



Migrant Workers and Undocumented Persons in Malaysia: Research Findings

**Consultation on the Domestic
Legislation Concerning Migrant
Workers**

**Human Rights Commission of
Malaysia (SUHAKAM)**

24 November 2008

Background

- **The first meeting of the 4 ASEAN NHRIs was held in Bangkok in October 2004.**
- **Agreed to work on common concerns.**
- **4 were identified: trafficking, terrorism, economic, social & cultural rights, & migrant workers**
- **SUHAKAM was tasked to research into migrant workers and undocumented persons in Malaysia.**



Research Methodology

Outsourced to a professor who had carried several studies on migrant workers. Her data collection was from:

- 1. Secondary sources: reports, documents, correspondence;**
- 2. Primary sources: interviews with target groups, government officials, NGOs, employers, agents and foreign mission staff.**

Findings: Number of Migrant Workers with PLKS in 2003-2007

Year	Pen M'sia	Sabah	S'wak	Total
2003	1,125,755	170,426	116,516	1,412,697
2004	1,155,854	199,542	119,290	1,474,686
2005	1,454,924	236,090	130,736	1,821,750
2006	1,512,585	221,539	136,914	1,871,038
2007	NA	NA	NA	2,106,116

Foreign Workers by Country of Origin and Job Sector in 2007

C of O	DM	Constr	Manuf	Service	Plantn	Agric	Total
Indon	296984	210838	206898	40116	297615	102629	1155080
Bangla	17	49289	151376	26069	24552	15016	266319
Nepal	30	4624	178714	28764	2810	8171	223113
Myanm	30	15111	79425	20617	1483	6556	123222
India	99	7577	30803	60750	23298	21631	144158
Viet	10	5229	106686	2826	90	623	115464
Philipp	10397	1686	2856	2765	5038	2581	25323
Thai	417	1015	790	15216	63	555	18056
Pakist	1	4387	3296	1829	816	5080	15409
Camb	6825	176	2404	231	201	86	9923
Others	893	2508	2857	3174	369	248	10049
Total	315703	302440	766105	202357	202357	356335	2106116

Undocumented Persons

- **Those who came clandestinely without proper documents.**
- **Children born to foreign nationals whose births have not been registered.**
- **Foreign workers whose work pass has expired.**
- **Pass abusers**

... Undocumented Persons

- **Over-stayers**
- **Those in possession of false documents or of genuine documents obtained fraudulently.**
- **Refugees in Sabah whose IMM13 pass has not been renewed.**
- **Asylum seekers and refugees who have not been verified by UNHCR.**

Estimates of Number of Undocumented Persons

- **Different parties have their own way of estimating the number.**
- **Generally, state authorities include refugees & asylum seekers.**
- **Malaysian Employers' Federation assumes that for every 1 legal workers there are 3 illegal ones, meaning 6 million in 2007.**

Estimates of Number of Undocumented Persons

- **The Labour Department estimates the number to be around 1 million.**
- **The Police and Department of Immigration assume that for every 3 legal workers, there is 1 legal one.**
- **MTUC estimates there are 1/2 million of them.**

Amnesty Exercise Oct '04-Feb '05: Participants by Country & Gender

Country	Male	Female	Total	Percentage
Indonesia	234,078	113,829	347,907	87.248
India	16,538	1,452	17,990	4.512
Bangladeshi	8,414	73	8,487	2.128
Philippines	4,032	3,546	7,578	1.900
China	1,131	2,191	3,322	0.833
Nepal	3,181	37	3,218	0.807
Pakistan	2,876	24	2,900	0.727
Myanmar	1,851	117	1,968	0.494
Vietnam	1,747	192	1,939	0.486
Cambodia	983	708	1,691	0.424
Sri Lanka	773	65	838	0.210
Thailand	350	295	645	0.162
Others	216	59	275	0.069
Total	276,170	122,588	398,758	100.000

Arrest of Foreign Nationals in Malaysia by Country of Origin ('01-'06)

Country	2001	2002	2003	2004	2005	2006	Total
Indonesia	14,628	11,813	20,965	11,591	13,116	29,106	101,219
Philippines	1,718	3,974	10,486	3,083	5,406	8,820	33,487
Thailand	3,606	2,877	2,380	2,002	1,749	3,169	15,783
Myanmar	2,202	1,494	1,553	1,992	1,852	4,434	13,527
Indians	3,259	1,681	2,517	1,095	1,171	2,331	12,054
Bangladesh	1,991	1,367	616	627	821	2,103	7,525
P.R.C	891	1,334	1,018	798	886	1,361	6,288
Pakistan	847	612	275	468	1,154	1,251	4,607
Cambodia	343	346	1,136	649	321	946	3,741
Nepal	121	356	359	379	396	931	2,542
Vietnam	191	51	347	219	325	527	1,660
Others	3,524	2,411	1,239	668	882	1,336	10,060
Total	33,321	28,316	42,891	23,571	28,079	56,315	212,493

