

Migrant Workers Contribution towards the Malaysian Economic Transformation

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The term migrant worker can be used interchangeably with foreign workers. For example, the United Nations resolutions or the International Labour Organisation's Convention and Recommendation used the term 'migrant worker.' The term 'migrant worker' is generally confined to lower-wage fields, perhaps because the term has been commonly linked to low-wage earnings. 'Migrant worker' can also be defined as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.² It also means a person who works in a country other than the one of which he or she is a citizen. In Malaysia, the Employment Act 1955 adopted the term 'foreign employee'³ and is defined in s. 2 as 'an employee who is not a citizen.'⁴

The growing pace of economic globalisation has created foreign workers where millions of these workers and their families travel to countries other than their own to find work. Some countries which have labour shortage, import workers, both skilled and unskilled, to fill gaps in the domestic labour pool. Many of these migrant workers are predominantly employed as labourers in the country's construction and plantation sectors, restaurants and as domestic workers. Professionals (white collar) would also seek variety of jobs of their profession in other countries, be it as academicians, engineers, contractors and doctors, amongst others.

The population of migrant workers is a significant labour force in Malaysia. Up to today, Malaysia has become the largest importer of labour in Asia, taking in more than a million workers from Indonesia, Philippines, Bangladesh and Pakistan.⁵ It is estimated that there were roughly 3 million migrant workers in Malaysia⁶, which are relied heavily on to help out in the construction and plantation sectors. Most of the workers are sourced from Indonesia, India, Bangladesh and Nepal. The migrant labour force makes up about 20% of the countries' total labour force. Despite the trend over the past year to restrict migrant workers and hire local labourers, migrant workers continue to enter Malaysia in large numbers. Migrant-sending countries gain from the remittances sent home by the migrants to their families at home, as these contribute to the countries' GDP.

Further, the rapid expansion of the manufacturing sector created an increased demand for workers in various manufacturing industries, especially industries involving textiles, electrical goods and electronics. There was also a rapid expansion of small and medium-sized industries in the food, furniture and metal fabrication enterprises. These industries have created an increased demand for skilled and semi-skilled industrial workers. Migrant workers make up for the 'shortages' in these industries.

Apart from the above, the rapid urbanisation saw a greater participation of women in the labour market and with the better income opportunities for Malaysians, there came the increase in demand for domestic maids. Hotels, restaurants and other enterprises in the hospitality industry also rely on foreign workers, especially for jobs on the lower rungs of the hierarchy. The demand for migrant

² Sivakumaran, S., *The Rights of Migrant Workers One Year On: Transformation or Consolidation*, *Georgetown Journal of International Law*, 2004, p. 113.

³ Section 2 of the Employment Act 1955.

⁴ Federal Constitution, namely, arts. 14 to 21 deal with acquisition of citizenship.

⁵ Please refer to various reports received by the Human Rights Watch through their website at <http://www.hrw.org>.

⁶ Kent, J., 'Illegal workers leave Malaysia,' *BBC News*, <http://news.bbc.co.uk/2/hi/asia-pacific/3964511.stm>.

workers is fulfilled by workers mostly from Indonesia, Nepal, Bangladesh, India, Pakistan, Vietnam, Cambodia, Thailand, and the Philippines.

In fact, the inflow of international migration into the Malay Peninsula is not a recent phenomenon. It started during the British colonial rule when the capitalist economic enterprises were introduced together with necessary infrastructures.⁷ The Chinese labourers, who were known for being hardworking, were engaged in the colony of the Straits Settlements and the Malay States since the 1820s.⁸ A vast majority of them were unskilled labourers and European entrepreneurs recruited them in the rubber estates, either directly or indirectly. The immigrants became permanent residents and part of the cosmopolitan Malaysian society with their future generations becoming citizens after independence in 1957.⁹ The opening of large scale plantations (coffee, coconut and rubber), the expansion of tin mines and the construction of railways, roads and buildings required a large number of workers, the colonial authorities recruited and encouraged the entry of foreign labour, especially from China and India and, to a lesser degree, from neighbouring Indonesia.¹⁰ The indentured labourers were bonded to work for the European capitalists for a fixed number of years. Since independence in 1957, the 'push-and-pull' factors at the international level in the region caused workers to immigrate into Malaysia for employment. The accelerated economic development programmes in the 1990s and 2000s which saw a high economic growth rate in Malaysia caused by the entrance of migrant workers to meet the increasing demand in the Malaysian labour market. The implementation of several strategic infrastructure development and urban development projects increased the demand for labour, especially in the construction sector.¹¹

Foreign workers have contributed to the economies of their host countries, and the remittances they send home help to boost the economies of their countries of origin. It is beyond doubt that migrant workers in Malaysia have contributed enormously to the development of this country especially in the construction sites where the buildings and highways would never have been completed on the required period except for the hard labour of the migrant workers.

