held regularly;
- xi. Rantau Panjang ICQS faces several physical and asset problems such as:
  - a. narrow access in the vehicle lanes that disrupts the traffic flow and causes delays in the Immigration inspection process;

- b. most existing CCTVs are not functioning and additional new units are required as there are several locations at risk that do not have CCTVs;
  - c. most of the lighting around the complex is not functional. Repairs and rewiring are required; and
  - d. the main gate is rusted and damaged, thus making it difficult for officers on patrol to open it;
- xii. the Department of Immigration Kelantan has stated that the nearest Immigration Detention Centre is in Tanah Merah, which has a capacity of 550 people. The centre is used to temporarily detain illegal immigrants prior to deportation. For the Rohingya people from Myanmar whose status have been verified and who have obtained the United Nations High Commissioner for Refugees (UNHCR) card, they will be sent to these quarters; and
- xiii. inspection is carried out separately according to the roles of each agency respectively. To ensure smooth running of operations at the ICQS, the Department of Immigration Kelantan has stated that meetings between the heads of agencies are frequently held.



**Picture 72:** Rantau Panjang ICQS Complex.



**Picture 73:** Briefing session at Rantau Panjang ICQS.



**Picture 74:** Lane into Malaysia with increased vehicles.



**Picture 75:** Entry route crossing Golok River.

2.8.7 The members of the Commission also observed the roadblock set up by the Malaysian Border Control Agency (AKSEM) approximately 5km from the Rantau Panjang ICQS (Picture 76). This roadblock is conducted for 24 hours to inspect all vehicles and passengers going to and from the border (Picture 77).



**Picture 76:** AKSEM Office, Rantau Panjang.



**Picture 77:** AKSEM roadblock.

## 2.9 SUMMARY OF WORKING VISIT TO THE MALAYSIA-THAILAND BORDER IN KELANTAN

2.9.1 Due to their visit to Kelantan, the members of the Commission were given a true picture of the border culture of the people who reside on the border of Malaysia, as well as in Thailand. The members observed that there is a necessity for residents of the border to enter and exit via the Malaysia-Thailand border and this movement is regularly carried out. It is also an economic source of activity among other activities of the locals. This is similar to the activities of the people of Wang Kelian prior to 2015 before the discovery of the camps and graves at Bukit Wang Burma and Genting Perah.

2.9.2 During the visit, the enforcement authorities also announced that one of the factors contributing to the difficulty in demolishing illegal stores by the local authorities is the response from locals. As such, the local authorities more often issue compounds as opposed to demolishing these stores.

2.9.3 Despite this, the smuggling of controlled goods and human beings through the borders must always be kept under control so that the security and law and order of our nation are not compromised. Even though at present, no migrant smuggling transit camps have been found on the Malaysia-Thailand border in Kelantan, it cannot be denied that the syndicates involved in smuggling along Golok River may possibly be linked to the smuggling syndicate at Wang Kelian, and a similar modus operandi may also be used.

2.9.4 From the observations of members of the Commission, it was found that the natural border between Malaysia and Thailand along Golok River presents a challenge for enforcement agencies in controlling security, especially with regard to the smuggling of controlled goods and human smuggling. Golok River at a length of 95km and with a lack of border walls is complicated in the control and monitoring of security. The narrow river also presents a situation by which syndicates and individuals involved in smuggling activities can take advantage.

2.9.5 The assignment of enforcement agencies along the Golok River border is similar to that in Wang Kelian wherein the General Operations Force was given the responsibility of controlling the border and both are presented with challenges in terms of topography. The deployment of 6 or 7 members of the force at one post must be increased as the area patrolled is very large and the natural conditions present make detection difficult, especially in the uninhabited illegal corridors. Modern equipment such as CCTV and the construction of walls at the border are amongst the proposed improvements recommended by those on duty at the border.

2.9.6 The issue of construction and use of buildings as illegal stores on the riverbank must also be seriously addressed and support of local representatives must be garnered. Leaving the problem of illegal stores unresolved will mean that the issue of smuggling of controlled goods will always be present and the syndicates continuing to carry out such activities will pave the way for more rampant smuggling of migrants.

2.9.7 From the briefing given by the enforcement agency and the observations of the members of the Commission, both ICQS complexes required upgrading so that they may become more conducive to daily operations, possess an uninterrupted supply of utilities and have a well-functioning monitoring system through CCTV. The enforcement authorities acknowledge that there are weaknesses in terms of cooperation and coordination between Departments and Agencies working on the border. Thus, cooperation, exchange of information and coordination between agencies must be enhanced to ensure the challenging task of controlling the border can be carried out more effectively.

2.9.8 Members of the enforcement agencies must also be trained to conduct investigations under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670] in cases of illegal immigrants that have been apprehended, and not solely taking action under the Immigration Act 1959/63 [Act 155], to enable detection and prevention of human trafficking and migrant smuggling by syndicates.

## CHAPTER 3 PUBLIC HEARING

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### 3.1 INTRODUCTION

3.1.1 A public hearing was held for 17 days between 17<sup>th</sup> April 2019 and 18<sup>th</sup> June 2019 at Dewan Gemilang, Ministry of Home Affairs, Level G, Block D1, Complex D, Putrajaya. A total of 48 witnesses were called, comprising security personnel, public officers, members of the public, illegal immigrants and media practitioners. In addition, the Commission also received evidence through depositions of illegal immigrants who had been deported and from records of Court proceedings.

### 3.2 CHRONOLOGY OF DISCOVERY OF CAMPS AND GRAVES AT BUKIT WANG BURMA AND GENTING PERAH

The following is the chronology of the discovery of the camps and graves at Wang Kelian, Perlis, based on the statements of witnesses called by the Commission:

#### Discovery at Bukit Wang Burma

3.2.1 The discovery of the camps and graves at Wang Kelian, Perlis, began with the discovery of the camp at Bukit Wang Burma by Corporal Mat bin Ten (S1) of Company B, Battalion 3, General Operations Force, Bidor, who was under orders to patrol the Wawasan Kedah-Perlis Operations area. Between the hours of 2 am and 12 pm on 18<sup>th</sup> January 2015, during patrol with Lance Corporal Syafiq, they discovered a path from the road heading towards the hill. They followed the path entering the jungle for approximately 300 metres. They found discarded items such as clothing and shoes in the area. They then returned to the General Operations Force patrol post and S1 informed Corporal

Yusof Islam bin Hassan (S2), Section Commander of Battalion 3, General Operations Force, of the discovery.

3.2.2 On 19<sup>th</sup> January 2015, S1 returned to the location with S2 and came across a guard tower near a telecommunications substation. The tower was situated on top of a tree, made of wood and large enough to accommodate 2 individuals. There was also an illegal corridor next to it, going up Bukit Wang Burma. Recent footprints were found close to the tower. After a 90-minute trek into the jungle, S1 and S2 arrived at a steep area and found an old logging lane that was accessible by motorcycle. A road to the right led them towards the Malaysia-Thailand border up to the border stone, leading directly to Thailand.

3.2.3 Approximately 200 metres from the border on the Thai side was a wooden house that stored stocks of food such as rice, sardines, dried anchovies, onions and cooking oil. They then proceeded back towards the direction of Malaysia through the path they found and discovered a camp thought to be the first illegal immigrant transit camp. The second camp was discovered to the right of the first camp, whereas the third camp, which contained wire and barbed wire, was discovered when they doubled back to look for the way out.

3.2.4 On the descent from the hill, they heard the sound of water and continued their trek following the sound to a stream. As S1 was about to drink the water from the stream, he noticed bubbles. He then scooped up some of the water and found that the bubbles smelt of soap. S1 then went upstream to check and saw a woman doing washing and a man lying down in a hammock on a guard tower. He also heard the sound of a generator. The woman did not notice S1's presence at the time. He also found a hut, which he entered and discovered items inside.

3.2.5 Further inspection also discovered guard towers on top of trees with locked doors, connected to each another by a platform. 4 patrol posts were seen at each corner, each one of which was guarded by an individual. There were also 3 double-decker tents surrounded by barbed wire. The bottom floor of the tents were occupied by male illegal immigrants. S1 also noticed that the guards communicated with each other in Thai.

3.2.6 S1 then moved down to notify S2 of the discovery. They then descended to the Wang Kelian post and arrived at approximately 11 am. S2 contacted ASP Joeking S/O M. Marian Anthony (S5), the Company B Commander, Battalion 3, of the General Operations Force to inform him of the discovery. At around 12 noon, S5 contacted S2 and issued orders to prepare to go up to carry out reconnaissance on the same day. S5 arranged 3 teams for the purpose, as set out in Table 1:

<b>TEAM</b>	<b>TEAM</b>
<b>TEAM 1</b>	Carry out reconnaissance and raid (counterreaction) (if necessary)
<b>TEAM 2</b>	Cut-off at the foothills of Bukit Wang Burma, responsible for arrests of individuals attempting to flee from the top of the hill.
<b>TEAM 3</b>	Standby at Wang Kelian post to assist Team 1 and Team 2.

**Table 1:** Breakdown of the General Operations Force's teams duties

3.2.7 Team 1, headed by Inspector Mohd Mossadique bin Azni (S3), Platoon Commander 5, Company B, General Operations Force, with 9 members of the General Operations Force including S1 and S2, began reconnaissance at approximately 2 pm. At approximately 4 pm upon arrival near the transit camp, S1 noticed a woman who was looking into a mobile telephone. The woman suddenly got up and looked around the camp, obviously startled, and shouted "Police! Police!". It was then they realised there were many individuals in the camp. They noticed illegal immigrants who were climbing up to break down the fence/canvas roof to escape, most of whom fled towards Malaysia.

3.2.8 The reconnaissance plan turned into a raid after their presence was discovered. S5 ordered the team to search the area and arrest anyone found. S3 who was at the location issued the search order to all personnel to find any individuals in the area. Search and inspection at the camp found that many of the tents were already vacant. S1 and S2 broke open the padlocks to a tent that held 6 illegal immigrants, using a discarded machete and hammer, as well as striking them with rocks to release the said illegal immigrants, some of whom had wounds on their bodies and one was found to be ill. They were then brought down to the Wang Kelian post. S1 delivered confiscated items to S3, as follows:

- i. A notebook in Thai (Picture 78);
- ii. A mobile phone and 3 simcards (Picture 79);
- iii. A Thai driving licence (Picture 80); and
- iv. A VCD/DVD player and CD.



**Picture 78:** Notebook in Thai.



**Picture 79:** Mobile phone and 3 simcards.



**Picture 80:** Thai driving licence.

3.2.9 In total, 38 illegal immigrants were arrested compromising 22 Bangladeshi and 16 Myanmar nationals. They were taken to the Padang Besar District Police Headquarters (IPD) where police report was lodged by S5. The illegal immigrants were subsequently handed over to the Kangar Immigration authority for further action. The operation that day concluded at approximately 4 am.

3.2.10 On 20<sup>th</sup> January 2015, a press conference was held by ACP Khaw Kok Chin, also attended by Supt. Wan Hamzah bin Hj. Wan Kadir (S14), Commanding Officer, Battalion 3 of the General Operations Force and DSP Sivanganam @ Thiruganam S/O Sathisivam (S6), Assistant Commanding Officer, Battalion 3 of the General Operations Force, on the arrest of illegal immigrants and the discovery of camps at Bukit Wang Burma, Wang Kelian, Perlis.

3.2.11 On the same day, S5 conducted a briefing during the Monthly Meeting with the Perlis Chief of Police, which was chaired by ACP Md Zukir bin Md Isa (S13), Perlis Deputy Chief of Police at the Perlis IPD. During the briefing, S5 informed those present of the arrest of 38 illegal immigrants and discovery of a fenced-off camp at Bukit Wang Burma consisting of 6 tents. S13 gave orders for the said camp to be demolished so that it could no longer be used for illegal immigrants in future.

3.2.12 Following this, on 21<sup>st</sup> January 2015, a team comprising 30 personnel including those from the Northern Brigade Intelligence Branch headed by S6, conducted an operation to demolish the camp at Bukit Wang Burma.

3.2.13 Pictures of the camp were taken before demolition commenced. The operation began with the burning of canvass from the top of the tents. At the same time, a reconnaissance of the area surrounding the camp was conducted during which, an area was discovered with a structure resembling a grave approximately 50 to 70 metres from the camp. The demolition operation was halted once the grave-like structure was discovered.

3.2.14 A police report was lodged by S5 regarding the demolition of the camp and discovery of the grave on 22<sup>nd</sup> January 2015, at Padang Besar IPD.

3.2.15 In his statement, S6 stated that he had submitted a report in writing entitled "Report of the Discovery of an Illegal Immigrant Transit Camp at Bukit Burma Wang Kelian Perlis" dated 23<sup>rd</sup> January 2015, regarding the said incident to the Northern Brigade Commander, a copy of which was sent to each of the Perlis Chief of Police, Kedah Chief of Police, Perlis National Security Council, Kedah-Perlis Border Intelligence Unit, Battalion 3 and Tactical 5 Base.

3.2.16 On 23<sup>rd</sup> January 2015, ASP Wan Ahmad Hamirudeen bin Wan Ahmad (S19), the E6 Staff Officer of the Perlis Police Contingent Headquarters' (IPK) Special Branch, together with officers from the Perlis IPK Special Branch, Padang Besar IPD, as well as the Padang Besar IPD Crime Branch and the General Operations Force ascended Bukit Wang Burma to verify the existence of the camp. During the climb, four camps were discovered. Camps 1, 2 and 3 were abandoned camps whereas in Camp 4 there were traces of tents that had been burnt and scattered, including a number of ground structures that resembled graves. On the journey down, another camp was found, which was empty and had long been abandoned.

3.2.17 From S19's observations, Camp 1 had been abandoned as there was no water source while Camps 2 and 3 had been rebuilt as there was a water supply in the form of a stream. Camp 4 was also located near a stream. Camp 5 was located in an abandoned area containing dilapidated tent structures.

3.2.18 They proceeded to Padang Besar IPD after verifying the discovery of the said grave structure. S19 received a number of documents from ASP Jamaluddin Shah bin Mohd Jawan (S7), the acting Head of Padang Besar IPD Special Branch, in the form of books and pieces of paper, and announced that the documents were obtained from, ASP Azizie bin Mohd (S4), Disciplinary Officer of Battalion 3, General Operations Force, Bidor, on 29<sup>th</sup> January 2015. Analysis of the documents discovered certain names, telephone numbers and bank account numbers in Malaysia and abroad.

## Discovery at Genting Perah

3.1.19 As a result of the discovery of exhibits in January 2015, as well as information obtained from intelligence and investigations carried out, the Special Branch were of the opinion other camps existed on the Malaysia-Thailand border. In February 2015, the Special Branch contacted VAT 69 for assistance to reconnoitre the entire area of responsibility to find out if there were any other transit camps. Intelligence information uncovered that these areas had become routes for illegal immigrants.

3.2.20 S7 stated that information on migrant trafficking activities was obtained from information sources and interviews with illegal immigrants. The information obtained at the time did not indicate the existence of camps in Malaysia but of those in Thailand.

3.2.21 Inspector Mohamad Afiq bin Sarmid (S17), Troop 8 Commander, Charlie Squadron, VAT 69, was involved in the Perlis IPK Special Branch operation from 9<sup>th</sup> to 13<sup>th</sup> March 2015. This operation was conducted to confirm the existence of settlements in the Genting Perah area. On 10<sup>th</sup> March 2015, S17 headed 4 teams towards the Perlis IPK Senior Officers Mess, where MARTEK was established for the operation carried out where the teams then entered the operations area at 2 am on 11<sup>th</sup> March 2015. 1 abandoned wooden camp structure was found on 13<sup>th</sup> March 2015. Solely building structures including poles and roof frames were found, and no other items or persons (Picture 81). From the teams' observations, there were around 14 tents at the site, which were less than 100 metres from the Malaysia-Thailand border.



**Picture 81:** Camp structure found at Bukit Genting Perah.

3.2.22 During the same operation, one of the teams from VAT 69 came across 5 dubious individuals approximately 200 metres from a tent discovered. They were searched and found to be in possession of prohibited items (firearms) and among them were those not possessing documents. One individual had an identity card stating Thai citizenship.

