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Labour migration has been a significant policy issue in Malaysian history since the late nineteenth century and continues to dominate policy-making, security concerns and migration management. Immigration played a pivotal role in the growth of wage labour and shaped labour practices and regimes in various sectors. Crucially, it led to major demographic changes and transformed Malaysia into an immigrant nation.

Two major labour migration surges may be identified since the late nineteenth century. The first was in the 1870s, when the British colonial administration established pathways for the primarily unrestricted circular migration of Chinese and Indian workers to Malaya. These labour movements were consistent with industrialisation in the West, the pursuit of tropical commodities by European firms and the need for cheap labour. Migration led to labour force growth in the country, facilitating the expansion of the tin and rubber industries and advancing the economic interests of the colonial administration and European investors. After independence, the national government halted low-skilled labour migration and thousands of Indian and Chinese ‘foreign citizens’ were repatriated to their homelands. Concurrently, the government implemented a new immigration policy directed at recruitment of skilled migrants with abilities needed by the newly independent country.

In the mid-1980s, Malaysia made an about-turn in its low-skilled labour migration policy. In common with the United States and the European Union, Malaysia implemented a new labour policy focusing on temporary or guest worker programmes. This policy change marked a second stage in foreign labour employment, consistent with Malaysia’s new growth strategies and increasing demand for workers for the agricultural, manufacturing, construction and domestic work sectors. The new migration processes for guest workers hinged on two policy domains, circular migration and border control. The state also gradually increased its immigrant detention centres and instigated regular deportation exercises for irregular migrants. Additionally, Malaysia embraced biometric identification systems for controlling the movement of guest workers and reducing irregular migration flows. Nevertheless, like the US and EU, Malaysia also began to rely on the regularisation of irregular migrants as a policy instrument, extending legal status to undocumented economic migrants.

Meanwhile, the government’s state-driven programmes for recruitment of highly skilled professionals mirror Malaysia’s aspiration to achieve developed nation status by 2020. Like
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Singapore, therefore, Malaysia has amended its immigration infrastructure to capitalise upon the mobility of highly skilled individuals by offering them pathways to permanent residence and citizenship. Focusing on this second migration surge, this chapter examines Malaysia’s evolving migration management frameworks and policies in light of changing migration realities in the country. It then appraises Malaysia’s border-control system and its impact on migrant workers’ human rights.

**Initial migration policy and border management after 1957**

Malaysia’s national migration policy after independence has to be viewed from the perspective of political transitions and competing ethnic aspirations. Under the terms of the 1948 Federation of Malaya Agreement, Malays were granted federal citizenship while Chinese and Indians could acquire citizenship only by fulfilling residency qualifications; however, most Chinese and Indians did not have documentation confirming their residency status in the country. Following this agreement, the Malay-dominated government’s indigenisation efforts and hostility towards further Indian and Chinese low-skilled immigration dominated policy regarding Malaya’s future national, racial and economic borders. In 1957, the Malayan government enacted new legislation that effectively ended Chinese and Indian immigrants’ access to the labour market. The subsequent Immigration Act 1959 put in place a tough new policy that denied citizenship rights to Chinese and Indian residents and forced them to leave, despite their earlier connections to and residence in the country. This legislation also included a clause that reinforced right-of-entry rules under the section on reunification of families. Thus, wives and children of Chinese and Indians living separately from their husbands or fathers for a continuous period of five years after December 1954 were denied admission into Malaya.

In 1968, the government approved new legislation – the Employment Restriction Act – against the backdrop of worsening economic conditions in the country. This legislation resonated with the colonial government’s Immigration Ordinance 1953 that restricted permanent admission to migrants possessing ‘specialised services’ and who could contribute ‘to the expansion of commerce and industry’ (Kaur 2008; Saw 1988: 17). The 1968 legislation further enshrined specific eligibility criteria based on applicants’ expertise for recruitment as foreign workers. Simultaneously, less-skilled foreigners were denied right of entry into Malaysia. Nevertheless, the state surreptitiously allowed low-skilled Indonesian migrants to work in the plantation sector following the departure of Indian plantation workers.

