

Migrant Workers in Malaysia: Protection of Employers

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ABSTRACT

Among the Asian countries, the importation of migrant workers in Malaysia is a necessity when the country is facing an acute shortage of labour force in its multi-sectoral development programs. Malaysia desperately needs the migrant workers in order to keep up with sustainable economic development and rapid economic progress in the country. However, the government should be very vigilant and play an active role in employing the optimum number of foreign workers. While their rights and welfare must be taken care of as not to affect the existing political relationship between the sending and receiving countries, the rights of the employers must not be ignored. Migrant workers are always portrayed as victims of abuse, exploitation and harassment by their employers. In reality, employers of the migrant workers deal with bigger responsibilities such as adhering to the rules, regulations and policies laid down by the law. Apart from that, employers of migrant workers also have duties towards the country, society and respective immigrant workers. Employers have to ensure that the productivities of their immigrant workers contribute to the stability of economy and their employment benefit the society. Employers also have to ensure that the rights and welfare of the immigrant workers are well taken care of. In spite of the challenging responsibilities, employers of the migrant workers lack assistance and protection with regards to their rights. This research looks into the protection of employers of migrant workers, the effect and recommendations to improve the relationships of both groups. The focus of this research is on three sectors, namely manufacturing, construction and domestic.

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INTRODUCTION

In the last few decades, Malaysia has experienced a very high level of industrial development. Currently, its industrial sector is becoming increasingly important

day by day. This sort of industrial development, obviously, generates a huge demand of the work force for immediate employment especially in the industrial and manufacturing sectors. The rapid expansion of the manufacturing and industrial sectors creates a large number of employments in the country. But as there is a great scarcity of domestic labour force in the country, they have to depend largely on the migrant workers for their burgeoning industrial plans. The importation of migrant workers into Malaysia is a necessity when the country has been facing an acute shortage of labour force.

THE POSITION OF MIGRANT WORKERS IN MALAYSIA

The Immigration Department, under the Ministry of Home Affairs, bears full responsibility for the policy implementation. The government reviews the employment situation regularly. Industries that require migrant labour will be scrutinized before importation is allowed. Prior to this, the employers are required to forward their recruitment advertisements and reminded that local workers should be given priority. The employers can apply to the Immigration Department when such vacancies are not filled by the locals. Only then, are the employers issued with a certificate to recruit immigrant workers who must have a valid passport and visa, and pass the medical check-up. The employment of migrant workers is just a temporary measure to fulfill the vacancy in the organization. The migrant workers should leave once their permit and

visa expire. An employer is responsible to each and every migrant worker employed. There must not be discrimination between local and migrant labours.¹

Malaysia pursues an implicit policy to “hire first and fire last” all Malaysian nationals with respect to the recruitment of low-skilled foreign labour. Import of contract migrant labour is subject to the labour market test. For example, employers must prove that there are no local workers for the particular job by having the post advertised before they are allowed to hire foreign labours. Foreigners must go first in the event of retrenchment..

The entry, residence and employment of foreign labour are governed by the Employment (Restriction) Act 1968 and the Immigration Act 1957. These overarching regulations have been amended and substantiated with other ad hoc policies and measures to deal with the import of low-skilled and high-skilled migrants. However, the major part of immigration and migrant employment policies deal with contract migrant workers and irregular migrants since the former accounts for an overwhelming 98.0 per cent of the total migrant workers with close to a third in irregular status. Such creates tremendous challenges to managing migration.² Given the dynamics of International Labour Migration (ILM), policies to regulate the import of labour have evolved over the years. A number of factors that include labour market imbalances, pressure from labour and human rights organizations, national security and foreign relations,

high incidence of irregular migration, and legal and social infractions by migrants influence the amendments. In general labour migration policies aim to:

- i. control and regulate the import of migrant workers;
- ii. reduce clandestine or irregular migration; and
- iii. protect the rights of migrant workers.³

Wide arrays of policy instruments and measures have been used to regulate the inflow of migrant workers in maintaining equilibrium of the short-term versus long-term needs of the economy. These include the use of authorized employment agencies to recruit contract migrant workers, bilateral agreements with selected sending countries, issuance of work permits, imposition of a levy and a freeze or ban on import of contract migrant workers from time to time. These policy instruments have recorded mixed success. To a large degree, they determine the trends and patterns of labour migration in Malaysia since the mid-1980s.⁴