3.2.23 After notifying to MARTEK, orders received were to withdraw and hand over the arrested individuals, and information of the discovery of the camp site to the Special Branch. All the arrested individuals were brought to the Perlis State Park area and were handed over to Inspector Muhammad Husyairi bin Musa (S18), Operation Intelligence Inspector.

3.2.24 Investigations revealed that 2 of the arrested individuals were Thai citizens and the other 3 were Myanmar citizens, as indicated in Table 2:

<b>PUA</b>	<b>NAME</b>	<b>NATIONALITY</b>
<b>1</b>	Biau Wong Chumpo	Thailand
<b>2</b>	Suriyan Saengmak	Thailand
<b>3</b>	Yahya Lalaya	Myanmar
<b>4</b>	Shahidullah	Myanmar
<b>5</b>	Momotin	Myanmar

**Table 2:** List of Person Under Arrest (PUA)

3.2.25 One Smith & Wesson pistol with an empty chamber together with a pouch containing 12 bullets were seized from PUA 1, cash to the amount of RM410.00 and THB 100 was seized from PUA 2, and a machete measuring 1 foot was seized from PUA 3. The PUA were then taken to Padang Besar IPD for further action and investigation under Section 8 of the Firearms (Increased Penalties) Act 1971 [Act 37], Section 8(a) of the Arms Act 1960 [Act 206], Section 6(3) of the Immigration Act 1959/63 and Section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357]. A police report was lodged by S18 on 14<sup>th</sup> March 2015 at 12.29 am and the PUA were handed over to investigation officer ASP Junaidy bin Md Saad (S11), Head of the Criminal Investigation Division, Padang Besar IPD.

3.2.26 On 8<sup>th</sup> May 2015, ASP Mohd Yusof bin Ariffin (S45), Troop 12D Squadron Commander, VAT 69, received orders from Superintendent Mancha anak Ata, the Intelligence/Operations Staff Officer of 69 Commandos to assist the Northern Brigade General Operations Force in the Strike Force and *Ronda Geledah* deployments.

3.2.27 On 11<sup>th</sup> and 12<sup>th</sup> May 2015, S45 and the team conducted a reconnaissance of the area around Wang Kelian, in particular areas that are entrances to the General Operations Force routes ascending to Genting Perah.

3.2.28 On 13<sup>th</sup> May 2015, S45 and the team entered the jungle of Genting Perah through the Simpang 5 General Operations Force Post following traces of previous movement such as cut away saplings and human tracks. The assignment was concluded on 15<sup>th</sup> May 2015 with 16 camps discovered at Genting Perah.

3.2.29 According to S19, the Operation *Wawasan Khas* was launched by the Inspector General of Police. Bukit Aman took over the case investigation in May 2015. However, it remained a cooperative effort between the Criminal Investigation Department, the Forensics Department and Special Branch of the Royal Malaysian Police.

## Second Discovery at Bukit Wang Burma

3.2.30 On 15<sup>th</sup> August 2015, S7 with the team from Padang Besar IPD Special Branch and Perlis IPK Special Branch patrolled the Wang Burma area, Wang Kelian. An inspection of the area revealed an illegal immigrant camp and 6 human skeletons within the camp, which was constructed of wood and covered with canvas. In addition, they found 20 structures believed to be graves less than 50 metres from the camp. The size of the second Wang Burma camp was smaller than the first camp and was surrounded by barbed wire. Following the discovery, a police report was lodged by S7 on the next day.

3.2.31 On 24<sup>th</sup> August 2014, a team comprising the Special Branch of Padang Besar IPD, Perlis IPK and the Forensics team went to the camp to identify graves.

## 3.3 EXHUMATION OF GRAVES AND IDENTIFICATION OF HUMAN REMAINS

### Operation to Exhume Graves and Identify Human Remains

3.3.1 On 6<sup>th</sup> March 2015, based on the information channelled by the Padang Besar IPD Special, Branch, Superintendent Rizani bin Che Ismail (S12), Padang Besar District Chief of Police, led a special mission to verify the existence of corpses in the ground structures that resembled graves at the top of Bukit Wang Burma. Joining S12 were S11, the Padang Besar IPD Forensics Team headed by Inspector Bahar and members of the Padang Besar IPD Special Branch. Exhumation was carried out at a depth of approximately one foot. This was conducted by the forensics team who found a white-coloured shroud containing human remains that had begun decompose in the intestinal and abdominal parts. The forensics team there took photographs of the corpse and then covered the exhumed grave as the orders received from S12 at the time was only to confirm the existence of corpses. According to S12, he received orders from Dato' Zul Aznam bin Haron (S16), the Perlis Chief of Police to keep the investigation on hold.

3.3.2 On 8<sup>th</sup> March 2015, at the orders of S12, a Sudden Death Report (SDR) investigation paper of the corpse found in the grave on Bukit Wang Burma was opened. Further investigation was not carried out as an autopsy could not be conducted because the body was still at Bukit Wang Burma.

3.3.3 Throughout the Operation *Wawasan Khas* from 24<sup>th</sup> May 2015 to 16<sup>th</sup> June 2015, SAC Azari bin Hj. Abd. Rahman (S37), Head of Division D10, Forensics Laboratory Physical Division, Royal Malaysian Police Bukit Aman, was responsible for the search and exhumation of corpses and skeletal remains. The Crime Scene Investigation Unit, Fingerprint Analysis Investigation Unit, Computer Analysis Investigation Unit, Document Analysis

Investigation Unit and Audio Video Analysis Investigation Unit from the Forensics Laboratory of the Royal Malaysian Police Bukit Aman were also involved in the task. The key role of Division D10 of the Royal Malaysia Police was to assist investigation officers in the exhumation and removal of corpses from graves, and to search for physical evidence that could benefit the investigation.

3.3.4 2 stages of operation were carried out, being the Operation *Wawasan Khas* conducted from 24<sup>th</sup> May 2015 to 16<sup>th</sup> June 2015 and Operation *Wawasan Khas 2* conducted on 22<sup>nd</sup> August 2015. The Operation *Wawasan Khas* was divided into 3 phases with phase 1 beginning from 24<sup>th</sup> May 2015 up to 1<sup>st</sup> June 2015. For phase 1 deployment, 4 teams were established comprising 21 Lower-Rank Personnel and 3 Senior Police Officers. Phase 2 began on 2<sup>nd</sup> June 2015 up to 10<sup>th</sup> June 2015. During phase 2, the operation was reinforced with the addition of 6 more teams bringing the total to 10 teams comprising 20 Senior Police Officers and 46 Lower-Rank Personnel. The final phase 3 began on 12<sup>th</sup> June 2015 up to 16<sup>th</sup> June 2015, during which the operation was reduced to 2 teams comprising 13 Senior Police Officers and 16 Lower-Rank Personnel.

3.3.5 A total of 6 areas were identified to contain ground structures believed to be graves that were to be excavated by the forensics team. These areas were marked as Sectors A, B, C, D, E and F for the purposes of facilitating the operation. Each sector was also named differently according to the number of grave-like ground structures found in each.

3.3.6 In Sector A, the task of search and exhumation of human remains (HR) began on 25<sup>th</sup> May 2015. Here, no exhumations were carried out as there were no grave-like ground structures. According to S37, the forensics team found 3 sets of HR left lying on the ground, which were brought down from Bukit Genting Perah (Picture 82).



**Picture 82:** HR found in Sector A, Bukit Genting Perah.

3.3.7 On 26<sup>th</sup> May 2015, the forensics team went up to Sector B at Bukit Wang Burma, which was designated Grave 37. From the search and exhumation carried out, only 34 sets of HR were found (Picture 83). The search and exhumation work at Bukit Wang Burma took 4 days and all personnel involved remained at the scene during nights. On 26<sup>th</sup> May 2015, 1 set of HR was exhumed; on 27<sup>th</sup> May 2015, 2 sets of HR were exhumed; on 28<sup>th</sup> May 2015, 9 sets of HR were exhumed; and on 29<sup>th</sup> May 2015, 22 sets of HR were exhumed.



**Picture 83:** One of the sets of HR found in Sector B, Bukit Wang Burma.

3.3.8 At Sector C, which was designated Grave 24 in Genting Perah, the personnel involved entered the location through a road from the Thai side on 4<sup>th</sup> June 2015. HR search and exhumation work began the next day on 5<sup>th</sup> June 2015. In total 14 sets of HR were found in Sector C. In Sector C, one grave was found, which contained 3 sets of HR buried together (Picture 84).



**Picture 84:** Grave containing 3 sets of HR buried together in Sector C, Bukit Genting Perah.

3.3.9 At Sector D, which was designated Grave 20 in Genting Perah, the forensics team carried out search and exhumation work on 6<sup>th</sup> June 2015. As a result, a total of 20 sets of HR were exhumed (Pictures 85, 86, 87 and 88).



**Picture 85:** Process of identifying ground structure believed to be graves at Sector D, Bukit Genting Perah.



**Picture 86:** Exhumation of HR at Sector D, Bukit Genting Perah.



**Picture 87:** Exhumation of HR at Sector D, Bukit Genting Perah.



**Picture 88:** HR discovered as a result of exhumation at Sector D, Bukit Genting Perah.

3.3.10 At Sector E, which was designated Grave 40 in Genting Perah, personnel involved began search and exhumation work on 7<sup>th</sup> June 2015. As a result, a total of 30 sets of HR were found (Pictures 89, 90 and 91)



**Picture 89:** Process of identifying a ground structure believed to be a grave at Sector E, Bukit Genting Perah.



**Picture 90:** Exhumation of grave at Sector E, Bukit Genting Perah.



**Picture 91:** HR discovered after exhumation at Sector E, Bukit Genting Perah.

3.3.11 At Sector F, which was designated Grave 7 in Genting Perah, the forensics team began search and exhumation work on 8<sup>th</sup> June 2015 and 7 sets of HR were exhumed (Pictures 92 and 93).



**Picture 92:** Identifying a ground structure believed to be a grave at Sector F, Bukit Genting Perah.



**Picture 93:** HR discovered after exhumation at Sector F, Bukit Genting Perah.

3.3.12 The graves exhumed in each zone were at average depths of between 0.8 to 1.37 metres. The length of the graves were between 1.07 to 2.44 metres and were between 0.41 to 1.4 metres wide (Pictures 94, 95, 96 and 97). All individual HR discovered had been properly shrouded.



**Picture 94:** Width of grave.



**Picture 95:** Width of grave.



**Picture 96:** Length of grave.



**Picture 97:** Depth of grave.

3.3.13 Phase 2 of the Operation *Wawasan Khas* was concluded overall and the Royal Malaysian Police forensics team brought down 108 sets of HR from the exhumation of 128 ground structures resembling graves. All sets of HR from the location were brought to Hospital Sultanah Bahiyah in Alor Setar, Kedah, for autopsy.

## OPERATION *WAWASAN KHAS* PHYSICAL EVIDENCE ACCUMULATION

3.3.14 Phase 3 of the Operation *Wawasan Khas* commenced from 12<sup>th</sup> June 2015 up to 16<sup>th</sup> June 2015. The main objective of this operation was to accumulate physical evidence from Sectors B, C, D, E and F. The Royal Malaysian Police Forensics Team was divided into 2 groups, A and B, which comprised 13 Senior Police Officers and 16 Lower-Rank Personnel.

3.3.15 At Sector A, the operation to accumulate physical evidence had already commenced in the early stages and 3 personal items were found: 1 yellow-coloured jacket, which was marked as A/Sector PB1, 1 dark-coloured jacket of the Anggollo Litrillo UE brand, marked as A/Sector PB2, and 1 pair of dark trousers, marked as A/Sector PB3.

3.3.16 At Sectors B and D, the operation to collect physical evidence began on 13<sup>th</sup> June 2015 at 6.00 am and was concluded at 5.00 pm. At Sector B, a total of 31 exhibits comprising 25 items of physical evidence and 6 samples of swabbing were found (Pictures 98, 99 and 100). At Sector D, 95 items of physical evidence were found and marked as exhibits including food and drinking utensils, clothing and personal hygiene items such as toothbrushes and combs, and cooking ingredients such as spices and such like (Pictures 101, 102, 103 and 104).



**Picture 98:** Example of exhibits found at Sector B, Bukit Wang Burma.



**Picture 99:** Example of exhibits found at Sector B, Bukit Wang Burma.



**Picture 100:** Example of exhibits found at Sector B, Bukit Wang Burma.



**Picture 101:** Examples of exhibits found at Sector D, Bukit Genting Perah.



**Picture 102:** Examples of exhibits found at Sector D, Bukit Genting Perah.



**Picture 103:** Examples of exhibits found at Sector D, Bukit Genting Perah.



**Picture 104:** Examples of exhibits found at Sector D, Bukit Genting Perah.

3.3.17 At Sectors C, E and F, the operation to accumulate physical evidence was conducted on 14<sup>th</sup> June 2015 from 6.00 am to 3.00 pm. A total of 13 items of physical evidence were discovered in Sector C consisting of 1 pair of green boots, several pieces of cotton marked 2C, 4 units of cotton packages marked 3C, several pieces of paper marked 4C, 1 piece of white plastic, 1 Ajinomoto wrapper, 1 Giant brand black fabric glove, 1 ear protector, 1 white face mask, 1 pair of Guide brand blue jeans, 1 pair of green boots, 1 white/blue Colgate toothbrush and 1 white towel (Pictures 105 and 106).



**Picture 105:** Examples of exhibits found at Sector C, Bukit Genting Perah.



**Picture 106:** Examples of exhibits found at Sector C, Bukit Genting Perah.

3.3.18 At Sector E, 28 items of physical evidence were discovered (Pictures 107 and 108). Similar to items found at Sectors A, B and D, evidence found at Sectors C, E and F also comprised food and drinking utensils, clothing and personal hygiene items, such as toothbrushes and combs, and cooking ingredients such as spices and such like.



**Picture 107:** Examples of exhibits found at Sector E, Bukit Genting Perah.



**Picture 108:** Example of exhibits found at Sector E, Bukit Genting Perah.

3.3.19 At Zone F, 9 items of physical evidence and 1 sample of swabbing were obtained. Examples of exhibits found included 1 red torchlight, 1 stainless steel spoon, 1 glass bottle drink, 1 right-foot slipper, 1 green toothbrush, 1 sardine tin with a Thai label, 1 piece of plastic labelled Salt, 1 white straw and 1 dark-coloured cloth (Pictures 109, 110 and 111).



**Picture 109:** Example of exhibits found at Sector F, Bukit Genting Perah.



**Picture 110:** Example of exhibits found at Sector F, Bukit Genting Perah.



**Picture 111:** Example of exhibits found at Sector F, Bukit Genting Perah.

## Autopsies of Human Remains

3.3.20 The autopsy process was carried out at the Sultanah Bahiyah Hospital in Alor Setar, Kedah. The responsibility for this was undertaken by medical forensic specialists from all over the country. The Forensics Department of Sultanah Bahiyah Hospital, Alor Setar, was selected to be the Disaster Victim Identification (DVI) Centre for the purposes of disaster management. The exhumed bodies were brought to this hospital as the Forensics Department in Alor Setar was the nearest and most suitable location for the autopsies of the retrieved human remains.

3.3.21 For the operation, Dato' Dr Mohamad Shah bin Mahmud, Director of the National Institute of Forensic Medicine, also the Head of National Forensic Services, acted as the Chief Operations Coordinator at national level. He received his letter of appointment from the Director of Development, Ministry of Health, who instructed him to establish a DVI team for the discovered bodies at Wang Kelian and for autopsies to be conducted at the Sultanah Bahiyah Hospital in Alor Setar. Forensic teams from all over Malaysia were involved to carry out the autopsies on an alternate basis.

3.3.22 Dr Mohd Suhani bin Mohd Noor (S39) Senior Forensics Consultant, Department of Forensic Medicine, Sultanah Bahiyah Hospital, Alor Setar, Kedah; Dr. Mohamad Azaini bin Ibrahim (S40), Forensics Specialist at the Department of Forensic Medicine, Serdang General Hospital; and Dato' Dr. Zahari bin Noor (S41), Senior Forensics Consultant, Penang General Hospital; were among the Forensic Medicine Specialists involved in the autopsy process. All three Forensic Medicine Specialists gave evidence before the Commission.