Following the 1969 racial riots in Malaysia and a change in leadership, the government espoused state-led economic growth and launched the New Economic Policy, aimed at promoting economic growth through industrialisation. The state’s export-oriented industrialisation strategy was associated with Japan’s post-World War II ascendency in the international economy and the new international division of labour. Its economic strategies included large-scale infrastructure development projects, public sector expansion, and agricultural growth and diversification. Poverty reduction and income redistribution schemes for Malays were also begun while agricultural development centred on resettlement of Malays who either owned small plots of land or were landless. The government further approved the development of large blocks of land by public agencies such as the Federal Land Development Authority (FELDA). All these projects, as well as a construction boom in the urban areas, had a predictable impact on labour supply, creating labour shortages and disruption in several sectors.

According to the World Bank (1995: 58), 14 million new jobs were created in 1987–93, for an annual labour market growth rate of 3.9 percent. The domestic labour force grew an average of 3.1 percent per year during the same period.Job creation in the public sector and expansion
of government projects also attracted large numbers of rural Malays to the towns, for government jobs. These circumstances foreshadowed changes in Malaysia’s official labour immigration policy, leading to a new phase in foreign labour recruitment. The policy was designed to meet a skills shortage (highly skilled workers) and also meet labour force growth (less-skilled workers).

Policy-making, migration management and border control since the 1980s

New migration frameworks

Malaysian labour policies enacted after the 1980s focused on international labour migrants; the colonial administration had already laid the basis for labour laws and labour rights for Malayan workers in the 1940s and 1950s. In 1940, for example, the British approved the Trades Union Ordinance in Malaya, stipulating compulsory registration of unions and emphasising conciliation procedures. Nevertheless, workers were denied the right to picket and prohibited from carrying out political and sympathy strikes. Then, after World War II, Britain supported the creation of trade unions in the colonies, establishing two important principles of law relating to labour contracts. The first was associated with security of tenure, while the second emphasised individual employment rights (Kaur 2004: ch.7; Morgan 1977: 153; Ramasamy 2001). As discussed later in the chapter, Malaysia reintroduced ‘indirect’ labour relations and reinstated the contract labour system in 2006 to manage the evolving migration situation and reduce labour costs.

In the early 1980s, policies on hiring less-skilled migrant workers in labour-intensive sectors were devised on an ad hoc basis to meet enterprises’ ‘urgent’ labour needs and Malaysia turned a blind eye to the recruitment of ‘irregular’ workers from Indonesia and Thailand. As incomes rose in Malaysia in the 1980s, demand for seasonal labour in agriculture and domestic work also increased. Against the backdrop of labour shortages, employers utilised their social networks and relied on private labour brokers or intermediaries to recruit Indonesian and Thai workers clandestinely for the construction, plantation and domestic work sectors (Kassim 1987: 267–68). The employer-driven system and lack of a legal policy framework and channels for labour recruitment resulted in the illegal recruitment of large numbers of mostly Indonesian migrants to fill labour market gaps. According to Jones (2000: 15), citing Indonesian Ministry of Manpower records, estimates of irregular Indonesian migrant workers in Malaysia ranged from 200,000 to 700,000 in the early 1980s. These labour movements reflected Malaysia’s attraction as an immigrant destination, and, as Andreas (2011) notes, ‘increases in the flows of cross-border illicit goods . . . and migrants . . . [were] a natural consequence of increased globalization’.

Despite opposition from trade union officials, Malaysia saw foreign labour recruitment as a tool for economic competitiveness. The initial legal framework focused on labour accords with neighbouring labour-sending countries. In 1984, Malaysia signed the Medan Agreement with Indonesia for the supply of Indonesian workers for the plantation and domestic work sectors. Next, in 1985, Malaysia approved a labour accord with the Philippines for the recruitment of domestic workers. Labour accords were subsequently also signed with Bangladesh and Thailand for employment of workers for the plantation and construction sectors. These labour accords both permitted the employment of foreign workers in low-wage jobs and dealt proactively with those living in Malaysia.

In 1991, Malaysia adjusted its initial position on low-skilled labour immigration and established a cabinet committee on foreign workers to develop new strategies and procedures for labour recruitment for the economy. A new policy, the Comprehensive Policy on the
Recruitment of Foreign Workers, was adopted to ensure coordination on foreign labour employment. A separate committee was also set up in the Ministry of Human Resources to deal with the comprehensive management of foreign workers. These committees were tasked with developing a policy framework for admitting immigrants and ensuring cooperation among relevant government departments. The bureaucratic frameworks also set numerical limits on annual work permits to manage immigration. Importantly, the regulatory process included three policy instruments: the Immigration Act, the Employment of Foreign Workers Act (including the Employment Agencies Act) and the Penal Code.