Private Employment Agencies Act 1981 ~~is to~~ permits the establishment of private agencies to recruit foreign labours. These recruitment agencies play a vital role in sourcing migrant workers. Competition among these agencies has ensured that they provide fairly efficient services at competitive fees. These agents deal with recruitment agencies in source countries and they process all administrative paperwork and provide the logistics. Such services alleviate employers on the complexities in hiring foreign labour. Government attempts

to remove their intermediary role and to deal directly with agents overseas have failed in the past. Recognizing their beneficial role, the present bilateral Government-to-Government (G to G) agreements use labour recruiters to facilitate the recruiting process.

Not all agents are registered even though agents and recruiters fall under the purview of the Private Employment Agencies Act 1981.. Many migrants opt to use unlicensed labour recruiters or agents. Some migrants are unaware of their legal status or some find services of unlicensed labour recruiters or agents to be more economical. Unlicensed labour recruiters and agents have been guilty of charging exorbitant fees, falsifying documents, misleading workers about wages, and other abuses.⁵ It has been estimated that on the average of 3,000 workers, mainly from Indonesia, Nepal and India, are left in the lurch every year. Authorities have not been too successful in monitoring the recruitment practices of the agents. ⁶New recruitment mechanisms have been introduced to ensure that the migrants are not exploited by labour agents. At present, most of the foreign workers are being recruited through agents or directly by employers. As of August 2005, companies intending to hire fewer than 50 foreign workers have to use the services of labour outsourcing companies. A total of 58 outsourcing companies have been appointed by the government to supply and manage labour. Government has appointed a total of 58 outsourcing companies to supply and manage labour. However, the initial ban on agents has been lifted when

the authorities realize that the use of agents is an “unstoppable trend”.⁷ Illegal agents can be fined up to RM5000, three year jail or both under the Private Employment Agencies Act 1981. Outsourcing companies has to post bonds on each worker, provide housing and a minimum salary if the worker does not have a job. The labour outsourcing firms have been in operations since the end of 2005. It is too early to assess their effectiveness.⁸ Policy experiences have revealed the inherent limitations of the unilateral approach to curb irregular migration. For instance, irregular migrants apprehended without proper identification papers could not be deported to their country of origin.

Recognizing the importance of greater state involvement to stem irregular migration, the Government-to-Government (G to G) agreement was reintroduced in February 2006. It is to ensure that the process of recruitment to be more systematic and transparent, and beneficial to all parties. Sending countries are more forthcoming in engaging with the bilateral agreements following Malaysia’s tough legislation and other repressive preventive measures in combating irregular migration. The wide publicity in sending countries on the harsh treatment of irregular migrants has brought immense public pressure on their governments to play a more active role in protecting their workers overseas.⁹ Streamlining the role of recruiting agencies addresses many of the shortcomings of earlier bilateral agreements. The bilateral agreements include several clauses dealing

with the responsibilities of the signing parties, the employers and the migrant workers on conditions of residence and employment.

THE POSITION OF EMPLOYERS OF MIGRANT WORKERS IN MALAYSIA

As stated earlier, in order to hire migrant workers, employers must adhere to the government policies and procedures. Employers must give priorities to the local employees. Advertisements must be made and continued for the period of six months. Upon expiration of that period, if no locals is interested or the locals are not enough to fulfil the vacancies, then only the vacancies are offered to migrant workers. However, application must be made through the relevant ministry according to employment sector e.g. manufacturing sector must make an application through the Ministry of International Trade and Industry (MITI), and construction sector through the Construction Industry Development Board (CIDB). The application is subject to approval by the Immigration Department.

Once approved, cost is another burden for all employers. Consider that an employer has to spend around RM2500.00 to RM8000.00 for each and every migrant worker. This amount excludes the costs on medical check-ups, accommodation, transportation and food once the employees are in the country.

Application for migrant workers in domestic sector must be made through registered agents i.e. agents registered under

the Labour Department. Apart from the high cost of employing domestic migrant workers, employers have to deal with “middle person” or the agent. These agencies operate to gain profit even though all agents must be registered as required under the Private Employment Agencies Act 1981¹⁰ and subjected to this legislation.. They operate their businesses with the objective of gaining profit and the welfare of the employers and the migrant workers are not the priority.