3.3.23 S39 acted as Mortuary Manager at the DVI centre. Body bags were received in stages from 25<sup>th</sup> May 2015 to 8<sup>th</sup> June 2015. The autopsy process was carried out between 7<sup>th</sup> June to 1<sup>st</sup> July 2015. The examinations conducted on the human remains included radiological examinations, pathological examinations, or autopsies, anthropological examinations, or examinations of the bones and also orthodontic examinations, or examinations of the teeth.

3.3.24 A total of 108 body bags were received by the police according to the zones labelled A to G, from the incident location. Based on DNA results and anthropological examinations, it was concluded that a total of 114 individuals had been discovered. The difference in numbers had occurred as certain bones in several body bags were found to have been mixed with those of others.

3.3.25 Of the 114 individuals, 106 were identified as male through DNA testing. According to S41's statement, the autopsy that he conducted on 2 sets of HR revealed that both bodies were female, under 20 years old.

3.3.26 Of the said 114 individuals, 104 individuals were identified to be of Indian ethnicity (terminology of the Department of Chemistry Malaysia) through DNA profiling, the ethnicity of 2 individuals could not be determined despite DNA profiling and the ethnicity of 8 individuals could not be determined as no DNA profiling was obtained. The determination of ethnicity was also based on bones of the midfacial region, features of the nose and part of the cheekbones, which provide an image of an individual's racial grouping or ethnicity. In the field of forensic anthropology, there are 3 major racial groups: Mongoloid or Asian, Negroid or African and Caucasoid or White. The Indian ethnicity referred to is included under the Caucasoid group, encompassing South Asians, who include the Rohingya and Indian peoples.

3.3.27 Of the 114 individuals, it was discovered that 16 individuals were estimated to be between the ages of 10 to 20 years old, 57 individuals were estimated to be between the ages of 20 to 40 years old, 34 individuals greater than 40 years old and for the remaining 7 other individuals, the estimated age could not be determined. There were 2 bodies estimated to be less than 20 years old and this situation complicated the process to determine the features of the bodies either in terms of race or gender.

3.3.28 Of the 114 individuals, the cause of death of 112 of the corpses could not be determined or were classified as undetermined due to decomposition and advanced skeletonisation that had set in. However, there were 2 corpses that S40 and S41 conducted autopsies on, of which the cause of death was determined.

3.3.29 S40 conducted an autopsy on one corpse that revealed the deceased's heart was still present and the main artery on the left side of the heart displayed 60% to 70% blockage. The cause of death was coronary atherosclerosis, or atheroma, where by the artery is blocked. He was of the opinion that the deceased had significant blockage that could have resulted in death.

3.3.30 S41 conducted an autopsy on a corpse that still contained significant soft tissue and the cause of death was pneumonia, or infection of the lungs. This body was estimated to have been buried between one week to one month prior to the autopsy. It was found that the individual also had a broken lower arm bone, the radius, which was estimated to have occurred recently, approximately one or two weeks before the autopsy. The cause of the injury could not be determined.

3.3.31 S39 stated that of the corpses examined, some were only skeletal remains and others were already at a stage of advanced decomposition. The deceased of solely skeletal remains underwent a process of skeletonisation that took several months, whereas those of advanced decomposition may only have been newly deceased and it was also possible that these individuals were still alive in January 2015.

3.3.32 Based on the examination, there were no clear signs of injuries as the corpses received mostly comprised of bone and tissue that had undergone the process of decomposition. S41 conducted an autopsy on a male, estimated to be in his 20s to 30s. It was discovered that the left arm had been broken as there were indications of previous medical treatment prior to his demise. The cause of death was undetermined due to advanced decomposition whereby only bones remained.

3.3.33 According to the forensic medicine specialists, the determination of causes of death, identities of bodies and results of the examinations depended on the amount of tissue left on the corpses. The specialists did not refute the possibility that had the bodies been brought in earlier for autopsy, the results could have indicated other causes of death.

3.3.34 S41 also opined that had the autopsies been conducted earlier, he was sure that there would have been a difference in terms of determination of identities and causes of death of the corpses. S41 was of the opinion that:

- i. the forensic medicine specialist team should have been called before the graves were exhumed;
- ii. the exhumation should have been carried out without delay because if corpses are left too long, their forensic importance would be reduced; and

- iii. during the process of bringing the bodies down, there was a strong possibility that the bodies had been left for a longer period of time, on the ground surface, as there were many bodies to be exhumed. This situation would have affected the condition of the corpses as the decomposition of those that were buried would have taken longer than those that had been left exposed.

3.3.35 S39 was of the opinion that this incident was a humanitarian disaster and the bodies should be given proper burial to meet the objectives of forensic humanitarian management. S39 believed that based on the existing evidence, it was highly probable that the victims were of the Muslim faith. As such, they should be properly buried. On the advice of the Kedah Fatwa Council (Council of Edicts), the bodies were buried at the cemetery in Tualang, Kedah. Data that would enable future identification was also collected and if any next-of-kin should come forward, the process of matching could be carried out.

### Exhumation of Graves and Identification of Human Remains in the Operation *Wawasan Khas 2*

3.3.36 On 22<sup>nd</sup> August 2015, the Operation *Wawasan Khas 2* was launched following the discovery of new camps and graves on 15<sup>th</sup> August 2015 in the Bukit Wang Burma area by the Padang Besar IPD Special Branch team together with the VAT 69 Force. On 22<sup>nd</sup> August 2015, a total of 16 officers and 107 other personnel including S7, S11 and the Bukit Aman forensics team were instructed to reascend to the location of the incident. The site was situated at a height of 750 metres and the journey there took 3 hours. The camp was very close to Thailand and was at the highest and most isolated location.

3.3.37 During the operation, the deployment was divided into Sectors G and H, where 24 sets of HR were found. In Sector G, 6 sets of HR were found on a ground surface lined with planks. In Sector H, 20 ground structures that resembled graves were excavated and 18 sets of HR were found. All 24 sets of HR discovered during the Operation *Wawasan Khas 2* were brought to the same hospital, Sultanah Bahiyah in Alor Setar, Kedah. Following the discovery, 24 Sudden Death Report (SDR) investigation papers were opened by the Padang Besar IPD Crime Division.

3.3.38 ASP Harnizam bin Idris (S44), the Head of Padang Besar IPD Criminal Investigation Division who had taken over the investigation from S11 on 27<sup>th</sup> September 2017, stated that the autopsy reports for all 24 Sudden Death Reports were received on 26<sup>th</sup> December 2018, and were forwarded to the Deputy Public Prosecutor on 27<sup>th</sup> December 2018, with a proposal for an inquest to be held. On 14<sup>th</sup> January 2019, the matter was referred to the Perlis Director of Prosecution and on 8<sup>th</sup> April 2019, all the Sudden Death Reports were referred to the Coroner with no proposal for an inquest.

3.3.39 On 6<sup>th</sup> May 2019, S44 made an application to register the Sudden Death Reports through 'e-kehakiman' (online system for the judiciary) for referral to the Coroner and received a decision from Coroner Dato' Ibrahim bin Osman that there was no necessity for an inquest to be held and the deaths were declared as open verdicts on 17<sup>th</sup> May 2019.

## Summary of Exhumation of Graves and Discovery of Human Remains

3.3.40 Overall, based on the statements of witnesses before the Commission, the number of corpses and graves found during the Operation *Wawasan Khas* came to 138 corpses and 148 exhumed graves. The details are as below:

### **Operation *Wawasan Khas***

DATE OF OPERATION	LOCATION	SECTOR	NUMBER OF GRAVES EXHUMED	SETS OF HUMAN REMAINS REMOVED	NUMBER OF CORPSES VERIFIED BY FORENSIC MEDICINE SPECIALISTS
24 <sup>th</sup> May 2015 – 16 <sup>th</sup> June 2015	Genting Perah	A	-	3	114
	Bukit Wang Burma	B	37	34	
	Genting Perah	C	24	14	
		D	20	20	
		E	40	30	
		F	7	7	
<b>Total</b>			<b>128</b>	<b>108</b>	<b>114</b>

**Table 3:** Total Number of Corpses and Graves for Operation *Wawasan Khas*

### **Operation *Wawasan Khas 2***

DATE OF OPERATION	LOCATION	SECTOR	NUMBER OF GRAVES EXHUMED	SETS OF HUMAN REMAINS REMOVED	NUMBER OF SDR OPENED
22 <sup>nd</sup> August 2015	Bukit Wang Burma	G	-	6	24
		H	20	18	
<b>Total</b>			<b>20</b>	<b>24</b>	<b>24</b>

**Table 4:** Total Number of Corpses and Graves found in the Operation *Wawasan Khas 2*

3.3.41 The cause of deaths for all but two of the corpses discovered found could not be ascertained and were classified as undetermined due to advanced decomposition. The sole remains of the corpses were bones except for 2 bodies whereby the cause of deaths were determined to be coronary atherosclerosis and pneumonia respectively. No clear indication of injuries were found on the corpses as most of them comprised only bones and tissue that had undergone decomposition.

3.3.42 The Commission would like to register its appreciation to the parties responsible in arranging the exhumation of the human remains and bringing these down from the location of the incident. Recognition should be given to the Forensics Division of the Headquarters of Police, Bukit Aman and the General Operations Force, Royal Malaysian Police, which had carried out the operation to exhume and bring down a total of 132 sets of human remains (HR). The process took approximately 12 days. The Commission appreciates the contribution of all officers and personnel of the Perlis Contingent Headquarters, the Padang Besar District Headquarters, as well as officers and personnel from the Commercial Crime Investigation Department, the Narcotic Criminal Investigation Department, the Logistics Department and the Criminal Investigation Department, which were also involved.

3.3.43 The Commission also recognises the contribution of the Forensics Special Force comprising forensic specialists from all over the country led by Datuk Dr Mohd Shah bin Mahmood, Head of Department and Senior Forensic Specialist, Forensic Medicine Department, Kuala Lumpur Hospital. The same appreciation is also conveyed to Dr Mohd Suhani Mohd Noor, Senior Forensic Specialist, Forensic Medicine Department, Sultanah Bahiyah Hospital, Alor Setar, Kedah, who was assigned as the coordinating officer for the autopsies on 138 sets of human remains, which took place at the Sultanah Bahiyah Hospital, Alor Setar, Kedah. The autopsy process took approximately 18 days.

3.3.44 The Commission also highly regards the humanitarian contribution of the Kedah State Government that donated a piece of land at the Muslim Cemetery, Kampung Tualang, Pokok Sena, Kedah, to be made into a new burial ground for the 108 sets of human remains (HR) on which autopsies had been carried out (Pictures 112, 113 and 114). The burial arrangements were completed with the cooperation of the Majlis Agama Islam Kedah (MAIK) (Kedah State Islamic Council), the National Security Council (MKN) and the Royal Malaysian Police.



**Picture 112:** Muslim cemetery at Kampung Tualang, Pokok Sena, Kedah.



**Picture 113:** Sign at the Muslim cemetery, Kampung Tualang, Pokok Sena, Kedah.



**Picture 114:** Headstone at the Muslim cemetery, Kampung Tualang, Pokok Sena, Kedah.

## 3.4 DESCRIPTION OF VICTIMS

### Victim 1 (S38)

3.4.1 Victim 1 originally came from Devenah Village, Maudaw, Myanmar. Through a recorded deposition<sup>13</sup>, Victim 1 related the events of his journey from Myanmar to Malaysia. He was 14 years old when he left Myanmar on 30<sup>th</sup> August 2014, going with a friend named Farouk whom he had known since a young age. Farouk suggested him to leave Myanmar with him but did not mention the destination. Farouk then brought Victim 1 to meet an unknown man and they were asked to get on a small boat on the river to proceed to a large ship.

3.4.2 Upon reaching the large ship, Victim 1 saw approximately 40 other people already on board. The male and female passengers were separated, whereby the men were placed on the lower deck and the women on the upper deck. The ship did not set sail and waited for 28 days to load more people. According to Victim 1, during the period, some tried to escape but the guards, thought to be Thai, would give chase in a small boat and apprehend them. Those apprehended would be beaten and had their hands tied up, and then were pushed into the sea and left for dead.

3.4.3 The ship embarked on its journey when the load reached 750 people. There were people on board who kept count and the passengers comprised men, women, children and babies. Whilst on board the ship, they were given food twice daily, morning and night. They were put to work when needed as it was a big ship. 10 armed persons kept watch on board.

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<sup>13</sup> Deposition of Victim 1 at the Sessions Court in Kangar, Perlis, on 7<sup>th</sup> September 2016.

3.4.4 While on board, certain passengers were not allowed to relieve themselves. Some screamed due to hunger and were beaten if they demanded food. Some women were raped on the ship. Victim 1 also witnessed people being shot and then thrown overboard into the sea. More than 60 people died.

3.4.5 They arrived in Thailand after sailing for one month. An agent named Ayub came and informed them in the Rohingya language, that he would take them into Thailand. They would only be released and be brought to Malaysia after payment for the cost of taking the small boat in Myanmar and boarding the large ship had been paid. They would be held at the camp if they could not afford to pay the amount demanded, which was 200,000 Myanmar Kyat, equivalent to RM7,000.

3.4.6 On the following day, they boarded a speed boat from the sea to a small river and were brought to a rubber plantation. They were then told to board awaiting pick-up trucks. One vehicle carried 30 people at any one time and they were packed in the truck to be brought to a place known as Balok, as claimed by the agent. They were guarded by 4 Thai nationals armed with shotguns.

3.4.7 On arrival at Balok, they were instructed to carry foodstuff up a hill, until they found a large camp after a climb of half an hour. 1,000 people were in the camp, which was surrounded by wire fencing. Victim 1 stayed at the camp for 3 days and was given plain rice mixed with water.

3.4.8 After 3 days, they were transferred to another camp in groups of 40 people. It took 8 hours to arrive at the subsequent camp. On arrival, an agent named Syakir allowed them to contact their family members and those who were ill were given treatment. There were 7 agents who were Rohingya and Bangladeshi, who would beat them if money was not paid.

3.4.9 Victim 1 stated that he was caned for not being able to contact his family. Those who were able to contact their families in order to deposit money were not beaten and were separated to be sent out of the camp. According to Victim 1, there was a receiving house in Malaysia where they would be received. However, Victim 1 did not know the process and arrangements after they were taken out of the camp.

3.4.10 At the camp, there were people who died and women who were raped by the Thais. Apart from being physically abused, they were also verbally abused by the agents. Farouk was beaten until he suffered severe head injuries and passed away after his father cursed the agent on the telephone when Farouk contacted his family. There was an *ustaz* (religious teacher) named Ali Mamu in the camp (also an agent) who handled Farouk's body. Farouk was buried not far from the camp where there were many other graves.

3.4.11 While they were held at the camp, it was raided by the police from Malaysia. Victim 1 fled with 6 others in fear. They later met a Thai person as they came out of a rubber plantation. The Thai person brought them to a *kongsi* (shared housing for workers) at a rubber plantation and demanded payment of RM7,000.

3.4.12 During a car journey, the driver realised that a police car was following them, causing the car to hit into a tree and skid into a ditch. Victim 1 and the 6 other persons were arrested while the driver of the car managed to escape. They were taken to a lock-up for questioning. Victim 1 and one other person were detained at the Bukit Jalil Immigration Depot while the others were imprisoned. Victim 1 was released after being granted refugee status by the UNHCR.

## Victim 2

3.4.13 Monica Joseph Gaisah (S36), who was on duty as Registrar of the Subordinate Court in Kangar, read out the deposition of Victim 2 before the Commission. Victim 2 was originally from the district of Cox's Bazaar in Bangladesh, leaving to work in Malaysia. He depart from Bangladesh on 1<sup>st</sup> January 2015 by boarding a bus in Teknaf, then boarding a boat at 6.30 pm, reaching a large ship at 12.00 midnight.