All workers should be treated with fairness, dignity and equality without distinction whether they are local or migrant. Migrant workers are entitled to the same employment rights and benefits enjoyed by other local workers. In *Chong Wah Plastics Sdn. Bhd. & Ors v Idris Ali & Ors*,¹² the Industrial Court stated *inter alia*, that 'if the country has to employ foreign workers both the law and equity, and good conscience demand that they be given their legal rights and this includes the payment of same wages as local workers.'

All forms of exploitation and abusive practices against workers in the workplace are prohibited by both the international and national instruments. Migrant workers are human beings and as human beings they are entitled to basic human rights that are set out in the Universal Declaration of Human

⁷ Dorall, R. F., Foreign Workers in Malaysia: Issues and Implications of Recent Illegal Economic Migration from the Malay World in *The Trade In Domestic Helpers: Causes, Mechanisms And Consequences*, (1989), p 289

⁸ Ooi Jin-Bee, *Land, People and Economy in Malaya*, London: Longman, Green and Co., (1964) at 113. The Chinese appeared to have been residents of Malaya since early as 1349 but close contact only arose from the fifteenth century and large immigration was seen in nineteenth century. See Gamba, C., *Labour Law in Malaya*, Singapore: Sonal and Moore, (1955) at p. 4.

⁹ <http://www.ilo.org/public/english/dialogue/actrav/publ/129/21.pdf>

¹⁰ <http://www.unesco.org/most/apmrnw9.htm>

¹¹ <http://www.ilo.org/public/english/dialogue/actrav/publ/129/21.pdf>

¹² [2001] 1 ILR 598. News report-New Straits Times, 2001, 4 April.

Rights (UDHR)¹³, International Covenant on Civil and Political Rights (ICCPR)¹⁴, International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁵, International Convention on the Elimination of All Forms of Racial Discrimination (CERD),¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁷ and other United Nations and International Labour Organization (ILO) Conventions¹⁸ including the Convention Concerning Migration for Employment (C97)¹⁹, Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (C143)²⁰ and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)²¹.

¹³ The Universal Declaration of Human Rights in its various Articles provides that "no one shall be held in slavery or servitude.... Everyone has the right to freedom of peaceful assembly and association.... Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests. Everyone has the right to rest and leisure, including reasonable limitation of working hours.... Everyone has the right to a standard of living adequate for the health and well-being of himself and his family ... and the right to security in the event of unemployment, sickness, disability ... or other lack of livelihood" See Universal Declaration of Human Rights, Arts. 4, 20, 23, 24, & 25.

¹⁴ The ICCPR, which has been ratified by 144 States, makes it clear that "no one shall be held in slavery No one shall be required to perform forced or compulsory labour.... An alien lawfully in the territory of a State Party ... may be expelled ... only ...in accordance with law.... All persons shall be equal before the courts and tribunals.... The right of peaceful assembly shall be recognized.... Everyone shall have the right to freedom of association ..., including the right to form and join trade unions.... All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.... In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language...." See the ICCPR, Arts. 8, 13, 14, 21, 22, 26, & 27.

¹⁵ The ICESCR, which has been ratified by 141 States, obliges States Parties to recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.... The States Parties ... recognize the right of everyone to ... just and favourable conditions of work which ensure ... fair wages and equal remuneration for work of equal value without distinction of any kind...; a decent living ...; safe and healthy working conditions; equal opportunity for everyone to be promoted ...; rest, leisure, and reasonable limitation of working hours the right of everyone to form trade unions and join the trade union of his choice ... for the promotion and protection of his economic and social interests...; the right to strike... the right ... to social security.... Children and young persons should be protected from economic ... exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.... States Parties ... recognize the right of everyone to an adequate standard of living for himself and his family...." See International Covenant on Civil and Political Rights (ICCPR), Arts. 8, 13, 14, 21, 22, 26, & 27.

¹⁶ States Parties to the CERD have undertaken "to prohibit and to eliminate racial discrimination ... and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law ... in the enjoyment of ... the right to freedom of peaceful assembly and association...; the rights to work, to free choice of employment, to just and favourable conditions of work, ...to equal pay for equal work, to just and favourable remuneration; the right to form and join trade unions...." See the CERD, Art. 5

¹⁷ CEDAW, which came into force in September 3, 1981 and has been ratified by 186 States, obligates States Parties to "take all appropriate measures ... to ensure, on a basis of equality of men and women, ... the right to work as an inalienable right of all human beings; the right to the same employment opportunities...; the right to free choice of profession and employment, the right to promotion, job security and ... training; the right to equal remuneration ... and to equal treatment in respect of work of equal value...; the right to social security...; the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction...." See CEDAW), Art. 11.