Challenges and Problems of Migrant and Irregular Workers

These findings are based on interviews conducted with:

- **Target group, that is, the workers.**
- **Employers**
- **Recruiting agents**



... Challenges and Problems of Migrant and Irregular Workers

- **Officials of ministries & government agencies.**
- **NGOs**
- **Staff of foreign missions**

Problems Encountered by Workers: Policy Related

- **High cost of recruitment**

**Processing fee, levy, passage etc.
E.g. Bangladeshi pay RM10,000 –
RM12,000 for a RM750 job.**

- **Long bureaucratic procedures**

**Numerous forms to be supported
by verified evidence; contract in
English.**

Problems Encountered by Workers: Outsourcing & Employment Agencies

- **Victims of recruiting agents –
legally recruited but without jobs**
**Outsourcing agencies import
workers without ensuring job
availabilities.**
- **Job misplacement**
**Deployed in jobs or employers
other than what was promised.
E.g. factory but sent to plantation.**

Problems Encountered by Workers: Work Related

- **Nonpayment or deduction of wages**

 - ✓ **Deduction for recruitment cost;**

 - ✓ **Withhold of salary to prevent them from absconding.**

- **Wages not commensurate with workload**

 - Multiple tasks e.g. prepare food, serve at food stall – 11-hour work.**


... Problems Encountered by Workers: Work Related

- **Inadequate housing**

Overcrowding e.g. 20 workers in a 4-room single storey bungalow; living in their place of work.

- **Cheated of overtime wages**

Denied the right rate for overtime work or work on public holidays.



... Problems Encountered by Workers: Work Related

- **Denied weekly rest day and public holidays (incl religious festivals).**

Denied though their contract includes these provisions.

Common among restaurant and laundry workers and maids.

- **No real access to trade union**
- **No real access to justice**

... Problems Encountered by Workers: Work Related

- **Lack of information on workers' rights and access to justice**
No knowledge of their rights, how to seek for justice; did not know the address of their embassies.
- **Prohibition & limitation to perform religious rituals**
E.g. fasting during Ramadan, handling of non-halal food, attend Sunday services.

... Problems Encountered by Workers: Work Related

- **Employers keeping workers' passport**

Though the employer may have good intention but the practice renders vulnerability to arrest.

- **Ill treatment**

Physical, sexual & verbal abuse, food deprivation, and spatial & social confinement.

... Problems Encountered by Workers: Work Related

- **Communication problems**

Communication barrier & misunderstanding lead to abuse by employers and conflict among coworkers of different ethnicity.

- **Daily rated wages**

No income for absence from work for whatever the reason; problem for those who are sick and need rest.

Problems Specific to Maids

- **Unspecified job tasks**

May cover a wide range ranging from looking after children/elderly parents to washing cars.

- **Double/multiple tasking**

Tasks other than domestic work e.g. helping employers in their trade.

- **Pass abuse by employers**

To avoid high annual levy, apply as maid.

Undocumented Persons: Work

- **Not all are in employment.**
- **Employed to do the same work as legally recruited foreign workers but without contract.**
- **Low wages.**
- **Appalling work and living conditions.**

... Undocumented Persons

- **Often exploited by employers and recruiters.**
- **Some unscrupulous employers report their presence to avoid paying the salary.**
- **Self-employed; e.g. petty trader, farmer (some open up small holdings), tailor & masseuse**



Employers

Employers' View on Migrant Workers

- **Many employers, especially those in the corporate sector, prefer foreign workers because:**
- **More committed and eager to earn as much money as possible;**
- **More subservient and easier to manage;**
- **Few social obligations that keep them away from work**

Employers' View on Migrant Workers

- **Are “captured” labour – willing to work in accordance with fluctuation in the demand for the company’s product;**
- **Rate of absenteeism low especially among the daily rated workers;**
- **Cannot jump from one to another;**
- **To ensure they are subservient, employers prefer a 2-3 year contract.**



Problems Faced by Employers

- **Lack of appropriate skill**
E.g. construction workers who were farmers, domestic maid from villages
- **Unprepared for designated jobs**
Long hours in restaurant and routine work in factories.
- **Communication gap**
Giving orders and instructions can be problematic.

Problems Faced by Employers

- **Workers absconding**

At least 10% abscond before end of first contract.

- **Conflicts among workers within same ethnic group**

Quarrel over debts, jealousy over job distribution, betray and women.

Indonesia from Madura known for violence and use of weapons.