3.4.14 Victim 2, together with 350 others, men, women and children from Myanmar and Bangladesh, were on board the ship for 6 days. Throughout the journey, they were given rice twice daily. There were 6 workers on the ship and Victim 2 identified them as Burmese based on the Mok dialect they spoke.

3.4.15 After 6 days, they were transferred to a second large ship, but only 250 of them. They sailed for one day in cramped conditions and were not given food. After disembarking from the ship, 140 of them boarded 5 pick-up vehicles for a 30-minute journey to some foothills. They climbed a hill to arrive at a camp being guarded by 6 Thais. Victim 2 was at the camp for 3 days.

3.4.16 Based on the deposition of Victim 2, there were 3 camps constructed of timber. The camps contained roofs and were fenced off. During 3 days at the camp, they were not allowed to go out and their doors were locked, and only opened during meal times. Food was prepared by Muslims from Myanmar who had boarded the ship together with Victim 2. In the camp were self-constructed shower and toilet facilities.

3.4.17 4 Thais were seen holding canes but Victim 2 never saw them beat anyone. Throughout the 3 days at the camp, 3 agents came and asked them if they wanted to contact their families. The victim was given a telephone to contact his family for one minute before the telephone was snatched away by the agent. The victim's family were asked to contact the agent again and a payment of RM6,000 was demanded. According to Victim 2 he did not know the country of origin of the 3 agents. However, the agents spoke in the Malay language. Victim 2 only knew that they spoke in Malay after he was informed by a friend.

3.4.18 After Zhuhr Prayer, police raided the camp and Victim 2 was caught while trying to flee. Victim 2 was brought to the Alor Setar Police Station and was later sent to the Detention Depot in Langkap, Perak.

### Victim 3

3.4.19 S18 recorded Victim's 3 statement pursuant to Section 112 of the Criminal Procedure Code [Act 593]. Victim 3 stated that the unrest in Myanmar had led him and his family making the decision to escape the country. Victim 3 took a 15-minute boat ride to a jetty to board a ship that could accommodate 300 to 400 people. The journey from Myanmar to Thailand by ship took approximately 15 days with an overland journey thereafter to a holding camp. They were held in the camp for 3 to 4 months and would have only been released to go on to Malaysia if a payment of approximately RM6,500 was made.

3.4.20 Victim 3 said that they were brought from Myanmar through an agent and it was highly likely they were in Thailand as the guards interacted in Thai. Victim 3 said that there were other victims who would be beaten if they failed to make the payment. Each person would be called to arrange payment and if they failed to provide a telephone number, they would be beaten and returned to the camp. 62 people had died from food poisoning, unhygienic living conditions, diseases and those who were tortured for not making payment to the agent. They were also ordered to bury the bodies. The distance from the graves to the camp was only several metres.

3.4.21 Victim 3 also said that they tried to flee during a raid by what they believed to be the Thai army, in what was a chaotic situation with the camp doors being broken down. They hid in the jungle for 3 days before finding a way out when they met a Thai man who told them that they had entered Malaysia. They were instructed to board a taxi to an unknown destination before being arrested by the Malaysian police.

## 3.5 ARRESTS OF ILLEGAL IMMIGRANTS AND LEGAL ACTION

3.5.1 Based on the witnesses' statements, legal action had been taken regarding the issue of illegal immigrant entry into the Wang Kelian area and the Malaysia-Thailand border in the periods before and after the incident between 2012 to 2016.

3.5.2 Before 2015, the Royal Malaysian Police, specifically in Perlis, did not bring many cases to court for human trafficking prosecution. Most individuals arrested, although not charged, would have had action taken against them under the Prevention of Crime Act 1959 [Act 297] (POCA). This was because witnesses refused to cooperate and did not want to give evidence in court. Therefore, human trafficking cases could not be brought to court.

3.5.3 The Armed Forces of Malaysia took part in the Operation *Wawasan Kedah-Perlis* for the first time during the commencement of the National Blue Ocean Strategy (NBOS) from 15<sup>th</sup> November 2010 to 15<sup>th</sup> May 2012 and handed over deployment to the General Operations Force, Royal Malaysian Police. The Armed Forces then took over the Operation *Wawasan Kedah-Perlis* deployment for the second time during the 13<sup>th</sup> General Election (prior and after) from 22<sup>nd</sup> November 2012 to 3<sup>rd</sup> September 2013 before it was handed over to the General Operations Force, Royal Malaysian Police to date.

3.5.4 During the Operation *Wawasan Kedah-Perlis* deployment, the Armed Forces carried out motorcycle and foot patrols along the border fences and also along the security road. According to Major General Dato' Zulkapri bin Rahamat (S46), former Brigade 6 Commander of the Armed Forces, they arrested 23 illegal immigrants and 323 illegal immigrants in 2012 and 2013 respectively. The Armed Forces did not conduct any further investigations and all illegal immigrants were handed over to the Royal Malaysian Police to be rearrested or for further action.

### Immigration Act 1959/63 [Act 155]

3.5.5 The 38 illegal immigrants arrested on 19<sup>th</sup> January 2015 during the initial discovery of the camp at Bukit Wang Burma were brought to Padang Besar IPD. Police reports were lodged at Padang Besar IPD by S5 and S3 in respect of the Kaki Bukit report 89/2015 and subsequently the illegal immigrants were handed over to the Department of Immigration for further action. According to Mr Mohd Amir bin Othman (S30), former Perlis Director of Immigration, the illegal immigrants were investigated under Section 6(1)(c) of Act 155 for non-possession of a valid pass or permit. The Royal Malaysian Police handed over all persons under arrest to the Department of Immigration as they were of the opinion that the only offences committed were under Act 155, without considering the elements of offences under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670].

3.5.6 Further checks found that 9 of the illegal immigrants were sent to the Department of Immigration's Detention Depot in Langkap, Perak. However, of these 6 illegal immigrants were released after obtaining confirmation of refugee status by UNHCR, 2 were deported while one continued to be detained at the Detention Depot in Langkap.

3.5.7 The remaining 29 illegal immigrants were sent to the Department of Immigration Detention Depot in Belantik, Sik, Kedah. Checks found that 3 of them were released after obtaining confirmation of refugee status from UNHCR, one had died at the depot, 8 others could not be traced, 10 were deported, 2 were detained at the Bukit Jalil Depot, 2 were detained at the Pekan Nenas Depot and 3 others were detained at the Lenggeng Depot. The 3 illegal immigrants detained at the Lenggeng Depot were however deported while being called to assist in the investigations.

3.5.8 3 illegal immigrants recorded depositions under Section 40A of the Immigration Act 1959/63 at the Kangar Sessions court on 8<sup>th</sup> June 2016 and 4<sup>th</sup> August 2016.

### **Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM) [Act 670]**

3.5.9 According to S18, a taxi driver and 6 illegal immigrants were arrested under Section 26A of Act 670. A Kaki Bukit police report 431/15 was lodged on 14<sup>th</sup> May 2015. The taxi driver was convicted and fined RM20,000 under Section 26J Act 670 for involvement in the smuggling of migrants into Malaysia. The migrants arrested were living in a camp on the Malaysia-Thailand border.

3.5.10 The authorities took action against the caretaker of the camps at Bukit Wang Burma and Genting Perah, as well as the individuals involved as "transporters" who sent the smuggled illegal immigrants into Malaysia from the camps. 4 foreign nationals were charged under section 26A of Act 670, namely, Nurul Islam (Bangladeshi national), Biau Wong Chumpo (Thai national), Shaidullah (Myanmar

national) and Momotin (Myanmar national) who were involved in migrant smuggling activities at Bukit Wang Burma and Genting Perah. All of them pleaded guilty in the Kangar High court, Perlis, and were convicted of the offence in 2016.

## Prevention of Crime Act 1959 (POCA) [Act 297]

3.5.11 Action may be also be taken against migrant smuggling offences under Act 297 for cases that are difficult to obtain convictions under Act 670 due to insufficient evidence. Act 297 was not applied in the Wang Kelian case.

3.5.12 However, the Commission was informed that Act 297 had also been applied in other migrant smuggling cases and the statistics of arrests from 2014 to 2018 for the whole of Malaysia are in Table 5.

<b>YEAR</b>	<b>NUMBER OF ARRESTS UNDER ACT 297 FOR MIGRANT SMUGGLING CASES</b>
<b>2014</b>	2
<b>2015</b>	42
<b>2016</b>	15
<b>2017</b>	34
<b>2018</b>	31
<b>Total</b>	<b>124</b>

**Table 5:** Number of Arrests under Act 297 for Migrant Smuggling Cases<sup>14</sup>

<sup>14</sup> Presented by S48 during the public hearing session on 18<sup>th</sup> June 2019. Source: Anti-Trafficking in Persons and Anti-Smuggling of Migrants Division, Royal Malaysian Police.

## Security Offences (Special Measures) Act 2012 (SOSMA) [Act 747]

3.5.13 All PUA who were subject to action being taken against them under Act 670 for the offence of smuggling migrants in the case of Wang Kelian were also subject to action being taken against them based on the provisions of Act 747.

3.5.14 Being subject to action under Act 747 for the offence of smuggling migrants has been applied since 2012 according to the statistics are as set out in Table 6.

YEAR	ACTION TAKEN UNDER ACT 747					NUMBER OF ARRESTS
	UNDER INVESTIGATION	RELEASED	DEPORTED	ON TRIAL	SENTENCED	
2012	-	6	0	0	5	11
2013	-	5	0	0	11	16
2014	-	0	0	0	25	25
2015	-	50	13	0	84	147
2016	-	22	4	4	103	133
2017	-	72	32	46	132	282
2018	-	28	4	70	103	205
<b>Total</b>	<b>-</b>	<b>183</b>	<b>53</b>	<b>120</b>	<b>463</b>	<b>819</b>

**Table 6:** Number of Arrests and Action Taken under Act 747 from 31<sup>st</sup> July 2012 to 31<sup>st</sup> December 2018<sup>15</sup>

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<sup>15</sup> *Ibid.*

## Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613]

3.5.15 The investigation paper was opened on 26<sup>th</sup> October 2015 under Act 613 whereby Inspector Suffian bin Abd Rashid, S33, acted as the Investigating Officer looking into offences under Section 4(1) of Act 613. The investigation of the Act 613 case was based on the predicate case under Section 26A of Act 670.

3.5.16 The investigation was directed against 6 Thai nationals and 3 Malaysian nationals, who were also investigated. An application under Section 48(1) of Act 613 was approved by the Deputy Public Prosecutor to review the accounts of these suspects in Malaysia. All their accounts were subsequently frozen.

3.5.17 After the investigation was carried out, it was found that only 2 accounts contained evidence to support the continuation of investigation under Section 56(1) of Act 613. The investigation uncovered that there was an individual, a Myanmar national, who had deposited RM4,000 into the account of Ku Hamid on 2<sup>nd</sup> October 2014. The deposit was made to release his nephew, who had been detained at the camp in Wang Kelian.

3.5.18 The investigation also found that on 25<sup>th</sup> November 2014, 2 cash deposits via a cash deposit machine were made into a CIMB Bank Berhad account for the sum of RM5,800. The money was deposited by a Myanmar national to release his uncle being held at a camp in Thailand.

3.5.19 No charges were made against any of the suspects under Section 4(1) of Act 613. However, property seized was forfeited under Section 56(1) of the same Act in the case of Ku Hamid to the amount of RM19,895 and also Ariffin at the sum of RM270.49.

3.5.20 A Mitsubishi Triton vehicle bearing registration number KEB 2712 was seized from Ku Hamid and was offered on a banker's cheque bond valued at RM21,700. The banker's cheque was also forfeited.

**Arms Act 1960 [Act 206], Firearms (Increased Penalties) Act 1971 [Act 37] and Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357]**

3.5.21 The Royal Malaysian Police also investigated 5 suspects who were arrested on 13<sup>th</sup> March 2015, for the offence of possession of weapons under Section 8 of Act 206, Section 8 of Act 37 and Section 6 of Act 357.

3.5.22 S18's statement confirmed the arrest of the 5 suspects at Genting Perah: Biau Wong Chumpo, Shahidullah, Momotin Suriyan Saengmak (Thai national) and Yahya Laloya (Myanmar national).

3.5.23 Biau Wong Chumpo was found in possession of a Smith & Wesson pistol with an empty chamber in his right side pocket whereby his left side pocket had a pouch containing 12 bullets of various types. A machete measuring 1 foot was seized from Yahya Laloya, which was on the right of his back. Biau Wong Chumpo was convicted under Section 8(a) of Act 206 on 7<sup>th</sup> September 2015 and was sentenced to 5 years in prison for the offence of being in possession of firearms and an additional 2 years for the offence of being in possession of bullets, both of which are to run concurrently.

## Penal Code [Act 574]

3.5.24 It was ascertained from the witnesses at the public hearing that certain victims were locked up in a fence-off tent. Most of the victims comprising of 38 illegal immigrants detained at the camp claimed that they had been beaten with canes by the camp guards.

3.5.25 Based on the deposition recorded from the victims, certain illegal immigrants claimed that they witnessed acts of rape committed at the detention camp. All the illegal immigrants claimed that they were extorted for payment of between RM2,000 to RM7,000 for their release from the said camp.

3.5.26 However, no investigation for offences under the Penal Code was carried out against any suspect or victim, despite evidence indicating that offences under the Penal Code had been committed.

## Criminal Procedure Code [Act 593]

3.5.27 The Royal Malaysian Police opened Sudden Death Reports in line with Chapter XXXII on Inquiries of Death under Act 593 in the case of the graves discovered at the camps. A total of 130 Sudden Death Reports were opened on all corpses from the graves and camps at Bukit Wang Burma and Genting Perah.

3.5.28 A team of Forensic Pathology Specialists conducted autopsies on all the corpses. The results of all but two autopsies determined the cause of death to be undetermined, while the two autopsies determined the causes of death to be Coronary Atherosclerosis and Pneumonia. The 130 Sudden Death Reports were then referred to the Coroner culminating in the decision of open verdicts for all.

## Extradition Act 1992 [Act 479]

3.5.29 The Malaysian authorities made requests to Thailand and Bangladesh to extradite criminals who were found to be involved in the offences committed against illegal immigrants in the camps in Bukit Wang Burma and Genting Perah.

3.5.30 The extradition request to Thailand involved 10 criminals while the application to Bangladesh involved one. However, no official feedback was received from Bangladesh. The feedback received from Thailand was that it was still in the process of consideration of extradition and was tracing these criminals in Thailand.

## Witness Protection Act 2009 [Act 696]

3.5.31 This act was applied to provide witness protection to an illegal immigrant who was a victim held at the camp in Wang Burma and Genting Perah. This victim had assisted in investigations and went on to become a witness whereby his statements recorded in a deposition aided in the conviction of 2 camp guards who were charged under Section 26A of Act 670 at the Kangar High Court.

## CHAPTER 4 FINDINGS OF THE COMMISSION

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*That which occurred was a widespread and systematic humanitarian crime that encompassed elements of deceit, extortion, force and torture against victims for monetary gain. This crime challenged the sovereignty of the nation.*

*- Members of the Commission*

### 4.1 INTRODUCTION

4.1.1 The findings of the Commission were based on statements of witnesses, which comprised victims, members of the public, security personnel, Government employees and investigating officers, obtained through public hearing, visits to incident locations as well as analysis of related reports including legislative instruments and reports by local and international media.

4.1.2 The discovery of the camps and graves at Wang Kelian was an extremely serious incident that brought negative implication to the image, security and sovereignty of the nation. It also brought about a negative perception that the authorities have failed to detect the existence of such camps. This failure was clear negligence on the part of the authorities in the discharge of their respective responsibilities.

4.1.3 This investigation by the Commission was a positive step towards preventing such incidents in future. It was expected that the investigation would meet the expectations of the people who care about this issue. It was hoped that these findings could provide a conclusive and just explanation and would be well-received by the public, as well as the international community.

## 4.2 FINDINGS OF PUBLIC HEARING AND VISITS TO LOCATIONS

### Human Trafficking and Migrant Smuggling Offences

4.2.1 From the evidence obtained, clear facts exist of the crimes of human trafficking and migrant smuggling from 2012/2013 to 2015 in Wang Kelian. This statement was reinforced by the discovery of camps at Wang Kelian, of which construction commenced in 2013.