Malaysia subsequently introduced an annual levy on migrant workers in the 1991/92 federal budget to deter excessive dependence on foreign workers. The levy charged was consistent with the sector and migrants’ skill categories (general, semi-skilled and unskilled) and could be paid by either employers or workers. Predictably, employers insisted that workers pay the levy. Levies were increased in subsequent years, correlating with global economic conditions and demand for Malaysian commodities. These developments institutionalised cooperation among relevant departments, emphasising increased scrutiny of eligibility criteria, recruitment, employer sponsorship and visa conditions of foreign labour.

Concurrently, against the backdrop of a new geography of migration, neoliberal globalisation and capital’s shifting national and supranational boundaries, Malaysia readily embraced the principles underpinning the relocation of foreign labour-intensive manufacturing industries to the country. Thus in 1995, the government offered incentives to Malaysian and foreign investors to set up industries such as electronics, automated manufacturing, biotechnology and information technology in Malaysia. These industries were seen as critical to attaining developed country status by 2020 and necessitated further amendments to the migration management apparatus. Malaysia subsequently authorised foreign labour schemes for employment of professionals and skilled workers alongside the hiring of low-skilled workers. A Special Task Force on Foreign Labour was also established to take control of foreign labour recruitment (excepting domestic workers and shop assistants). The task force and official guidelines for foreign labour recruitment streamlined Malaysia’s immigration processes.

The task force subsequently took over the Immigration Department’s job of processing foreign workers’ work applications. Malaysia also pursued greater cross-border cooperation with labour-sending states through memoranda of understanding (MoU), signing MoUs on recruitment and employment of low-skilled workers with major labour-sending states, including Indonesia, Bangladesh, Pakistan, Sri Lanka, Thailand and Vietnam. The Immigration Department’s role also expanded to include better regulation of foreign labour, identifying ‘appropriate’ labour-source countries, and monitoring the eligibility of sectors and firms applying for foreign workers.

Malaysia thus created institutional capacity for immigration policy-making, instituted a border-control system and implemented legal channels for admission of migrants who met broader policy-defined goals to boost economic growth. Subsequently, various sorts of inequalities among workers became apparent, such as between local and migrant workers, between men and women, among different ethnic groups and employment sectors, and in who received training on the job. The recruitment of a docile foreign workforce was also designed to undermine the influence of trade unions and the existing low-skilled labour force, comprising mostly Malaysian Indians and Chinese. Malaysia also utilised new migration policies to manipulate race-based politics in Malaysia.

Malaysia’s foreign labour policy involved off-shore recruitment procedures and included guidelines on such issues as assisted passages for workers and repayment of travel costs and other advances through salary deductions. Workers’ employment was prearranged with a
specific employer; it included fixed-term employment and obligatory return to the country of origin upon completion of the contract (Kaur 2006: 23–51). Not long afterwards, the Asian financial crisis of 1997–98 triggered an economic and financial crisis in Malaysia, resulting in the addition of further legal frameworks, a greater emphasis on security issues and a prohibition on further recruitment of foreign workers. Nevertheless, the manufacturing and service/hospitality sectors were exempted from this policy decision. Malaysia then disbanded the foreign labour task force in March 1997 and transferred recruitment matters to the Foreign Workers Division of the Immigration Department.

After economic conditions improved towards the end of 1998, foreign labour recruitment recommenced. Additionally, Malaysia established a new committee to administer the admission of professionals and skilled workers (known as expatriates), and the government permitted foreign multinationals and Malaysian companies to sponsor the recruitment of expatriates to meet Malaysia’s changing labour needs. Like the US and EU, Malaysia relied on salary thresholds to identify professionals and highly skilled workers. This policy was essential to reduce the amount of discretion held by immigration officials. A brief description of the two categories of immigrant workers is necessary to understand public discourse on the different visa streams and policy frameworks.