It is the norm that employers expect some level of skills from the employees and the same goes to migrant workers. Employers are often promised by agents to provide employees with basic skills either skilled or semi-skilled. Employers in the manufacturing sector, especially requires employees with some level of skills i.e. skilled or semi-skilled to operate machines or equipment. Level of education can also be an advantage with regards to skills. Employers are left with no options except to provide training or short courses to the migrant workers if they are unskilled. Trainings and courses not just incur cost but also time in order for the migrant workers to get into full employment. It may lead to decline in productivity. There are also cases where these workers left their employment and look for other companies to get a better and higher salary¹¹ after they have been developed to become skilled or semi-skilled. When this happens, employers have to bear the losses in terms of hiring, recruiting and others costs.

Another problem that employers have to face includes migrant workers, especially

in the domestic sector, run away or flee from their employment. Theft, abuse of the employers’ children or elderly, damage to properties and belongings are among other problems that employers have to bear.

In the construction and manufacturing sectors, crime is the biggest problem that employers have to deal with. Fights among migrant workers, usually from different groups, race and countries and sometimes it may lead to murder. At the same time, employers must ensure that the migrant workers do not hurt the sentiment of the local people and these migrant workers integrate well with the locals. Employers have the challenging duties in these aspects.

These are only among a few problems that employers of the migrant workers are currently facing. These few problems mentioned are merely tip of the iceberg that employers of the migrant workers currently face. Obviously, employing migrant workers come with bigger responsibilities and heavier tasks compared to locals. It is clear that employers of the migrant workers should also be accorded enough protection in order to ensure the development of the country. Employers contribute to the development of the country either directly or indirectly.

THE NEED TO PROTECT EMPLOYERS OF MIGRANT WORKERS IN MALAYSIA

Legally speaking, the rights and protections accorded to employers of migrant workers in Malaysia are still unclear. Employment Act 1955 and Industrial Relations Act 1967 clearly protect the rights and welfare of

employees. The Employment Act 1955 is more concerned with monetary benefits such as annual leaves, sick leaves, maternity allowance, overtime and so on. The Act is of compelling nature that failure to provide any of those benefits is an offence. Employer can be prosecuted in court should they fail to adhere to the Act. On the other hand, the Industrial Relations Act 1967 is more of persuasive nature. Industrial Relations problems are resolved through negotiation and conciliation.

Employers may find these legislations as legal guidelines in employment. Part XIIB of the Employment Act 1955 contains provisions regarding employment of foreign employees. However, the Act is silent on the right and protection accorded to the employers of the migrant workers. Sections 60K,¹² 60L,¹³ 60M,¹⁴ and 60N¹⁵ provide duties of employers towards the Director General and foreign employees. The employers' groups lack legal protection and the principle of "Equality before the Law" is not achieved. Labour laws, as the term itself suggests concerns and protects the employees groups which are often perceived as the underprivileged ones.

From the perspective of economy, the productivities of a particular sector are expected to increase if employers of the migrant workers are protected legally. In this case, the employers know that they are subjected to the legislations, not only as guidance and responsibilities to employ migrant workers, simultaneously they are provided with assurances and protections of their rights. Indirectly, productivity and

economy can improve when both groups, employers and employees, recognize their roles, duties and responsibilities towards each other. At the same time, it creates conducive working environment.

Issues regarding migrant workers are always the subject between the sending countries and a receiving country like Malaysia. People in both countries become tense when migrant workers are abused or subject to unfair treatment. In such case, employers in Malaysia are blamed and, indirectly, the political ties between both countries are affected. It would be better that groups, employers and employees, understood their rights, duties and responsibilities in employment in view of their interdependent relationships. If both groups know that their rights are protected and well taken care of, they will know how to channel respective grievances should the need arise.

Generally, if the employers of the migrant workers are given enough rights and protections as their fellow employees, both groups will respect each others' rights and will not take advantage or abuse their positions.

One should remember that migration will increase in the future not decrease, given the global demographic trends, widening disparities in income, human securities and rights across countries, increasing migrant networks and environmental and climate changes.¹⁶ In this context, there are currently three major migration issues that demand attention: governance of migration, protection of migrant workers

and maximizing development benefits of migration.