4.2.2 Elements of extortion, force, torture, abuse and violence were used against illegal immigrants by the criminal syndicates to force payment from them. This situation began from the moment the illegal immigrants boarded the boats up until they reached the camps, and would continue until payment was made by their families or friends.

### Illegal Immigrants Transit Camps

4.2.3 There were 18 camps on the Malaysian side, approximately 100 to 200 metres from the Malaysia-Thailand border, 16 of which were in Genting Perah and 2 in Bukit Wang Burma. These camps were believed to have been built by a criminal syndicate of Thai nationals, based on the similar structure of camps in Thailand. The building materials and items such as tinned food, generator, pots, plates and bowls that were found indicated that they made in Thailand. This fact was supported by witnesses.

4.2.4 Visits by members of the Commission to the camp sites found that the trees surrounding the areas still formed a lush canopy and there were no signs of trees being felled. This was believed to be measures taken by the syndicate to avoid detection of the camps from the air.

4.2.5 The topography on the Thai side was of a more gradual incline and easily accessible compared to the Malaysian side, which is steeper and densely forested. On the Thai side, there were rubber plantations, orchards and villages close to the border.

4.2.6 There exists old logging roads in the Perlis State Park area that were used in the 1980s. These roads were some of the routes used by the criminal syndicates to bring illegal immigrants down through the FELCRA Lubuk Sireh rubber plantation.

4.2.7 A total of 148 grave structures were found, 57 of which were in Bukit Wang Burma and 91 in Genting Perah. These graves were found to be facing in the direction of the *qiblah* (Makkah), in accordance with the practice of Islam. There were no “mass graves”<sup>16</sup> as claimed by the media, Fortify Rights and SUHAKAM<sup>17</sup>. It was not denied that there existed one grave larger than average, stated to contain 3 corpses, which was found at Genting Perah on 4<sup>th</sup> June 2015.

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<sup>16</sup> There is no definition of “mass grave” specifically in international law. In general, “mass grave” is understood to refer to a site which contains human remains that are buried en masse. Human Rights Office of the United Nations Assistance Mission for Iraq and the Office of the United Nations High Commissioner for Human Rights, “Unearthing Atrocities: Mass Graves in territory formerly controlled by ISIL” (6 November 2018).

<sup>17</sup> Human Rights Commission of Malaysia and Fortify Rights, “Sold Like Fish” (Malaysia, March 2019).

## CRIMINAL SYNDICATES

4.2.8 The criminal syndicates bringing in illegal immigrants through Thailand to Malaysia comprised of Thai, Myanmar and Bangladeshi nationals. This fact was based on witnesses' statements and reports from the Malaysian and Thai media, as well as Fortify Rights and SUHAKAM<sup>18</sup> reports. This was supported by convictions in the Thai Courts of Thai nationals comprising army officers, public officers and civilians. Based on these statements, there was no evidence linking Malaysian nationals or public officers to the criminal syndicates. However, several Malaysians were involved in illegal immigrant smuggling activities known as "tekong"<sup>19</sup>.

4.2.9 The victims said that they were taken on small boats from their respective countries and were transferred to Thai ships in international waters. They were then brought to Thailand and from there they were taken by the criminal syndicates to camps in Thailand and Malaysia. Malaysia was the intended destination of the illegal immigrants.

4.2.10 Criminal syndicate members were found to have deceived illegal immigrants of Rohingya and Bangladeshi ethnicities regarding job opportunities, attractive salaries and safety, in addition to the low cost of transportation. They were exploited at the transit camp by being forced to make payment or additional payments through their families and friends. Failure to do so would mean that they would not be released by the criminal syndicates from being held and would be pressured, threatened and abused until their demands were met.

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<sup>18</sup> *Ibid.*

<sup>19</sup> For the purposes of this report, "tekong" refers to local people involved in bringing illegal immigrants to determined destinations (transporters).

## Description of Illegal Immigrants and Transit Camps

4.2.11 All the illegal immigrants were originally from Myanmar of the Rohingya ethnicity, or from Bangladesh. This fact is based on statements of witnesses comprising victims, forensic reports, enforcement officers and persons accused<sup>20</sup>.

4.2.12 The camps were in impoverished conditions, unhygienic, with no water and electricity supply, and cramped living quarters. Food rations were insufficient and limited to the detainees being fed only once daily. There were elements of threats, force and abuse against men and women, including children, in the detention camps. They were kept captive in barbed wire enclosures locked with padlocks, watched over by guards carrying firearms and lived constantly in fear. They were not allowed to communicate with one another. Punishment in the form of physical abuse was meted out to illegal immigrants who attempted to escape or who defied commands. Medical facilities were not provided. These findings were supported by the SUHAKAM and Fortify Rights<sup>21</sup> report.

4.2.13 From witness statements, also reported in the SUHAKAM and Fortify Rights report<sup>22</sup>, among the factors that resulted in the deaths were malnutrition, surroundings that were not conducive to health, unhygienic water supply, non-existent medical facilities and a long detention period.

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<sup>20</sup> Supported by the results of investigations carried out by other quarters such as Fortify Rights and SUHAKAM in the Report entitled "Sold Like Fish", and local and foreign newspaper reports.

<sup>21</sup> Human Rights Commission of Malaysia and Fortify Rights, "Sold Like Fish" (Malaysia, March 2019).

<sup>22</sup> *Ibid.*

## Enforcement Coordination

4.2.14 Responsibility for control of the Malaysia-Thailand border in Perlis is divided into:

- i. border patrol by the General Operations Force, Royal Malaysian Police or Armed Forces, in rotation, covering the areas of Wang Kelian to Bukit Kayu Hitam at a distance of 65 kilometres;
- ii. maintaining control at the official entry points at Bukit Kayu Hitam and Wang Kelian. Control at the official entry points is conducted by key enforcement agencies such as the Department of Immigration, Royal Malaysian Customs, Royal Malaysian Police<sup>23</sup>, Department of Road Transport, National Anti-Drugs Agency, MAQIS, PERHILITAN and State Pharmaceutical Department, MOH;
- iii. maintaining control by the Anti-Smuggling Unit, now known as AKSEM<sup>24</sup>, at a roadblock situated approximately 2 kilometres from the border; and
- iv. security patrols by personnel of the Wang Kelian, Padang Besar and Kaki Bukit police stations.

4.2.15 Enforcement at the border involves several agencies, as stated above. Ensuring that this is effective and efficient requires firm coordination between the agencies involved. However, the Commission found such coordination between the enforcement agencies assigned to the border area to be very poor.

4.2.16 The General Operations Force and Armed Forces of Malaysia are responsible for the management of operations and control along the Malaysia-Thailand overland border, whereas the Department of Immigration, Royal Malaysian Customs and Royal Malaysian Police focus on the official entry points into the country, including the ICQS. The Anti-Smuggling Unit, now upgraded to AKSEM, on the other hand,

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<sup>23</sup> Comprising the General Operations Force and Special Branch.

<sup>24</sup> The Anti-Smuggling Unit and AKSEM is comprised of the Royal Malaysian Police, Department of Immigration, Royal Malaysian Customs, NADA, as well as the National Kenaf and Tobacco Board.

maintains control over the area commencing 2 kilometres from the country's border. The agencies on duty at the border still hold rigidly to their own assignments or core business. This makes firm border control coordination difficult. The roles of the various agencies in controlling the border, which involves several levels, may weaken the maintaining of security at the border, especially when combined with a lack of effective coordination.

4.2.17 In dealing with the discovery of camps and graves at Wang Kelian, several departments/units under the Royal Malaysian Police were involved at different levels. There were weaknesses in the Royal Malaysian Police's internal coordination in carrying out operations, which was demonstrated through the work flow and information channelled between departments/units in regard to the discovery of the camps and graves. In addition, there were gaps in the transmission and sharing of information where reviews were conducted several times before subsequent action was taken. This was seen to have caused delays in the implementation of proper action.

4.2.18 The authorities also failed to take note of, analyse and understand the incoming trend of illegal immigrants. They also did not view seriously the continued entry of these illegal immigrants on a large scale from 2012 to 2015. The large scale and continued entry trend of illegal immigrants should have appropriately been a clear warning and sign to enforcement agencies at state and national levels. The matter should also have been raised at policy-maker level.

4.2.19 At state level, the Royal Malaysian Police, National Security Council, Department of Immigration and AKSEM knew about and were aware of this pattern and flow of entry, but did not take any action to halt the entry of illegal immigrants in the areas that were often breached. Regular and comprehensive inspections should have been conducted along the Malaysia-Thailand border without exception.

4.2.20 Based on witness statements, there were discrepancies in the determination of areas of deployment of border control at Wang Kelian by the General Operations Force. S5 mentioned in his statement that the Wang Kelian area was an inactive area due to lack of control posts and the said area being under the supervision of the Perlis State Park. However, S5's statement contradicted S14, who stated that the Wang Kelian area was actually under the jurisdiction of the General Operations Force. However, patrols could not be carried out due to lack of personnel and official orders with regard to whether the relevant area was active or not under the control of the General Operations Force.

4.2.21 Based on witnesses' statements, control of the Wang Kelian area was not maintained or patrolled at all due to the following:

- i. it was not included in the official deployment orders;
- ii. there were no control posts;
- iii. there was a lack of personnel; and
- iv. the area was categorised as inactive.

4.2.22 The area of responsibility on the country's borders depends on the level of necessity for patrols in an area determined by the National Operations Planning Committee under the National Security Council. For areas that are less densely populated and with steep topographical factors, less emphasis is given by policymakers with regard to the determination of areas of responsibility. Several areas on the Perlis state border have been identified as requiring improvement in terms of security control, such as at Kampung Wai in Kuala Perlis, Bintong in Kangar and Wang Kelian.

4.2.23 Follow-up action after the discovery of the camps was also delayed and not handled forthwith. After the discovery of the camps on 19<sup>th</sup> January 2015, follow-up action to verify whether there were human remains in the structures resembling graves was only taken on 6<sup>th</sup> March 2015. The operation to discover and exhume the bodies at Bukit Wang Burma and Genting Perah only commenced in May 2015. The orders from the Inspector General of Police at the time with regard to the handling of this case were not clear, whereby orders to 'put on hold' were given to the Perlis Chief of Police. This caused a postponement in the investigation of the case. This delay shows that the case was not regarded seriously and was not handled immediately (lack of urgency). S16, when asked about the cause of delay in taking action, explained that when he informed the Inspector General of Police about the discoveries at Wang Burma, S47 had ordered them to 'put on hold' any action. S47 in his statement said that such an order was vital as he was unsure as to whether the location of the camps discovered were in Malaysia or Thailand. This answer is very surprising for several reasons.

4.2.24 Firstly, the uncertainty as to the location of the camps had never been raised by any witnesses prior to this. The Commission believes that all parties were certain that the camps were in Malaysia. Secondly, should there have been any uncertainty as to the location of the camps, the matter could have been resolved in a short period of time. Thirdly, this reason is unacceptable as prior to this officers of the General Operations Force had already conducted raids and searches of the said camps, and there had not been any objections from the Thai authorities. The Commission finds it difficult to accept the reason given by S47 and it is only seen as an excuse to cover up the actual reason for him to order that only action be put on hold.

4.2.25 In this case, the discovery of the camps and graves should have raised suspicions that a criminal offence had been committed. Immediate follow-up action should have been taken to investigate the incident location so that any evidence would be preserved and undisturbed. Unfortunately, the said incident location was left unguarded. Immediate action was not taken to inspect, search and carry out detection at areas in close proximity, such as at Genting Perah, after the discovery at Bukit Wang Burma. Follow-up action was only taken almost 2 months later.

4.2.26 The Commission finds that the issue was merely discussed in the Monthly State Chief of Police Meeting. A specific meeting to handle this issue was never convened. At the National Security Council level, the issue was not raised immediately after the discovery in January 2015.

4.2.27 Based on the statement of S47, the matter was brought before the National Security Council Meeting and the decision of the chairman was that investigations be carried out to determine the involvement of Malaysians after Thailand announced a series of arrests of Thai senior army officers, public officers and civilians. S47 however could not state the actual date when the matter was brought before the National Security Council. Nevertheless, what is clear is that the matter was only brought up during or after the month of May 2015, following the announcement made by the Thai authorities.

4.2.28 The torture and deaths of the illegal immigrants should have been prevented by the authorities taking a more proactive step in border control. It did not require any extraordinary effort to detect what had happened in Bukit Wang Burma as indicated by S1. What is required among enforcement officers is dedication, commitment and innovation in carrying out their duties.

## Border Control

4.2.29 The camps discovered at Bukit Wang Burma and Genting Perah were located in the Perlis State Park at an area of 4,379.81 hectares<sup>25</sup>. This area was not included in the area patrolled by the General Operations Force and the Armed Forces of Malaysia. The General Operations Force, when conducting the Operation *Wawasan*, only patrolled the areas from Bukit Kayu Hitam to the Wang Kelian post at a distance of 65km. From this distance, approximately 5km of the Malaysia-Thailand border at Wang Kelian was not patrolled. The deployment at the post covered a 2km radius of patrol area close to the border, parts of which were either fenced or unfenced. It was found that there were no control posts in the Wang Burma and Genting Perah areas, and most posts were not satisfactorily maintained and in a dilapidated condition.

4.2.30 The Malaysia-Thailand overland border between Wang Kelian and Bukit Kayu Hitam was found to be easily breached despite security fencing, walls, control posts and the security road (KESBAN) at the border. The reasons for such circumstances were as follows:

- i. Insufficient patrols;
- ii. Barbed wire fencing easy to cut through;
- iii. Lack of CCTV coverage at the border in Wang Kelian;
- iv. Unmaintained fencing;
- v. No residents on the Malaysian border area who could provide information to the enforcement authorities; and
- vi. CCTV only in place at the ICQS on the border but most cameras were damaged or not functioning.

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<sup>25</sup> "Perlis State Park", Department of Forestry Perlis, 2017, 8<sup>th</sup> July 2019  
<https://www.perlis.gov.my/forestry/index.php/ms/eko-pelancongan/taman-negeri-perlis>.

4.2.31 The strength of the force deployed on the border was insufficient to carry out effective patrolling. This situation has been worsened by a lack of equipment, especially vehicles, whereby existing vehicles need repair. Currently, the Wang Kelian area has been controlled by one section with a strength of 10 General Operations Force members. However, in an actual situation, only 6 or 7 members led by an Inspector or Sergeant would be placed on duty in the required area. Only 2 or 3 posts used Land Rover vehicles while the other posts have made use of their personnel's own vehicles or motorcycles.

4.2.32 Fences and walls constructed on the border were not extensive, as there were open areas along the border. The existing fences and walls have not been well-maintained. Added to that, a large part of the country's border area has still not been developed and made up of jungle cover. This situation would give room for smuggling, either of human beings, goods, animals or plants.

4.2.33 On the whole, the Commission has found that the lack of staff, assets and infrastructure on the border have not been given due attention by the Government. These were the main factors contributing to the incident at Wang Kelian.

## Involvement of Public Officers

4.2.34 The Commission also investigated the possibility of corruption and abuse of power among enforcement personnel and public officers in this Wang Kelian case. However, based on evidence, there was no proof that pointed to the involvement of public officers in this case. This was supported by the statements of victims in that they had been brought to the camps by Thai nationals, whereas the guards at the camps were either Thai, Myanmar or Bangladeshi nationals.

4.2.35 It was confirmed from depositions<sup>26</sup> presented to the Commission that Thai nationals the ones brought the victims uphill to the camps. This was stated by victims of human trafficking themselves in statements at the Sessions Court in Kangar, Perlis on 2<sup>nd</sup> March 2016, 3<sup>rd</sup> March 2016, 18<sup>th</sup> April 2016, and 23<sup>rd</sup> June 2016. Victim 5 explained the involvement of Thai nationals as follows:

“...we could not go out of the camp because there were the same people taking turns. But they were not the same people who went uphill with us. There were 20-30 Thais guarded us at the camp...”<sup>27</sup>

4.2.36 He also stated that:

“...5 Myanmarese guarded the place where we slept and acted as interpreters to communicate with the Thais, whom they worked for. They did not carry any weapons. The Thais had pistols...”<sup>28</sup>

4.2.37 Victim 6 stated that one of the camp guards was a Bangladeshi who also acted as an interpreter for the victims<sup>29</sup>. Victim 1 said that the agents who came to the camp were either Rohingya ethnicity, Bangladeshi or Thai<sup>30</sup>. According to him:

“...the agent would beat us if we did not give money. I was also beaten because I went to relieve myself without asking permission. I was also beaten because I was not able to contact my family to ask for money...”<sup>31</sup>.