Expatriates

Skilled, managerial, professional and technical foreign workers who earn a monthly salary of at least RM3,000 are classified as expatriates. The government’s increasing emphasis on knowledge-based industries has meant that expatriates are allowed to work in almost all sectors (except those relating to national security). Expatriates could be people sponsored by Malaysian employers or who are self-employed (Kaur 2008). They are admitted on an Employment Pass visa if their employment contracts are for at least two years. Expatriates admitted on short-term contracts (under one year) are issued a Visit Pass for Professional Employment. Married expatriates hired on employment pass visas are allowed to have their dependents accompany them to Malaysia. The initial employment pass visas were for two years (later extended to five years) and in 2011, Malaysia created channels to allow expatriates to stay on for longer periods. For instance, the Residence Pass for Talent (RP-T) is a ten-year work visa that allows expatriates to work in the country and also change jobs without having to renew their employment pass. A further amendment has permitted expatriates to apply for permanent residence if they satisfy the criteria of a points-based system that include age, education, work experience, language skills and ties with Malaysians (see Talent Corp n.d.). Similar to Singapore, Malaysia has also devised regulations that include longer periods of stay, incorporate other forms of social protection and allow expatriates to secure Malaysian citizenship (World Bank 2013).

Guest workers

Semi-skilled and less-skilled workers are classified as migrant workers and issued a Visit Pass for Temporary Employment for jobs in the manufacturing, construction, plantation and services sectors (excluding domestic work). These guest workers comprise about 98 percent of foreign workers in Malaysia. Guest workers were previously recruited on one-year work permit visas that could be renewed for a further five years; they were paid on a daily basis until recently (see below). There are age restrictions in their service conditions and their dependents cannot accompany them to Malaysia. They may now work for up to ten years in some sectors (New Straits Times, 16 April 2008); however, they are required to return to their countries after
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a five-year period and undergo the application process again. Their remuneration was officially fixed at below RM2,500 per month (now below RM3,000), but few actually earned/earn this amount. According to reports, 34 percent of the 1.3 million guest workers earned under RM700 in 2009, when the official poverty line income was RM800 (Alyaa 2014).

In addition, annual levies, ranging from RM410 to RM1,850, are designed to reduce dependence on these workers (Kaur 2013a). The government has vacillated with regard to the levy imposed. For example, in 2009, Malaysia made it obligatory for employers to pay the levy, following adverse criticism by national and international NGO groups. This policy amendment was short-lived. In 2013 (an election year), the government backtracked on this issue and currently allows employers to deduct the levy from their foreign employees’ wages.

The government also introduced detailed recruitment criteria for the allocation of a specific number of work permits to enterprises and employers, based on factors such as categorisation of the industry, whether of export or non-export orientation, paid-up capital and sales value, and ratio of local workers to foreign workers employed. The details of this legal framework are presented in Table 17.1.

<table>
<thead>
<tr>
<th>Table 17.1 Malaysia: criteria for employment of foreign workers in selected sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MANUFACTURING SECTOR</strong></td>
</tr>
<tr>
<td><strong>1. Export-oriented companies</strong></td>
</tr>
<tr>
<td>Eligibility criteria</td>
</tr>
<tr>
<td>a. Minimum export value: RM50 million</td>
</tr>
<tr>
<td>b. Eligibility ratio of local workers to foreign workers 1:3</td>
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<tr>
<td><strong>2. Non-export-oriented companies</strong></td>
</tr>
<tr>
<td>Eligibility criteria</td>
</tr>
<tr>
<td>a. Minimum paid-up capital: RM100,000</td>
</tr>
<tr>
<td>b. Sales value RM2 million</td>
</tr>
<tr>
<td>c. Eligibility ratio of local workers to foreign workers 1:1</td>
</tr>
<tr>
<td><strong>3. Companies in the electrical and electronic sectors</strong></td>
</tr>
<tr>
<td>Eligibility criteria</td>
</tr>
<tr>
<td>a. None</td>
</tr>
<tr>
<td>b. Eligibility ratio of local workers to foreign workers is 1:2, irrespective of whether the company is designated ‘export-oriented’ or ‘non-export-oriented’</td>
</tr>
<tr>
<td><strong>PLANTATION SECTOR</strong></td>
</tr>
<tr>
<td>Eligibility criteria: owner of plantation or lessee</td>
</tr>
<tr>
<td>Type of cultivation or nursery: oil palm, rubber, cocoa, teak and other species of forest</td>
</tr>
<tr>
<td>Approval criteria depend on two factors:</td>
</tr>
<tr>
<td>a. Land area</td>
</tr>
<tr>
<td>b. Number of existing workers (local and foreign)</td>
</tr>
<tr>
<td>(i) for every 8 hectares of oil palm: 1 foreign worker</td>
</tr>
<tr>
<td>(ii) for every 4 hectares of rubber: 1 foreign worker</td>
</tr>
<tr>
<td><strong>CONSTRUCTION SECTOR</strong></td>
</tr>
<tr>
<td>a. For construction workers &lt; 50</td>
</tr>
<tr>
<td>Employer needs to get approval from the Construction Labour Exchange Centre</td>
</tr>
<tr>
<td>b. For construction workers &gt; 50</td>
</tr>
<tr>
<td>Employer needs to get approval from Ministry of Home Affairs</td>
</tr>
</tbody>
</table>