Thus, the governance challenge is not on how to stop or prevent migration, In point of fact, it should focus on how to govern it for the benefit of all concerned that encompass the source countries, destination countries and migrant workers through international cooperation. Malaysia needs more and improved policies, not more policing, and intensified border controls.

Globalization has also led to the emergence of global production chains initiated by multinational corporations involving various levels of subcontracting and outsourcing to different suppliers. In the process, 'labour' brokers have emerged supplying the needs of different enterprises. This has undermined the traditional employer-employee relationship, under which employers are accountable for conditions of work offered to workers.¹⁷

Employers have a vital role to play in all the three areas identified above: governance of labour migration, protection of migrant workers, and promoting development benefits of migration. The employer group has played a valuable role in all of these processes.¹⁸ However, employers are still facing challenges in relation to migration.

Employers confront numerous policy and practical challenges in employment of foreign workers: identifying, recruiting and ensuring entry of foreign workers through regular channels; complying with complex and lengthy administrative procedures; addressing document control; facing risks of sanctions for employing migrant workers

without authorization; managing relations in multi-ethnic workplaces; and ensuring proper training and workplace protection.¹⁹

RECOMMENDATIONS

A number of suggestions can be made to address the challenges discussed above:

1. Migrant workers are now an international issue. From this perspective, it now requires international and regional co-operation. A harmonized labour policy should be formulated to deal with them efficiently. Laws should be enacted for preserving migrants' basics rights and also the rights of the local employers. As discussed above, labour laws provide protection for the employees groups. While, the employers of the migrant workers are subjected to rules, regulations and policies towards their migrant employees.
2. It has been recognized that Malaysia has been experiencing a rapid economic growth in its multifarious development sectors. Therefore, it is quite obvious that the country requires a huge number of manpower. In view of acute shortage of work-force, it has been suggested that the country should immediately implement high-powered technology for its development programmes which will reduce dependence on migrant workers.
3. Malaysia may request the sending countries to introduce some orientation programmes to their workers before sending them off to work in this country.

Orientation programmes are not necessarily limited to work training; it may include knowledge of the country, working culture and environment, social culture, religions and sensitivities of the society. It may help in preventing or minimizing the culture shock, different working environment in terms of weather, language and social issues. Basically, this orientation can provide the do's and the don'ts while working in Malaysia. Most migrant workers only focus on getting their salaries and saving enough to return to their countries of origin. Orientation programmes will most likely overcome the problems discussed above.

4. Employing migrant workers should be at national level whereby Malaysian government deals directly with the government of the sending countries (G to G) to reduce or possibly abolish the middle contractor that deals with the employment of migrant workers. This may reduce the cost of employing migrant workers especially in the domestic sector. It is due to the possibilities that these agents or middle contractor can easily charge exorbitant fees, while the welfare of both the employers and the migrants' workers are not taken into account. The government initiative can also prevent unregistered agents from operating and bringing in illegal immigrants to the country.
5. Owing to bureaucracy, the processes of employing migrant workers are

tedious, lengthy and costly. In view of the challenges, employers are more interested in employing illegal migrant workers. If recommendation (4) can be achieved, these three issues may have a good solution.

CONCLUSION

It is clear that foreign workers migration phenomenon is difficult to avoid especially when most countries in the world today are focusing on maximizing their economic development. The roles of human resources are still important especially in particular sectors such as manufacturing, construction and domestic even though the world today is getting hi-tech. Shortage of human resources in a country will cause development of foreign resources in order to cater for domestic employment demands.

It is critical that the government of receiving and sending countries to initiate efforts towards migration benefits development. Simultaneously, both employers and employees need to collaborate, and provide support and understanding towards the same goal. Policy makers should formulate a more transparent and comprehensive policy in dealing with migrant workers.

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- ⁹ International Trade Union Confederation (ITUC) (2010). *Internationally recognized core labour standards in Malaysia*. Report for the WTO General Council review of the Trade Policies of Malaysia, Geneva, January 18-20.
- ¹⁰ Private employment agency” means-- (a) an employment agency conducted with a view to profit, that is to say, any person, company, institution, agency or other organization which acts as intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers; (b) an employment agency not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organization which, though not conducted with a view to derive any pecuniary or other material advantage, levies from either employer or worker from the above service an entrance fee, a periodical contribution or any other charge;
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- ¹² Duty to furnish information and returns.
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