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<sup>26</sup> Depositions of victims at the Sessions Court in Kangar, Perlis, on 2<sup>nd</sup> March 2016, 3<sup>rd</sup> March 2016, 18<sup>th</sup> April 2016 and 23<sup>rd</sup> June 2016.

<sup>27</sup> Deposition of Victim 5 at the Sessions Court in Kangar, Perlis, on 18<sup>th</sup> April 2016.

<sup>28</sup> *Ibid.*

<sup>29</sup> Deposition of Victim 6 at the Sessions Court in Kangar, Perlis, on 23<sup>rd</sup> June 2016.

<sup>30</sup> Deposition of Victim 1 at the Sessions Court in Kangar, Perlis, on 7<sup>th</sup> September 2016.

<sup>31</sup> *Ibid.*

4.2.38 From the victims' statements, it was found that no Malaysian citizens, whether civilians or public officers, had been involved in the human trafficking syndicate in the case of Wang Kelian. Statements<sup>32</sup> show that the involvement of Malaysians was limited to being "tekong" (transporters) for illegal immigrants to be taken to determined destinations in Malaysia. There have been cases where foreign nationals residing in Malaysia played a role in bringing illegal immigrants to specific destinations, making arrangements for the journey and getting jobs for the illegal immigrants.

4.2.39 The Commission received the opportunity to examine the SUHAKAM and Fortify Rights<sup>33</sup> report on the misconduct of public officers wherein it was stated:

*"The potential for corruption was also identified as an issue in Malaysia. For example, a Malaysian representative from the Legislative Assembly of Bukit Kayu Hitam, Kedah State in July 2017 testified to the Commission that potential corruption among Malaysian border-control authority members encourages human-trafficking activities. He said some border agents demand money from vehicles moving back and forth over the border without conducting proper inspections according to their respective agencies. The representative believes human traffickers might rely on this corruption to traffic people to Malaysia in vehicles crossing the border."*

*"An officer-in-charge of the Padang Besar District Police Headquarters in Malaysia's Perlis State also told the Commission in 2017 that there was an issue for Malaysian law enforcement agencies with respect to bribery – and that Thai authorities facilitated the passage of "migrants" to Malaysia to avoid the cost of detaining them in Thailand."*

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<sup>32</sup> S18 during the public hearing on 28<sup>th</sup> April 2019.

<sup>33</sup> Human Rights Commission of Malaysia and Fortify Rights, "Sold Like Fish" (Malaysia, March 2019), p. 85.

4.2.40 The Commission found that the above-mentioned statements indirectly refer to the incident at Wang Kelian. However, the statements were merely speculation and belief on their part, and were not supported by any evidence.

4.2.41 In relation thereto, the Commission called upon Dato' A. Aziz bin A. Rahim (S42), Chairman of the Enforcement Agencies Integrity Commission (EAIC), a body regulating enforcement agencies including the Royal Malaysian Police, Department of Immigration and Royal Malaysian Customs, incorporated under the Enforcement Agencies Integrity Commission Act 2009 [Act 700] to testify. He stated that the Commission (EAIC) had called a representative from the NST who covered the Wang Kelian incident with the purpose of obtaining further information of the results of their investigation to verify as to whether there was any misconduct amongst members of the Royal Malaysian Police or other enforcement agencies deployed on the border.

4.2.42 The matter was brought before the EAIC meeting where it was decided that an investigation was not required as significant time had passed and there was no supporting evidence indicating any misconduct among enforcement personnel on the border based on comparison of information between the NST and Royal Malaysian Police. In addition, he also said that the information from the NST did not detail any accusation of misconduct against any officer to enable the EAIC to initiate an investigation. Based on the details above, the Commission was satisfied beyond any reasonable doubt that there was no evidence to support suspicions or accusations that corruption and abuse of power exists among public officers.

### 4.3 STANDARD OPERATING PROCEDURE (SOP)

4.3.1 The Commission found that enforcement agencies, especially the Royal Malaysian Police, have SOP in conducting investigations, which have been applied at all levels. In the investigation of the discovery of camps and graves at Wang Kelian, it was found that there were several related SOP, including the Inspector General of Police Standing Order (IGSO) Part D216 Illegal Immigrant/Unauthorised Immigrant, IGSO Part D223 Police Inquiry Paper, IGSO D232 Sudden Death Report, IGSO Part D 102 Scientific Assistance, IGSO Part D150 Criminal Investigation, IGSO Part A125 Intestate Estate – Unclaimed and Seized Assets, IGSO Part D221 Criminal Investigation Department Inspection and Procedure of Enforcement Agencies under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 issued by the Council on Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO).

4.3.2 After examining the existing SOPs, it was found that a large part of the procedures were complied with. However, several important procedures were not complied with that affected the quality of investigation of the case.

### Investigation under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]

4.3.3 In the initial stages of the discovery of camps in January 2015, the case was not investigated under Act 670. 38 illegal immigrants were arrested and handed over to the Padang Besar IPD, which subsequently passed them on to the Department of Immigration Malaysia on 19<sup>th</sup> January 2015. A report of the police arrests was lodged by S5 and was found not to have stated details of the exhibits seized by personnel on the raid led by S3. S5 who made the complaint was not the actual officer conducting the raid at Bukit Wang Burma, thus relegating the complaint to hearsay. The report should have been lodged by the officer heading the raid, S3.

4.3.4 Based on S11's statement, the said report was classified by the Padang Besar IPD as to "refer other agency" (ROA), namely the Department of Immigration as no criminal elements were found to be involved. The report was not investigated as a case under Act 670. This procedure, according to S11, was based on the order of the Criminal Investigation Department Director dated 9<sup>th</sup> October 2007, pursuant to the decision of the Special Court Meeting, Department of Immigration Malaysia on 14<sup>th</sup> February 2007. This indicates that enforcement agencies do not provide protection to illegal immigrants who are victims of human-trafficking.

4.3.5 After S11 was notified of the arrests of the 38 illegal immigrants on 20<sup>th</sup> January 2015, he instructed that oral statements be recorded from all of them at the Immigration depot on 22<sup>nd</sup> January 2015. Subsequently on 23<sup>rd</sup> January, S11 visited the incident location to conduct a review. After this, according to S11, the Padang Besar District Chief of Police ordered the case to remain classified as a Police Inquiry Paper (KEP). Hence, no further investigation was conducted. It was not proper for this case to be classified as KEP and not changed to an investigation paper, even though a review had been conducted by viewing the conditions of the camps and grave structures, as well as the recorded statements of the 38 illegal immigrants.

4.3.6 On 20<sup>th</sup> January 2015, at the Perlis Chief of Police Monthly Meeting No. 1/2015, S5 gave a briefing stating that the General Operations Force were successful in discovering an illegal settlement at Bukit Wang Burma, which was believed to have been used by human traffickers as a transit camp for illegal immigrants before entering Malaysia.<sup>34</sup> In the same meeting, S13, who was chairing the meeting, ordered the General Operations Force to take immediate action to demolish the illegal settlement. S13, before the Commission stated that the purpose such an order was given was so that the camp could no longer be used in the future to hold illegal immigrants. This order was seen to be in conflict with the decision of the meeting that as there were elements of human trafficking and migrant smuggling, this warranted investigation under Act 670. Further, all evidence should have been preserved to assist in the prosecution, as prescribed by Act 670<sup>35</sup> and the Procedures for Enforcement Agencies under the same Act. The decision and action for a case to be opened and investigated depending on indicators as to whether there are masterminds behind the scenes or otherwise should not be the foundation. On the contrary, the entire facts of the case and other indicators must be examined, especially regarding offences of migrant smuggling or other criminal cases. All the illegal immigrants who were arrested must be investigated, as provided by the existing SOPs.

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<sup>34</sup> Minutes of Perlis Chief of Police Monthly Meeting No. 1/2915, 21<sup>st</sup> January 2015.

<sup>35</sup> Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670], s27-s41.

4.3.7 The Commission's review found that there was an order from the Head of Prosecution Division, Attorney General's Chambers, bearing reference PNPRM 152/4/40 dated 23<sup>rd</sup> January 2009, which instructed that "any arrests that involve foreign nationals shall first be investigated under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, except for clear criminal offences under other Acts, such as murder and drug-trafficking, burglary and others"<sup>36</sup>.

4.3.8 In this case, it was very clear that all quarters including the National Security Council and the Ministry of Home Affairs, were not sensitive to the existence of human-trafficking crime elements based on Act 670. If the relevant parties had been more sensitive and aware, this case could have been handled more professionally and fairly. If that were the case, some of the illegal immigrants involved should have been treated as victims of human trafficking under Act 670. This was a serious failure at policy maker and implementer levels.

## Handling of Exhibits

4.3.9 Based on S3's statement, during the raid on the camp in Bukit Wang Burma on 19<sup>th</sup> January 2015, in addition to the arrests of illegal immigrants, several items of evidence were found. S3 only handed over the said exhibits on 28<sup>th</sup> January 2015, after one week had passed. S3, when testifying before the Commission, said that these exhibits were handed over to S4 because in S3's office at TS9 Post, there existed no locked storage to store such exhibits. S4 subsequently handed over the exhibits to S7 on 29<sup>th</sup> January 2015.

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<sup>36</sup> Investigation under the Anti-Trafficking of Persons Act 2007 – For Cases Involving Foreign Nationals, letter from Head of Prosecution Division, Attorney General's Chambers to the Inspector General of Police, Director General of Department of Immigration Malaysia, Director General of the Royal Malaysian Customs and Director General of the Malaysian Maritime Enforcement Agency, ref. PN.PRM 152/4/40 dated 23<sup>rd</sup> July 2009.

4.3.10 The Commission was of the opinion that the exhibits found at Bukit Wang Burma on 19<sup>th</sup> January 2015, were not properly handled. They were not recorded, were held on to by S3 for a significant period, stored in an unsafe location before being handed over to S4 and were only handed over subsequently to S7 after being requested by S7 to S4. There were other important exhibits that were not taken, such as the sim cards, which were found scattered over the location and could have shed light in the investigation.

4.3.11 The Commission was of the opinion that exhibits found on 19<sup>th</sup> January 2015, should have been handed over immediately to the Padang Besar IPD Criminal Investigation Department's investigating officer directly when S5 made the report of the arrest of 38 illegal immigrants on the same day. The exhibits were still held on to by the General Operations Force and were not handed over to the Criminal Investigation Department, despite the Criminal Investigation Department's investigating officers being on duty. The explanation given by S3 stating that the said exhibits were handed over by him to S4 as there was no place to store the exhibits at the General Operations Force was not reasonable and were unacceptable. The relevant exhibits should have been handed over directly to the CID investigating officer. This showed a weakness and failure in fully complying with existing SOPs.

4.3.12 This situation thus made it difficult for the Padang Besar IPD to classify the case. It also delayed the initiation of a comprehensive investigation on the discovery of the camps.

## Handling of Human Remains

4.3.13 On 6<sup>th</sup> March 2015, a police team from the Padang Besar IPD embarked on a special mission to confirm whether there were bodies in the ground structure resembling a grave at Bukit Wang Burma. The exhumation of the identified ground structure revealed a shroud containing human remains but the grave was subsequently covered up again. A Sudden Death Report (SDR) was thereby opened. According to S11, the police team involved in the special mission only took pictures

of the human remains found and marked 35 other ground structures resembling graves discovered during the said mission.

4.3.14 Section 329(2) of the Criminal Procedure Code [Act 593] provides that a police officer not less than a Sergeant is to be present immediately at a place where a body is found, conduct an investigation and prepare a report regarding the cause of death if apparent, describing injuries, broken bones, bruises and other injuries or signs and items, which in the opinion of the said officer are related to the death of the victim.

4.3.15 From witnesses' statements, it was found that the recording of the condition of the body and location as provided in section 329(2) of Act 593 was not done expediently as only the photographing and marking of the grave structure were carried out.

4.3.16 In the handling of the discovery of the body on 6<sup>th</sup> March 2015, at Bukit Wang Burma, it was found that steps to identify the body, ensure that the area was not approached by unauthorised persons and also guard the body were not taken. S11, acting Head of Criminal Investigation Division, Padang Besar IPD, when giving his statement before the Commission stated that he was not sure whether these steps were taken and S11 himself did not issue any orders for such action. S11 only said that additional personnel of the General Operations Force were assigned to the area to prevent intrusion. S11 could not, however, state with certainty the scope of monitoring by the General Operations Force.

4.3.17 In this matter, the Royal Malaysian Police had failed to act immediately despite having located the identified grave structures close to the camp. The Commission has found that all efforts of investigation at the location, exhumation and autopsy of the bodies were conducted in May 2015 during the Operation *Wawasan Khas* and not implemented immediately, as required by section 330 of the Criminal Procedure Code [Act 593] and IGSO D 232.

## Summary of the Commission

4.3.18 Overall, the Commission has found that the Royal Malaysian Police officers involved in the case lacked understanding and experience in handling cases involving human trafficking and migrant smuggling, despite being assigned to the country's borders. This weakness led to unorganised management of the case and intensive investigation being conducted only in May 2015.

4.3.19 The Head of the District Criminal Investigation Division and the District Chief of Police were also not sensitive to the situation and the facts of the incidents, which involved the arrests of illegal immigrants, discovery of camps and grave structures as early as January 2015. These were seen as merely offences under the Immigration Act 1959/63. Thus, the case was only referred to the Department of Immigration Malaysia. Despite there being elements of crimes being committed whereby illegal immigrants were found to be locked-up and guarded by several armed camp guards, the orders given at the time were only to open a Police Inquiry Paper. In fact, a police investigation paper should have been opened.

4.3.20 The order to hold back issued by the Inspector General of Police at the time caused a delay in the investigation, producing a significant impact on the quality of the overall investigation.

## 4.4 ANALYSIS OF LEGISLATION, INTERNATIONAL CONVENTIONS AND OTHERS

4.4.1 The Commission has taken into account and examined domestic legislation, international conventions and protocols related to human trafficking, migrant smuggling, refugees, immigration and preventive legislation currently in force.

## Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]

4.4.2 The Anti-Trafficking In Persons Act 2007 was passed and came into full force on 28<sup>th</sup> February 2008. The Act was subsequently amended in 2010 and enforced on 15<sup>th</sup> November 2010, and known as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670].

4.4.3 To reinforce existing legislation, Act 670 was once again amended in 2015 which, among other conditions, involved provisions regarding more active involvement of NGOs in terms of protection and care of victims of human trafficking. The amendment came into force on 18<sup>th</sup> November 2015.

4.4.4 The Council on Anti-Trafficking In Persons and Anti-Smuggling of Migrants (MAPO) is chaired by the Secretary General to the Ministry of Home Affairs. Among the responsibilities prescribed in section 7 of Act 670 include coordinating the implementation of the Act, formulating policies and programmes to prevent and fight human trafficking and migrant smuggling, as well as advising the Government on issues of human trafficking and migrant smuggling including the growth of human trafficking and migrant smuggling at international level.

4.4.5 Section 6 of the Act provides that the Minister of Home Affairs shall be the chairman of the MAPO High Committee. The five enforcement agencies empowered under this Act are the Royal Malaysian Police, Department of Immigration Malaysia, Malaysian Maritime Enforcement Agency (APMM), Department of Labour and Royal Malaysian Customs.