Source: Adapted from Shamsuddin (2006).
It is doubtful whether the government-established ‘dependency ceiling’, defined as the maximum share of foreign workers in a firm’s total employment, is in fact supported by employers. It is also generally known that employers and investors prefer hiring foreign labour over local labour since they are able to manipulate workers’ working conditions, compel them to work overtime and pay them lower wages (Kaur 2013a; Devadason and Chan 2014). According to a Malaysian labour activist, not only have the state’s safeguards, such as the levy system, employer-provided housing and recruitment quotas, all been ignored by employers, but guest workers’ working conditions are abysmal. They have to work about eleven to twelve hours daily (including rest days and public holidays) and factories have two twelve-hour shifts (Hector 2014).

Guest workers are recruited from sixteen countries, namely, Indonesia, Bangladesh, Pakistan, India, Laos, Nepal, Vietnam, Cambodia, Philippines, China, Sri Lanka, Thailand, Burma, Turkmenistan, Kazakhstan and Uzbekistan. Originally, there were no official regulations stipulating provision of accommodation for migrant workers. Migrants hired by construction companies had to build their own shacks at their worksites, while employers of domestic workers had to accommodate their domestic workers (this was implicit since domestic workers are hired on an ‘always on call’ basis). Foreign workers employed in urban areas reside in sub-standard housing. Most live in crowded apartment blocks or squatter settlements while those employed in restaurants are usually housed in rooms on the premises.

Plantation companies have been obliged to provide accommodation for their workers under the Workers’ Minimum Housing Standards and Amenities Act 1990. This regulation is consistent with the important position of palm oil exports in Malaysia’s export economy and was implemented following foreign and local reports on forced labour on plantations (see US Government Department of Labor 2012; Kaur 2014). Employer-provided housing has also enabled greater employer supervision over workers, since a significant number of foreign workers situated in rural areas have frequently absconded to urban centres in order to earn higher wages. According to newspaper reports, 38,000 ‘legal’ workers had ‘illegally’ changed jobs by 2011 (Letchumanan and Gaspar 2011).

The percentage share of foreign labour in the major economic sectors in the period 1985 to 2010 is listed in Table 17.2. In 2010, Malaysia employed approximately 1.9 million foreign workers in the main economic sectors. Indonesians comprised the largest group (50.9 percent),

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</thead>
<tbody>
<tr>
<td>Agriculture a</td>
<td>50.1</td>
<td>37.7</td>
<td>24.8</td>
<td>26.0</td>
<td>26.1</td>
<td>20</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>6.9</td>
<td>8.8</td>
<td>38.1</td>
<td>32.1</td>
<td>34.6</td>
<td>39</td>
</tr>
<tr>
<td>Construction</td>
<td>15.0</td>
<td>34.4</td>
<td>8.5</td>
<td>15.5</td>
<td>15.6</td>
<td>19</td>
</tr>
<tr>
<td>Services (non-domestic)</td>
<td>20.3</td>
<td>19.1</td>
<td>6.7</td>
<td>8.8</td>
<td>10.6</td>
<td>10</td>
</tr>
<tr>
<td>Domestic services</td>
<td>–</td>
<td>–</td>
<td>22</td>
<td>17.6</td>
<td>13.1</td>
<td>12</td>
</tr>
<tr>
<td>Total (%)</td>
<td>95.3</td>
<td>99.5</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Total (’000)</td>
<td>212</td>
<td>441</td>
<td>807</td>
<td>1,815</td>
<td>1,918</td>
<td>1,900</td>
</tr>
</tbody>
</table>

Notes:
* Includes forestry, fishing, mining and plantations.
* Includes domestic service.