Problems Faced by Employers

- **Inter-ethnic conflict**

Difference in culture. E.g. The Vietnamese ate dogs and this upset the Indonesians.

- **Group/gang unity & resistance to deployment**

Outsourcing agencies & labour contractors encounter when workers have to be deployed to various places

Problems Faced by Employers

- **Expectation of high pay**

- ✓ **Owing to high recruitment fees, they expect to get high wages.**

- ✓ **Disappointment over pay and working conditions leads to all kinds of misdemeanours such as sabotage the production process; stealing, ill treating children & the elderly or doing shoddy work among maids.**

Problems Faced by Employers

- **High cost of maintaining legal worker status – levy, medical examinations**
Not commensurate with workers' wage
- **Inconvenience caused by operations to weed out illegal immigrants**
when they have to go to detention centre to rescue their workers.
- **Short-changed by recruiting agents and state**
Levy and medical expenses cannot be refunded when the workers abscond.



Agencies

Recruiting Agencies

- **Big business for recruiting agents in the country of origin and the country of destination.**
- **Recruiting agents in country of origin act as intermediaries between prospective workers and the Malaysian recruiting agents.**
- **Malaysian agents have to ensure that recruiting is in line with Malaysian policies on migrant workers.**



Problems Faced by Agencies

- **Frequent changes in policies make it difficult for effective business planning e.g. capping of fees, banning and lifting of ban.**
- **Cumbersome bureaucratic procedures – several depts and agencies e.g. Immigration Department, FOMENA and insurance agents; different forms are in different locations.**

Problems Faced by Agencies

- **High cost of recruitment fees charged by agents in country of origin e.g. Agents in Malaysia have to pay RM1,300 just to get biodata from an Indonesian recruiting agent.**
- **Falsification of personal data of the workers in their travel documents.**
- **Employers' high expectation and lack of appreciation of the difficulty workers have in adjustment.**



Problems Faced by Agencies

- **Falsification of travel and work documents;**
- **Shoddy medical examination by doctors in the country of origin.**
- **Practice of giving misleading information about availability and remunerations by agents in country of origin, resulting in job misplacement or being stranded in Malaysia.**



Problems Faced by Agencies

- **Excessive charges by agents in the country of origin and lack of transparency in accounting such payment.**
- **Failure of recruiting agents in country of origin to provide induction courses, thus imposing the responsibility on local agents and employers.**



State Concerns



State Concerns

- **Foreign workers contribute to the economic growth of the nation.**
- **Employment and presence of irregular migrants are of concern to the government and not that of foreign workers per se.**
- **Employers engaging foreign workers at the expense of the locals.**

State Concerns

- **In financial terms, Malaysia loses due to remittances sent home by foreign workers.**
- **High cost in arresting, maintaining them in detention centres and prisons and deporting them – RM2.1 million per day.**
- **Financial burden on state as they also utilize social and medical services.**

State Concerns: Medical Facilities

- **The use of outpatient facilities and hospital beds in Sabah is relatively high: in 2001 and 2006, 8% and 6% of outpatient facilities and 14.5% and 11% of hospital beds were used by non-citizens respectively.**



State Concerns: Security

- **Border security;; e.g. Many cases of Filipinos and Indonesians committing crimes such as kidnapping and burglary and return to their country with the loot.**
- **As irregular migrants, they conduct their lives outside the law.**
- **Their children are not registered.**



State Concerns: Security

- **Though only around 2% of the crimes were committed by foreigners, non-citizens are inclined towards violent crimes;**
- **Engaged in molesting, criminal intimidation, extortion and rioting**
- **Drug**
- **Rapid increase in stateless children in Sabah**



State Concerns: Socio-cultural

- **Though foreign workers have to be given a clean bill of health by doctors in the country of origin, yet many were found suffering from hepatitis B, syphilis and tuberculosis.**
- **Cross-national marriages & bigamy**
- **Rise in prostitution, especially from China.**

Follow-up to the Study

- **The findings indicate that the problems are complex and solutions require the cooperation of many of the stakeholders, particularly the country of origin.**
- **At the 4th ASEAN 4 NHRI Meeting in Manila, it was agreed that the 4NHRI review legislation concerning migrant workers in sending & receiving countries.**



Human Rights of Migrant Workers

- **Human rights are for all, including migrant and irregular workers.**
- **In ensuring that migrant and irregular workers have their rights, the rights of the other groups, particularly the citizens, cannot be compromised or denied.**



Human Rights of Migrant Workers

- **Migrant workers contribute to the economy of the country of destination as well as their country of origin. Hence, the country of origin have to care for their wellbeing, not just the country of destination.**
- **Migrant workers, whatever the status, must respect the rule of law, particularly the country of destination.**



Thank you