4.4.6 The Act provides two specific parts, Part III and Part III A for offences of human trafficking and migrant smuggling. The list of offences and sentences for each related section is set out in Tables 7 and 8 below:

PART III TRAFFICKING IN PERSONS OFFENCES, IMMUNITY, ETC.	
SECTION	SENTENCE
<b>12. Offence of trafficking in persons</b>	Imprisonment for a term not exceeding fifteen (15) years, and shall also be liable to fine.
<b>13. Offence of trafficking in persons by means of threat, force, etc.</b>	Imprisonment for a term not less than three (3) years but not exceeding twenty (20) years, and shall also be liable to fine.
<b>14. Offence of trafficking in children.</b>	Imprisonment for a term not less than three (3) years but not exceeding twenty (20) years, and shall also be liable to fine.
<b>15. Offence of profiting from exploitation of a trafficked person.</b>	Imprisonment for a term not exceeding fifteen (15) years, and shall also be liable to a fine of not less than five hundred thousand ringgit (RM500,000.00) but not exceeding one million ringgit (RM1,000,000.00) and shall also be liable to forfeiture of the profits from the offence.
<b>15A. Offence in relation to trafficked person in transit.</b>	Imprisonment for a term not exceeding seven (7) years, and shall also be liable to fine.

**Table 7:** Offence of Trafficking in Persons

PART IIIA SMUGGLING OF MIGRANTS	
SECTION	SENTENCE
<b>26A. Offence of smuggling of migrants.</b>	Imprisonment for a term not exceeding fifteen (15) years, and shall also be liable to fine, or to both.
<b>26B. Aggravated offence of smuggling of migrants.</b>	Imprisonment for a term not less than three (3) years but not exceeding twenty (20) years, and shall also be liable to fine.
<b>26C. Offence in relation to smuggled migrant in transit.</b>	Imprisonment for a term not exceeding seven (7) years, and shall also be liable to fine.
<b>26D. Offence of profiting from the offence of smuggling of migrants.</b>	Imprisonment for a term of not less than seven (7) years but not exceeding fifteen (15) years, and shall also be liable to a fine of not less than five hundred thousand ringgit (RM500,000.00) but not exceeding one million (RM1,000,000.00), or to both, and shall also be liable to forfeiture of the profits from the offence.
<b>26H. Concealing or harbouring smuggled migrants and migrant smugglers.</b>	Imprisonment for a term not exceeding ten (10) years, and shall also be liable to fine, or to both.
<b>26J. Offence of conveyance of smuggled migrants.</b>	Imprisonment for a term not exceeding five (5) years, and shall also be liable to a fine not exceeding two hundred and fifty thousand ringgit (RM250,000.00), or to both.

**Table 8:** Offence of Smuggling of Migrants

## Immigration Act 1959/63 [Act 155] and Passport Act 1966 [Act 150]

4.4.7 The Immigration Act 1959/63 [Act 155] and the Passport Act 1966 [Act 150] are the main legislation in the country regarding the procedure of entering and exiting Malaysia, as well as the obligation of having valid travel documents. Foreign nationals especially must comply with the provisions and enter the country through the gazetted entry points.

4.4.8 Section 55E(7) of Act 155 defines "Illegal Immigrant" as any person, other than a citizen, who contravenes sections 5, 6, 8, 9 or 15 of Act 155 or Regulation 39 of the Immigration Regulations 1963. Among the offences provided in these Acts are:

<b>SECTION</b>	<b>OFFENCE</b>	<b>SENTENCE</b>
<b>Section 5(2)</b>	Entering and exiting Malaysia through unauthorised route or route that is not gazetted.	Fine not exceeding RM10,000.00 or imprisonment for a term not exceeding 5 years, or both.
<b>Section 6(3)</b>	Entering and staying in Malaysia without valid Pass or Permit.	Fine not exceeding RM10,000.00 or imprisonment for a term not exceeding 5 years, or both, and shall also be liable to whipping of not more than 6 strokes.
<b>Section 8</b>	Prohibited Immigrant	Fine not exceeding RM10,000.00 or imprisonment for a term not exceeding 5 years, or both.

<b>Section 9</b>	Entering and staying in Malaysia after Pass or Permit is cancelled by the Director General of Immigration Malaysia.	Fine not exceeding RM10,000.00 or imprisonment for a term not exceeding 5 years, or both.
<b>Section 15</b>	Staying in Malaysia after Permit is cancelled or expiry of pass.	Fine of not less than RM10,000.00 or imprisonment for a term not exceeding 5 years, or both.
<b>Regulation 39(b)</b>	Violating condition of Pass, Permit or Border Pass.	Fine not exceeding RM1,000.00 or imprisonment for a term not exceeding 6 months, or both.

**Table 9:** Immigration Offences

## Prevention of Crime Act 1959 (POCA) [Act 297]

4.4.9 The Prevention of Crime Act 1959 (POCA) [Act 297] was enacted in 1959. This Act is a preventive legislation which was also enacted pursuant to Article 149 of the Federal Constitution. The objective of this Act is to control the spread of criminals, specifically organised crimes/syndicates which pose a threat to national security, by registering criminals under the act and placing them under police surveillance. Another objective is to handle serious crimes such as triads, violent crimes, property crimes, drugs, prostitution, gambling as well as migrant smuggling. The Registrable Categories in the First Schedule of Act 297 are as follows:

*"First Schedule  
Registrable Categories*

1. *All members of unlawful societies which –  
(i.) use Triad ritual; or*

*(ii.) are constituted or used for purposes involving the commission of offences that are sizeable under the law for the time being in force relating to criminal procedure; or*

*(iii.) maintain secrecy as to their objects.*

- 2. Persons who belong to or consort with any group, body, gang or association of two or more persons who associate for purposes which include the commission of offences under the Penal Code.*
- 3. All traffickers in dangerous drugs, including persons who live wholly or in part on the proceeds of drug trafficking.*
- 4. All traffickers in persons, including persons who live wholly or in part on the proceeds of trafficking in persons.*
- 5. All persons concerned in the organisation and promotion of unlawful gaming.*
- 6. All smugglers of migrants, including persons who live wholly or in part on the proceeds of smuggling or migrants.*
- 7. Persons who recruit, or agree to recruit, another person to be a member of an unlawful society or a gang or to participate in the commission of an offence.*
- 8. Persons who engage in the commission or support of terrorist acts under the Penal Code.<sup>37</sup>*

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<sup>37</sup> First Schedule, Prevention of Crime Act 1959 [Act 297].

## Security Offences (Special Measures) Act 2012 (SOSMA) [Act 747]

4.4.10 This Act was enacted to establish provisions for special measures in relation to security offences for the purposes of maintaining the public peace and security, and for matters related thereto.

4.4.11 This Act sets out the offences under Chapter IIIA Smuggling of Migrants, Act 670 as Security Offences under the First Schedule. The list of security offences is as follows:

<p><u>"First Schedule</u> Security Offences</p>
<p>Penal Code [Act 574]:</p>
<ul style="list-style-type: none"><li>i. Offences under Chapter VI</li><li>ii. Offences under Chapter VIA</li><li>iii. Offences under Chapter VIB</li></ul>
<p>Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]:</p>
<p>Offences under Chapter IIIA</p>
<p>Special Measures Against Terrorism in Foreign Countries Act 2015 [Act 770]"<sup>38</sup></p>

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<sup>38</sup> First Schedule, Security Offences (Special Measures) Act 2012 [Act 747].

## Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613]

4.4.12 The Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613] was enacted for the purposes of prosecuting money laundering cases and acts of dealing with proceeds from criminal activities, providing measures and detecting money laundering and terrorism financing, and the mechanism to seize and forfeit proceeds of crimes and assets of terrorists.

4.4.13 Pursuant to Act 613, each prosecution of money laundering cases must be proven with a predicate offence (or also called serious offence in accordance with Act 613) to verify that the monies are illegal. The predicate offences referred to in this Act are listed in the Second Schedule; which encompasses 41 Acts managed by various enforcement agencies. These predicate crimes are serious organised crimes committed by criminal syndicates or illegal societies. Among the crimes that involve serious offences under the Second Schedule of Act 613 are Act 670, Act 150, Act 155, Act 37, Act 357 and the Penal Code.

## Mutual Assistance in Criminal Matters Act 2002 [Act 621]

4.4.14 The Mutual Assistance in Criminal Matters Act 2002 [Act 621] came into force on 1<sup>st</sup> May 2003 for the purpose of encouraging international cooperation with agencies involved in the criminal justice system at all levels worldwide. This was to ensure that all agencies are able to provide mutual assistance in order that investigations and trials may be conducted smoothly, and justice may be attained.

4.4.15 The objective of this Act is for Malaysia to provide and receive international assistance in criminal matters, as well as matters related thereto. The Act does not hinder cooperation with any international organisation in addition to the assistance that may be obtained under the Act. Act 621 aids the investigation of criminal cases that involve money laundering activities at international level more effectively.

## Extradition Act 1992 [Act 479]

4.4.16 The Extradition Act 1992 [Act 479] was enforced on 21<sup>st</sup> February 1992 with the updating and rearrangement of two sets of laws related to extradition: the Extradition Ordinance 1958, which came into effect on 1<sup>st</sup> December 1960 and the Commonwealth Fugitive Criminals Act 1967, which was first enforced on 30<sup>th</sup> September 1967. This Act enables the process of extraditing fugitive criminals from their countries of origin to Malaysia and from Malaysia to applicant countries.

## United Nations Convention on Transnational Organised Crime (UNTOC)

4.4.17 The convention is a document that binds member countries by law and came into force in 2013. It is the objective of this convention to promote cooperation in the prevention and combatting of cross-border organised crimes more effectively.

4.4.18 Malaysia signed the Convention on 26<sup>th</sup> September 2002, and ratified it on 24<sup>th</sup> September 2004. Malaysia is a member country<sup>39</sup> to this Convention together with 189 other countries worldwide.

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<sup>39</sup> Member country until February 2019.

## Protocol Against the Smuggling of Migrants by Land, Sea and Air

4.4.19 The protocol on the smuggling of migrants by land, sea and air is the key instrument on migrant smuggling under UNTOC. Although Malaysia is not a member of this protocol, the country has specific legislation for offences related to the smuggling of migrants.

4.4.20 Article 2 of the protocol states that the main objective is to prevent and combat migrant smuggling, and at the same time promote cooperation among member countries while protecting the rights of smuggled migrants. The instrument focuses on legislative actions that must be taken by member countries against smugglers. However, there are no specific provisions for smuggled migrants or illegal immigrants.

## Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

4.4.21 Malaysia first became a member to this protocol on 26<sup>th</sup> February 2009. The protocol serves as commitment of countries towards eradicating human trafficking crimes comprehensively by outlining actions in terms of prevention, prosecution and protection to victims of human trafficking.

## Convention relating to the Status of Refugees 1951 and Protocol 1967

4.4.22 Malaysia is not a member country to the Convention relating to the Status of Refugees 1951 and/or Protocol 1967. There is no specific provision or definition in the country's domestic legislation that touches on "refugees" including the Immigration Act 1959/63. The current policy on "refugees" is placed under the jurisdiction of the National Security Council.

### Related International and Regional Instruments

4.4.23 In addition, Malaysia has ratified three (3) international conventions on human rights: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention of the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD).

4.4.24 At regional level, Malaysia together with other ASEAN countries has ratified the ASEAN Convention Against Trafficking in Persons Especially Women and Children (ACTIP), which focuses on efforts and cooperation in eradicating human trafficking crimes in ASEAN.

### Analysis and Findings

4.4.25 The Commission has found that existing laws are sufficient in handling crimes involving the trafficking of persons and smuggling of migrants. In addition, preventive laws such as POCA and SOSMA special laws may also be applied in cases of migrant smuggling.

4.4.26 Nevertheless, in this case, the Commission has found that the authorities and general public lack understanding of issues and legislation concerning human trafficking and migrant smuggling. This stems from the following factors:

- i. insufficient explanation given to enforcement personnel regarding legislation related to human trafficking and migrant smuggling;
- ii. poor level of public awareness and sensitivity towards the issues of human trafficking and migrant smuggling; and
- iii. lack of effectiveness in the dissemination of information on human trafficking and migrant smuggling among the public.

4.4.27 In this context, in line with international norms the issue of human trafficking must be recognised as an issue of violation of human rights plaguing the international community. Regional cooperation must be enhanced to overcome cross-border crimes, especially human trafficking and migrant smuggling.

4.4.28 The Commission has found that the investigation carried out in the case should not have been focused solely on the issue of migrant smuggling but should have also included elements of human trafficking crimes. Unfortunately, the investigation conducted did not meet the above criteria despite the existing domestic legislation.

## 4.5 MALAYSIA-THAILAND BILATERAL COOPERATION

4.5.1 Cooperation between Malaysia and Thailand has long been forged with the establishment of the Malaysia-Thailand General Border Committee (GBC), and the committee thereunder for which the National Security Council is the secretariat. Under the GBC, there is the Border Information Cooperation Agencies Meeting (BICAM), which is a specific meeting between the Royal Malaysian Police and their Thai counterparts. However, intelligence cooperation in the issue of Malaysia-Thailand border control is less than satisfactory.

4.5.2 The issues of illegal immigrants and those issues concerning intelligence in human trafficking and migrant smuggling activities in Bukit Wang Burma and Genting Perah have never been raised or reported in the Malaysia-Thailand GBC meeting. This is because the agreement of both parties is required in the determination of the GBC meeting agenda for discussions.

4.5.3 The platform is an opportunity to discuss the issue of border security for both countries, including exchanging information, joint operations and training carried out for border control from land, sea and air. In addition, the local enforcement agency's intelligence team has been found to have played a less than positive role in obtaining early-stage information on the issues of human trafficking and migrant smuggling. Therefore, the roles of the GBC and the Committee thereunder should be reviewed and improved.

4.5.4 In addition to the GBC, Malaysia and Thailand also conduct Joint Border Patrol by patrolling the borders together at areas stipulated by both parties. This cooperation is implemented once a year. However, between 2013 and 2015, no joint patrol was conducted on the Malaysia-Thailand border in Perlis.

## 4.6 ANALYSIS OF THE ISSUE OF ENTRY OF ILLEGAL IMMIGRANTS (PUSH AND PULL FACTORS)

4.6.1 As clarified prior to this, most of the illegal immigrants arrested in this case originally came from Bangladesh and Myanmar. The conflict between Buddhists and Muslims in the region of Rakhine, Myanmar<sup>40</sup> has forced the minority Rohingya ethnic to seek protection in foreign countries. The conflict, which has long existed, has finally affected neighbouring countries including Malaysia.

4.6.2 Due to safety factors, especially the mass persecution through ethnic cleansing and murders committed against them, most of these Myanmar nationals, especially those of the Rohingya<sup>41</sup> origin, chose to migrate to Malaysia in order to continue with their lives. In this context, the political stability and status of Malaysia as a Muslim country provides a sense of security for them to seek protection in Malaysia, and this has led to the entry of greater numbers of illegal immigrants into the country.

4.6.3 In addition, the Rohingya community, which has existed for a long time, considers Malaysia a chosen destination because of the desire to reunite with their families who have long resided here. Their large numbers in Malaysia, as well as the country's multiracial culture, has enabled them to assimilate with the local people.

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<sup>40</sup> Intan Suria Hamzah, Sity Daud and Nor Azizan Idris, "Pelarian Rohingya dan isu-isu kontemporari di Malaysia", 12:9 (2019) Malaysian Journal of Society and space 11-23.

<sup>41</sup> *Ibid.*

4.6.4 For most of the illegal immigrants from Bangladesh, economic factors, or the job opportunities in Malaysia, were their priority. However, due to the payment of levy (Table 10) to legally obtain jobs in Malaysia being more expensive than offers made by illegal syndicates, they chose to enter the country illegally.

<b>SECTOR</b>	<b>RATES (RM)</b>
Manufacturing	1,850
Construction	1,850
Farming	640
Agriculture	640
Mining and Transportation	1,850
Services	1,850

**Table 10:** Rates of Foreign Worker Levy<sup>42</sup>

4.6.5 According to Victim 2<sup>43</sup>, the criminal syndicate did not demand payment for boarding the boat to Malaysia and the cost borne by the victim was only the bus fare. At the camp, however, the syndicate then demanded a payment of 160,000 Bangladesh Taka (RM6,000). S38 and Victim 4<sup>44</sup> were not required to make any payment to board the boat when they were deceived into coming to work in Malaysia. The payment of 200,000 Myanmar Kyat (RM7,000) was only demanded from S38 by the criminal syndicate on arrival at the camp to enable S38 to work in Malaysia.