Table 17.2 Malaysia: distribution of migrant workers in main economic sectors, 1985–2010 (%)
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followed by Bangladeshis (17.5 percent), Nepalese (9.7 percent), Burmese (7.8 percent) and Indians (6.3 percent). It was also estimated that there were an equal number of irregular migrants in the country (Asrul 2010).

Initially, the growing number of irregular immigrants (including workers who had run away from unbearable workplaces) led to changes in Malaysia’s migration policy processes. In 2002 Malaysia amended the Immigration Act 2002 and introduced several new rulings that affected irregular workers. These included fines of up to RM10,000; five-year incarceration periods; and ‘six strokes of the cane’ (Sreenevasan 2006). A succession of events then took place whereby the government initially took measures to control the influx of irregular migrants by implementing a freeze on new admissions, then rounded up irregular migrants, and subsequently, authorised amnesty-cum-regularisation programmes (see IOM 2008: 55). This approach became a regular occurrence in Malaysia; the labour outsourcing system (discussed below) was a major contributing factor.

The government’s labour outsourcing recruitment system was introduced in 2005 to attract further investment into the country. Briefly, against the background of affirmative action policies and race-based politics, Chinese investors had been deterred from investing in larger corporations. Consequently, many decided to elect for small and medium enterprises because these were ‘below the size threshold’ at which Malaysia’s Industrial Coordination Act’s employment quota (a prerequisite of 30 percent for Malays) was applicable (see Hill et al. 2012: ch.1). The government subsequently relaxed its tough foreign worker recruitment quotas to encourage further private sector investment, since Malaysia’s share of Southeast Asian FDI flows had been dropping. Both situations facilitated irregular migration.

The labour outsourcing system encouraged employers to circumvent regulations on upper limits for foreign worker recruitment, since workers recruited under the system were not counted in the allocations established for the various sectors. Significantly, contract workers are required to ‘pay’ for the privilege of recruitment. Additionally, although labour-hire firms are legally obliged to provide jobs for the workers, they behave like speculative labour contractors, moving workers around to get the best deal for their enterprises. Thus, the right to a guaranteed employment relationship between workers and employers until retirement age has been replaced with short-term or limited-duration contracts (Hector 2011). It has also been alleged that the outsourcing system has transformed migrant workers into ‘bonded’ labour. The NGO Tenaganita has published accounts of their exploitation by employers (Tenaganita 2007).

Growing foreign labour recruitment and development of new forms of employment in Malaysia have also corresponded with the undermining of the previous industrial relations system and the trade union movement (Ayadurai 1993: 65–68; Kaur 2004: ch. 10). Earlier, rather than legislate better wages and working conditions for Malaysian workers, Malaysia condoned the entry of cheap foreign labour to undermine the position of Malaysian workers. This policy subsequently resulted in rising youth unemployment, increased crime rates and greater social unrest (see, for example, Rasiah 2014). Significantly, the Malaysian Trades Union Congress (MTUC), which was initially ‘hostile’ to migrant workers and considered them a possible threat to the working conditions of Malaysian workers, has in recent decades championed foreign workers’ rights. The International Labour Organization (ILO), Malaysian civil society organisations, and trade unions from labour-sending states have also been influential in persuading the MTUC to address migrants’ rights in the context of international human rights standards. The MTUC has thus been influential, together with civil society groups, in persuading the government to allow migrant workers to join the MTUC (though foreign workers cannot hold any posts in the union) and obtaining a weekly day off for domestic workers in 2011.
Significantly, demands for improved wages for all workers were realised when in January 2013 the Malaysian government announced the raising of the minimum wage for low-skilled (including foreign) workers to RM900 a month for Peninsular Malaysia and RM800 for Sabah and Sarawak (Migration News 2013). All employers were required to comply with the Minimum Wages Order 2012, with effect from 1 January 2014. This wage policy, nevertheless, was criticised by some politicians who preferred to attract foreign investment by promoting the availability of ‘cheap’ labour.