¹⁸ The ILO's primary function is to safeguard the rights and dignity of the working people all over the world.

¹⁹ Migration for Employment Convention (Revised), 1949, ILO Convention No. 97.

²⁰ ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), 1975.

²¹ Adopted by General Assembly resolution 45/158 of 18 December 1990.

All forms of forced labour and slavery are prohibited by arts. 6(1) and (2) of the Federal Constitution. Article 6(1) provides that ‘no person shall be held in slavery.’ The term ‘no person’ explicitly used in the above article reflects that neither local nor migrant workers shall be held in slavery or any form of servitude. Further art. 6(2) provides that all forms of forced labour are prohibited. However, the Parliament may, by law, provide for compulsory service for national purposes. Apart from the above, art. 8(1) provides that ‘all persons are equal before the law and entitled to the equal protection of the law.’ Again, the words ‘all persons’ in the above article would necessarily include the migrant workers. Hence, physically abusing migrant workers such as causing hurt and their wrongful confinement is totally abhorred and is thus, prohibited by the Federal Constitution, the supreme law of the Federation. Likewise, to compel an employee to work for a particular employer, without affording him a choice in the matter is also one form of forced labour.²²

Be that as it may, many of the unskilled foreign workers are vulnerable to exploitation and human trafficking. It is not uncommon to hear inhumane treatment towards these foreign workers, male and female alike. Some are abused, deprived of proper accommodation and even food and thus, treated very badly. Comparatively, ‘undocumented’ migrant workers, asylum seekers and the refugees are more vulnerable to exploitation than their documented counterparts. They are the most affected by harassment and discrimination in the workplace. The undocumented migrant workers expose themselves and citizens to dangers while engaged in illegal entry to another country. Aside from the possibility that they may be intercepted and deported, some considerably more dangerous outcomes have been known to result from their activity. As an example, the illegal immigrants may be trafficked for exploitation. Migrant workers often become ‘undocumented’ for various reasons. Either because they enter a foreign land without proper documentation, they lose their legal status during their stay or due to poor immigration policies.

The employment statutes administered in Malaysia are applicable to migrant workers. Further, the Anti-Trafficking In Persons and Anti-Smuggling of Migrants Act 2007 was enacted to prevent the trafficking of persons for sexual exploitation. The above Act has adopted the standards set out in the UN Palermo Protocol (effectively criminalizing trafficking for forced labour).

Further, there are many employment statutes enforced in Malaysia which are applicable to all workers including migrant workers, unless the legislature expressly excluded its application to certain class of workers. The following are the laws that have been enacted to provide basic legislative protection to employees against all forms of exploitation, victimization, abuses and unfair labour practices²³: (i) Employment Act 1955 (the law applicable in the States of Sabah and Sarawak are the Labour Ordinance Chapter 67 and Chapter 76, respectively); (ii) Employment (Termination and Lay-Off Benefits) Regulations 1980 (iii) Employees Provident Fund Act 1991; (iv) Employees’ Social Security Act 1969; (v) Industrial Relations Act 1967; (vi) Trade Unions Act 1959 (Revised 1982); (vii) Factories and Machinery Act 1967; (viii) Occupational Safety and Health Act 1994; and (ix) Workmen’s Compensation Act 1952. Further, the common law also imposes various duties on the parties to the contract of employment and this includes duty of mutual trust and confidence, duty to provide safe work environment, duty to obey lawful directions of the employer and duty of fidelity and good faith, amongst others. Further, the Labour Court and the Industrial Court adjudicates disputes involving claims by workers against their employers.

As the laws are in place, what is expected is its vigorous enforcement to ensure that the migrant workers are always protected by the law thus, taking immediately remedial actions against exploitation by some unscrupulous employers and putting to rest the migrant workers ordeal without any inordinate delay.

²² See *Barat Estates Sdn Bhd & Anor v Parawakan Subramanian & Ors* [2000] 3 CLJ 625.

²³ See for example *Jaya Timor v Abdul Hafeez Mohammad* [1999] 2 ILR 16.

In Malaysia, migrant workers are not discriminated under the law and its due process as the Malaysian Federal Constitution guarantees all persons equality and equal protection of the law. Article 8 of the Federal Constitution of Malaysia states that ‘all Persons are equal before the law and is entitled to equal protection of the law’ and by the use of ‘person’ as opposed to ‘citizen’ makes it clear that this guarantee of right extends also to all persons, including migrant workers, be that they are documented or undocumented as well as also refugees. Under our Trade Unions Act 1959, migrant workers have the right to unionize and also be members of existing unions. This is very important to enable all workers, including Malaysian workers, the ability to ensure greater protection and advancement of worker rights. Migrant workers in law have the right to access the local Labour Courts and the Industrial Courts just like any other local worker.