<sup>42</sup> Ministry of Home Affairs, 2018 <http://www.moha.gov.my/index.php/ms/bahagian-pa-maklumat-perkhidmatan>.

<sup>43</sup> Deposition of Victim 2 at the High Court of Malaya in Kangar.

<sup>44</sup> Deposition of Victim 4 at the High Court of Malaya in Kangar.

4.6.6 The existence of the UNHCR office in Malaysia has also been seen to facilitate the process of obtaining “refugee” status and to stay in Malaysia “legally”. Since the start of operations of the UNHCR in 1975, the number of UNHCR cardholders has increased, causing the status of this card to be abused. As at 31<sup>st</sup> June 2019, 95,110 Rohingya people are registered as asylum seekers and refugees with the UNHCR<sup>45</sup>. This figure makes up the large part of the overall registered UNHCR cardholders in Malaysia of 175,760 persons<sup>46</sup>.

4.6.7 Malaysia, which is not a member country to the Convention relating to the Status of Refugees 1957, has dealt with this issue on a humanitarian basis and has urged the UNHCR to urgently carry out placement of these “refugees” to a third country (resettlement). In this matter, the UNHCR is seen to be more inclined to practise a regularisation approach in the host country instead of resettlement to a third country. Due to factors of changes in policies of third countries, which have reduced or withdrawn the acceptance of refugees, the numbers of resettlement to third countries has been found to have declined from previous years. The presence of these “refugees” has an impact on a country whereby the pressures of making a living has led them to become involved in criminal activities and social phenomena. Table 11 sets out the statistics for resettlement of “refugees” to third countries by UNHCR:

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<sup>45</sup> United Nations High Commissioner for Refugees, Figures at a Glance in Malaysia, accessed on 8<sup>th</sup> August 2019 <https://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html>.

<sup>46</sup> *Ibid.*

<b>Year</b>	<b>Number (persons)</b>
<b>2013</b>	8,527
<b>2014</b>	10,961
<b>2015</b>	12,547
<b>2016</b>	8,113
<b>2017</b>	2,631
<b>2018</b>	2,421
<b>2019</b> <b>*as at July</b>	1,890
<b>TOTAL</b>	47,090

**Table 11:** Number of resettlement of “refugees” to third countries<sup>47</sup>

## 4.7 GOVERNMENT POLICY

4.7.1 The government, regarding this matter, is viewed as not having clear policies and position on foreign workers and migration, leading to actions taken in dealing with them to be inconsistent.

4.7.2 The policies and position of the government are seen to be inconsistent with current legislation, are constantly changing and it seems that there is no commitment on the part of the government’s upper administration, including at policymaker level. For example, the foreign worker amnesty programme that is conducted is seen to be in contradiction with the Immigration Act 1959/63, which imposes imprisonment, fine and caning for those who enter Malaysia without valid documents. This gives the perception that Malaysia is not serious in overcoming the problem of an influx of illegal immigrants, which may lead to exploitation by human trafficking syndicates.

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<sup>47</sup> Provided by United Nations High Commissioner for Refugees (UNHCR) Representative in Malaysia.

# CHAPTER 5 RECOMMENDATIONS FOR IMPROVEMENT

## 5.1 INTRODUCTION

5.1.1 The incident at Wang Kelian was a serious humanitarian tragedy that has produced a negative impact on the image, security and sovereignty of the country. It is seen as a failure in the competency and capacity of the authorities in implementing and enforcing laws of the country. Initial failure in terms of intelligence in detecting threats and the failure to immediately take action have garnered various reactions from the public, NGOs and the international community. Various accusations and assumptions were raised by local and international media in relation to this incident.

5.1.2 The Commission has impartially examined the above findings in a holistic and practical manner, and has taken into consideration the possibility of the same situation occurring on any of the borders in Malaysia.

5.1.3 From the findings obtained throughout the Commission's investigations, it is clear that there were weaknesses in the enforcement of the laws, implementation of actions and implementation of investigation procedures. For example, there was a delay in conducting a comprehensive investigation. There were also weaknesses in collecting intelligence information and weaknesses in the leadership in making decisions with a sense of urgency. These matters may be seen as a system dysfunction, which, if not handled well, could lead to a repeat of the same tragedy.

5.1.4 The delayed action after discovery of the camps in January 2015 showed a lack of seriousness on the part of the authorities in investigating the incident. This has led to prejudice among the public that certain quarters are trying to conceal, underestimate, deny and view lightly the discovery.

5.1.5 There is room for improvement that must be implemented to prevent such incidents from occurring again, by consolidating all aspects of border management in particular, and migration management in general.

## 5.2 RECOMMENDATIONS FOR IMPROVEMENT

### Policy

5.2.1 Malaysia needs to have a clear and consistent foreign worker policy. It is not denied that foreign workers are very much needed in various sectors in this country. The open door policy towards foreign workers should be continued but entry points into the country must be better controlled to prevent easy incursion. It is clear that the Wang Kelian incident was caused by weaknesses in enforcement at the country's borders. This opens up the opportunity for criminal syndicates to make easy profit from human trafficking and migrant smuggling.

5.2.2 We understand very well that there are jobs that are not attractive to local people especially in the 3D Sector – the difficult, dirty and dangerous jobs. Therefore, the government needs to have a clear policy to attract local people to work in this sector, such as providing suitable vocational education, payment of incentives and a more attractive salary scale.

5.2.3 Currently, the government only determines the levy for intake of foreign workers imposed on employers. The government does not stipulate a ceiling for the agents who recruit these workers, whereby the rates charged are exorbitant and thus providing them high profits. These scenario has led employers to seek illegal immigrants as the cost is lower. The government needs to monitor the roles of these employment agencies from reaping excessive profits from both the workers and employers, leading to a negative effect.

5.2.4 The Commission is of the view that the government needs to determine a maximum ceiling rate that may be imposed by employment agencies. In addition, the government needs to review the recruitment process, which is difficult, time consuming and expensive, so that it does not burden employers whilst at the same time not compromising the security of our country. If these factors are dealt with by the government, demand for illegal workers will reduce.

5.2.5 The dependence on foreign workers must be reviewed to be in line with the country's aspiration of becoming a knowledge-based economy, as practised by developed countries. Thus, the government may provide incentives such as tax rebate/exemption on the purchase of high-technology equipment to companies that manage to reduce their dependence on foreign workers.

5.2.6 In addition, a holistic National Border Management Policy that encompasses human resources, financial and asset management, strategic relations, coordination, security and development must be prepared as a guide for the various levels of agencies involved in managing of the country's borders.

## Human Capital Development

5.2.7 Human capital development is a critical aspect that requires attention in any organisation. The ability of an agency to face current challenges and threats is closely linked to its capacity to equip its human resources with the skills and knowledge required. In relation thereto, the Commission recommends that special training on cross-border crimes, especially human trafficking and migrant smuggling, must be designed for enforcement agencies that are involved, either directly or indirectly, in border control. Lack of knowledge and awareness of issues of human trafficking and migrant smuggling were the key causes of the disastrous incident at Wang Kelian.

5.2.8 Any training designed must be jointly implemented between the agencies involved to enable sharing of expertise and skills for their mutual benefit, especially during potential operations in the future. Joint training is seen to improve communication and reinforce cooperation between agencies in the field.

5.2.9 A training module on human trafficking and migrant smuggling should also be made a compulsory module prior to deployment of personnel assigned to the borders. In addition, in-service training and courses on human trafficking and migrant smuggling should be implemented from time to time on a continuous basis. Apart from that, public officers should be exposed to international reports on human rights, such as the United States Trafficking in Person (TIP) Report. Enforcement officers must also be constantly sensitive and aware of the development of border issues in neighbouring countries.

5.2.10 The Commission also recommends that enforcement agencies study their actual vacancy needs based on the complexity of duties at the borders. Statements of witnesses from among enforcement officers clearly show a need to reinforce enforcement personnel, specifically in border control. Situations also exist where current vacancies are not being filled. In the matter of border control, this situation cannot be compromised and filling these vacancies must be given priority. Furthermore, the rotation of officers in the field must be implemented to ensure the integrity and credibility of enforcement agencies.

## Assets

5.2.11 The overland border of Malaysia-Thailand in Perlis runs for a distance of 106 kilometres. However, border fences and constructed walls are not inclusive, as only 48 kilometres of concrete walls or metal fencing were built, and some parts only contain barbed wire. The topography of most of the border area, especially at Wang Kelian, which is steep and covered in dense jungle makes it difficult to monitor and patrol.

5.2.12 To consolidate security control on the border and balance insufficient human resources, the Commission recommends that the government repair existing fences that have been damaged and build border fences or walls at exposed areas. The fence or wall must be constructed by taking into consideration effectiveness such as its durability, that it cannot be scaled and of a height that deters the commission of smuggling.

5.2.13 The Commission took note of the financial constraints faced by the Government, as well as the process and priority that require attention in considering the proposed construction of border fences and walls, especially the agreement of the Thai authorities in regard to construction of a wall on the borderline. Nevertheless, the issue of border security and sovereignty should not be compromised and must be given priority.

5.2.14 Moreover, the Commission recommends that assets and logistical requirements such as vehicles be improved for the purposes of patrolling, including facilities provided at control posts. The use of solar floodlights may also be considered, including the use of high-technology equipment such as drones and installation of high-definition CCTV to widen areas of access for purposes of control and monitoring.

5.2.15 The Commission has found from its review that there are assets not maintained and are in an impoverished condition. The existing CCTV, quarters, posts and security fences, as well as patrol vehicles at the Perlis-Kedah KESBAN road, need to be maintained and increased. Control posts must be built on the border in Bukit Wang Burma and Genting Perah to prevent incursion by smuggling syndicates and illegal immigrants. In this matter, the Commission urges the Government to make sufficient financial allocation for the purpose of maintaining such assets.

5.2.16 The Commission has examined the Enforcement Agencies Integrity Commission report on "Policy for the Raising of Integrity of Enforcement Officers Carrying Out Enforcement Duties Especially at Entry Points on the Border"<sup>48</sup> and the Commission fully supports the recommendations made therein.

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<sup>48</sup> The report on "Policy for the Raising of Integrity of Enforcement Officers Carrying Out Enforcement Duties Especially at Entry Points on the Border" was tabled during the Meeting of the Working Committee to the Committee for Integrity and Governance of Departments/Agencies of the Prime Minister's Department which was chaired by the Chief Secretary to the Government on 18<sup>th</sup> January 2018.

## Standard Operating Procedure (SOP)

5.2.17 The preparation and updating of Standard Operating Procedure (SOP) need to be given attention and expedited. Taking into consideration the administration of the Wang Kelian case and subsequent human trafficking and migrant smuggling cases, there have been issues of non-compliances and gaps in the current work processes. Therefore, enforcement agencies in particular need to place attention on aspects of verification, case classification, exhibit management and information management. This should include a communication plan for high profile incidents, so that information relayed to the public is accurate.

5.2.18 The Commission proposes that the monitoring mechanism for compliance of permanent orders, current directives and SOPs in case handling be consolidated. Orders that are not appropriate and obsolete should be reviewed and amended in accordance with current circumstances, whilst taking into account the capacity of those who carry out implementation in the field.

## Coordination and Border Control

5.2.19 It is generally known that there are several enforcement agencies involved in border control management. Each agency has different functions and areas of control, as well as assignments.

5.2.20 Government agencies currently are seen to be working in silos. A lack of coordination has led to confusion and an overlapping of duties among them. This has occurred as there is no single agency made responsible to coordinate and lead agencies on the border.

5.2.21 The Government needs to take heed of several incidents that have occurred on the country's borders. At the moment, the approach practised in the face of conflict is defensive in form whereas strategy taken is ad-hoc in nature. The Commission recommends that the Government establishes a sole agency to manage issues on the borders. This is to enable policies to be formulated, the function of enforcement agencies on the border be restructured, coordination to be more effective, and the operations as well work out procedures for all law enforcement agencies be coordinated and monitored based on one command.

5.2.22 Taking into consideration AKSEM, which was established and empowered to control the security of Malaysia's land borders from smuggling or other activities that violate the laws, the Commission proposes that AKSEM be empowered as the sole agency, as provided by the Malaysian Border Security Agency Act 2017 [Act 799]. Currently, Canada and Australia have implemented a single border agency on their respective borders.

5.2.23 For the short-term course of action, the National Security Council as the policy custodian in matters related to the country's security and public peace is urged to consolidate coordination on issues of security and formulate policies that are holistic and applicable to all enforcement agencies on the border for reference and guidance.

5.2.24 In addition, the Government must also fully utilise existing platforms such as the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) to coordinate the work flow between agencies more effectively. The National Action Plan on Trafficking In Persons which has been formulated shall be implemented though the active involvement between agencies. The structure of MAPO is proposed to be expanded at state level.

5.2.25 Border security control at Wang Kelian must be tightened to prevent the country's borders from easily enroached and the commission of crimes. From its review, the Commission proposes that the abandoned roads in Genting Perah, Wang Kelian, be cleared so that the security forces may conduct regular patrols.

5.2.26 Furthermore, it is proposed that the construction of a security road be carried out along the border to facilitate patrol and movement of security forces on duty, especially in the high risk areas.

## International Cooperation

5.2.27 The humanitarian tragedy at Wang Kelian has presented a negative image of Malaysia internationally and Malaysia's position on the Watchlist in the United States Department Report on Trafficking in Person(TIP) has been demoted from Tier 2 to Tier 3. Malaysia is committed to discharging its obligations, which have been agreed at regional and international levels, including in the issue of human trafficking, without compromising the interests of the country and border security. In terms of refugee administration, the actions taken by Malaysia have been on a humanitarian basis as Malaysia is not a member country to the Convention relating to the Status of Refugees 1951 and/or Protocol 1967. In relation thereto, Malaysia needs to take a firmer stand and urge the UNHCR, as well as third country member countries, to resolve the issue of refugees in Malaysia, the majority of whom are of the Rohingya ethnicity. This includes resettlement to third countries, which needs to be increased. The Government should earnestly state its stand, the difficulties and problems it faces so that international organisations including the United Nations do not deem Malaysia an irresponsible nation.

5.2.28 The Rohingya crisis has raised concerns and direct effects on the security of this region, as well as attract global attention. ASEAN member countries and the international community need to move forward in putting pressure on the Government of Myanmar to discontinue its political violence and resolve its internal conflict. Hence, the Commission is of the view that the Government needs to be more vocal in raising the issue of the Rohingya people at ASEAN and international levels.

5.2.29 On the international stage, the Government should be more active in raising issues of human trafficking and migrant smuggling as the main agenda in regional and international forums, as is the case concerning other crimes.

## Public Awareness

5.2.30 The Commission is of the view that awareness among the public on the implication of entry of illegal immigrants is still poor. This is very clear in the case of Wang Kelian where villagers acted as “tekong” (transporters) in the entry of illegal immigrants into our country for extra income. Several witnesses who are villagers have given statements before the Commission, testifying that certain villagers in Wang Kelian have accepted payment as “tekong”. In addition, there are villagers who, after encountering illegal immigrants do not make police reports. In fact, other villagers provided food to illegal immigrants out of compassion. Therefore, the Commission is of the view that the Government should increase awareness programmes and regular dissemination of information to the public, especially on the border, of the crimes being committed and the implication to the country.

## 5.3 CONCLUSION

5.3.1 The Commission regards the incident at Wang Kelian as a humanitarian tragedy that should never happened in this day and age. Human trafficking and migrant smuggling are serious offences and leave a huge impact on the wellbeing of the people and the security of the country. The entry of illegal immigrants poses a burden to the country in terms of social, health, economic and security aspects.

5.3.2 The Commission suggests that recommendations for improvements contained herein be seriously considered by the Government. It is the hope of the Commission that this report answers all the issues and weaknesses arising from the incident at Wang Kelian. It is also hoped that this report may prevent such incidents from ever being repeated.

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