Border management and security

As noted above, Malaysia has put in place legal frameworks to cooperate with sending countries, monitored irregular immigration and also instigated specific strategies to defend its borders. Cooperation with sending countries and Malaysia’s security apparatus have primarily been mediated via bilateral arrangements with labour-sending states (labour accords and MoUs), regional cooperation and partnerships through the Association of Southeast Asian Nations (ASEAN); and regional diplomacy via the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. Importantly, Malaysia has adopted new migration governance through the deployment of a non-state actor, the Ikatan Relawan Rakyat Malaysia (RELA) or People’s Voluntary Corps, and employment of a great number of police and military personnel to patrol the state’s borders. Malaysia has also established immigration detention camps (IDCs), created better databases, and utilised biometric hardware to monitor and manage foreign labour movements.

One of the earliest border-management strategies was the adoption of an off-shore recruitment process alongside a circular migration policy. This allowed the state to gather data on potential immigrant workers and benefit from cheap and mobile foreign labour. The enlistment of RELA has further enabled Malaysia to monitor and discourage settlement of foreign workers. RELA’s remit includes the right to ‘stop, search and demand documents, arrest without a warrant, and enter houses or premises believed to house irregular migrants’ (FIDH and Suaram 2007: 11). As an inducement, RELA recruits were initially given bounties for captured irregular migrants (Suaram 2006: 120–21) and were ‘immune from prosecution in relation to their conduct’ (FIDH and Suaram 2007: 12). The bounty system has since been dropped because it allegedly led to acts of violence against irregular migrants (Kaur 2013a).

Biometric information systems and mobile immigration enforcement teams have also been utilised to assist the state in the corroboration of the status of ‘legal’ foreign workers and assist with repatriation of undocumented workers (Migration News 2008; New Straits Times, 4 November 2008). Malaysia’s Home Ministry has supplied colour-coded identity cards to migrant workers, thus ensuring that workers are objectified on the basis of their occupational qualities (Star, 17 January 2008). Malaysian authorities also regularly administer physical punishment and subject irregular migrants to public humiliation prior to detaining them in IDCs. Special law courts have also been set up in IDCs to try migrants. In 2011, there were fifteen IDCs (numbers have varied) and other temporary detention centres, mirroring the government’s tough new policies on irregular migration. Importantly, irregular migrants have to pay for their deportation expenses (Kaur 2013b), although the workers’ employers and their embassies are expected to defray the costs of the exercise.

The latest round-up/amnesty/regularisation of irregular migrants exercise (2011–13) was labelled the ‘6P’ operation and included six fundamentals: *pendaftaran* [registration], *pemutihan* [legalisation], *pengusiran* [deportation], *pemantauan* [monitoring], *penguatkuasaan* [enforcement]
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and pengampunan [amnesty]. A second phase in this exercise, which has involved 10,000 enforcement officials, commenced in January 2014. It has been alleged that ‘an estimated 2.3 million’ undocumented migrants were targeted (Malaysia Chronicle 2014). Additionally, ‘offenders’ were swiftly deported, despite the fact that some had photocopies of their employment documents (Reuters 2014).

Malaysia is party to twenty-eight ILO conventions, including the Migration for Employment Convention (Revised) 1949 (C97) regarding equal treatment of migrant workers. Malaysia’s ratification of this convention means it should ‘apply treatment no less favourable than that which applies to their own nationals in respect to a number of matters, including conditions of employment, freedom of association and social security’, as stated in the convention. Notwithstanding this, Malaysia’s management of its urban spaces for irregular migrants, whether they are refugees or trafficked individuals, is judged to be the worst in the region (Department of State 2012).

Challenges and opportunities for Malaysia?

From an economic viewpoint, Malaysia’s immigration policy has some fundamental drawbacks. The state’s easy access to and excessive reliance on cheap labour in key industries has discouraged innovation and upgrading in the country. The race-based quota system governing enrolment in universities and employment in the public sector has also led to emigration of talent. Thus, although Malaysia has actively promoted its services sector (including medical tourism), it is finding it difficult to compete with neighbouring countries like Singapore, despite programmes to lure Malaysian talent from overseas. Crucially, crackdowns on irregular immigrants are also straining Malaysia’s finances and affecting the budget deficit. In January 2014, the Home Ministry estimated that ‘administrative costs for housing 68,000 undocumented foreign workers total[led] about RM2.4 million’, excluding medical expenses (Gangopadhyay 2014). Finally, Malaysia has misplaced its priorities. Instead of directing such inordinate amounts of energy to controlling and regulating migrant workers’ movements, it could and should ensure these workers’ rights under international conventions, echoed in Malaysian law.

Bibliography


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