The International Labour Conference had, in its 54th session on 22 June 1970, adopted the Minimum Wage Fixing Convention, 1970 (No. 131) and the Minimum Wage Fixing Recommendation 1970 (No. 135), which requires the ratifying states to establish a minimum wage fixing machinery which is capable of determining and periodically reviewing and adjusting minimum wage rates. Its primary purpose is to aid the underpaid the nation's working population and those who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage. Although Malaysia did not ratify this Convention, nevertheless it had in 2010 requested ILO’s assistance in the reformation of its national labour laws and policies, especially those relating to minimum wages and social security schemes (actuarial review and unemployment insurance).²⁴

More recently, the Minister of Human Resources and Manpower has enacted the Minimum Wages Order 2012 (‘the Order’) which came into force in January 2013. The establishment of a minimum wage aside from preventing the exploitation of workers at the hands of employers, is to promote a fair wage structure and further, to provide a minimum acceptable standard of living which could eventually alleviate poverty. This Order which will benefit some 3.2 million private sector workers or 25.8% of the total workforce²⁵ was made by the Minister of Human Resources and Manpower pursuant to the power conferred on him by the National Wages Consultative Council Act 2011, section 23(1).²⁶ Paragraph 4 of the Order makes it mandatory for employers to pay a minimum monthly wages of RM900 per month to employees in Peninsular Malaysia and RM800 per month for employees in the East Malaysia, inclusive of the Federal Territory of Labuan. The minimum wages will not be stagnant but is subject to review from time to time in line with the capability, productivity and competitiveness in the country.

Suggestion

1. ILO standards on migration provide tools for both foreign sending and receiving countries to manage migration flows and ensure adequate protection for this vulnerable category of workers.
2. Special tribunals for migrant workers must also be considered which would eventually provide a speedy procedure so that cases of non-payment or under-payment of wages and wrongful dismissal, for example, could be dealt with speedily. Better still, workers whose rights have been violated, and have filed a complaint should be allowed to work with another employer.

²⁴ <http://www.ilo.org/asia/countries/malaysia/lang--en/index.htm>

²⁵ See ‘Minimum wage policy – Curse or cure?’ at http://etp.pemandu.gov.my/upload/CIMB-Minimum_wage_policy%E2%80%93Curse_or_Cure.pdf

²⁶ Section 23(1) provides: “Where the Government agrees with the recommendation of the Council under paragraph 22(2)(a) or 22(4)(a) or determines the matters under paragraph 22(4)(b), the Minister shall, by notification in the *Gazette*, make a minimum wages order on the matters specified in paragraphs 22(1)(a) to (e) as agreed to or determined by the Government.”

3. Decent work sums up the aspirations of people in their working lives – their aspirations for opportunity and income; rights, voice and recognition; family stability and personal development; and fairness and gender equality. Ultimately these various dimensions of decent work underpin peace in communities and society. Decent work reflects the concerns of governments, workers and employers.²⁷
4. It must be recognised that migrant workers are workers with equal rights and dignity and hence, their rights must be protected in laws and policies. Such laws and policies must be effectively and justly enforced by the various agencies. If a country provides and ensures good laws and protection, takes care of foreign nationals and guarantee them their rights, the response would be better for the growth of the country, in terms of peace and foreign investment.

²⁷ This is line with the concept of decent work outlined by the International Labour Organisation. Decent work is captured in four strategic objectives: fundamental principles and rights at work and international labour standards; employment and income opportunities; social protection and social security; and social dialogue and tripartism. These objectives hold for all workers, women and men, in both formal and informal economies; in wage employment or working on their own account; in the fields, factories and offices; in their home or in the community. Decent work is central to efforts to reduce poverty and is a means for achieving equitable, inclusive and sustainable development. The ILO works to develop Decent Work-oriented approaches to economic and social policy in partnership with the principal institutions and actors of the multilateral system and the global economy. Progress requires action at the global level. The ILO is developing an agenda for the community of work, represented by its tripartite constituents, to mobilize their considerable resources to create those opportunities and to help reduce and eradicate poverty. The Decent Work Agenda offers a basis for a more just and stable framework for global development. The ILO provides support through integrated decent work country programmes developed in coordination with ILO constituents. They define the priorities and targets within national development frameworks and aim to tackle major decent work deficits through efficient programmes that embrace each of the strategic objectives. [http://www.ilo.org/global/About the ILO/Mainpillars/WhatIsDecentWork/lang--en/index.htm](http://www.ilo.org/global/About_the_ILO/Mainpillars/WhatIsDecentWork/lang--en/index.htm)