

Post Covid-19: Malaysia Foreign Worker Recruitment and Local Unemployment

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Introduction

Malaysia is an upper middle-income country with a robust economy based on diverse, labour intensive sectors. The aspects of globalisation involving trade, capital, labour migration, technology and information flow has historically molded the emergence of Malaysia as a developing nation. The changes brought about by globalisation transformed the nation economy which was previously highly dependent on primary commodities (tin and rubber) into one that was driven by manufactured exports. The influxes of migrants' workers since the 19th century have shaped the country into a multi-ethnic society.

In Malaysia's rapidly growing economy, increasing urbanisation and relatively low labour participation rate among women has continued to create a major demand for foreign labour. The World Bank has drawn upon three sources to estimate the amount of foreign labour with respective definition as follow:

Agency	Ministry of Home Affairs	Department of Statistics Malaysia	
		Labour Force Survey	Population and Demography
Estimates	1.797 million	2.27 million	3.287 million (estimate of 2018 based on the 2010 census)
Definition	Foreign workers to whom a Visit Pass (Temporary Employment) issued for the given year [Visit Pass subject to an annual renewal (so called 'registered' foreign worker)]	Non-citizen labour force, including irregular foreign workers but excluding tourists or foreign workers who do not reside in household for example hostels and labour camps	People who are not born in Malaysia including children, students, spouses of Malaysian citizens and expatriates and their dependents

Source: Ministry of Home Affairs, Ministry of Human Resources and Department of Statistics Malaysia

The World Bank also reported that unofficial estimates of the total number of foreign labour is much higher ranging from 3.4 million to 5.5 million. The Institute of Labour Market Information Analysis (ILMIA) under the Ministry of Human Resources attempted to use the number of foreign workers that subscribed to the mandatory Foreign Worker Insurance Scheme to estimate the number of foreign workers. ILMIA estimation from the method above estimated an average number of foreign workers from 2012 to 2016 to 3.429 million with higher concentration in Selangor, Johor and Sarawak. The

National Human Rights Society reported that there is an estimated 1.5 million to 4 million of undocumented foreign labour. ¹

The Covid-19 pandemic presented significant challenges to government, societies, businesses and individuals. Foreign workers, regardless of their status are vulnerable group in international supply chains. They face increased health risk due to lack of health insurance or access to health care facilities, retrenchment due to factory shut down or downsizing, and risk of losing their regular status by overstaying visas with the travel restrictions being implemented in several countries.

The goal of this paper is to examine national policies related with foreign workers and the possible changing dynamics and transformation of the local labour market in connection with the practices of future recruitment of foreign workers. Towards the end of the paper, recommendation and strategies are suggested for two scenarios - during the pandemic and after the pandemic with consideration of all involving stakeholders.

Malaysia Foreign Worker and Related Policies

Malaysia's economic development in the pre and post-independence period is through its dependence on trade, foreign direct investment and foreign labour. The development in the early stages of primary commodities and export-oriented manufacturing were made possible by the extensive use of foreign labour. In Malaysia, the country's economic development were built on foreign labour dating back to pre-independence times, with Chinese who worked in tin mining and Indians brought in by the British to work in rubber and oil palm plantations.

Fast forward today, foreign labour represent somewhere between 31 and 40 per cent of the total Malaysian workforce and are employed primarily in the 3D (Dirty, Dangerous and Difficult) jobs across a spectrum of sectors including plantation, agriculture, construction, manufacturing and service sector. Manpower and private employment agencies businesses of foreign labour recruitment, processing and placement is worth more than RM2 billion. However, Malaysia being one of the largest receiving countries in South East Asia,²

The Malaysia government has introduced several guidelines pertaining to foreign labour recruitment through the Ministry of Home Affairs - Foreign Workers Management division. The guideline includes approved sectors, levy payment rates and approved foreign worker source countries. ³

a) Approved Sectors

The division will process foreign worker recruitment intake application from the following approved sectors: Manufacturing, Construction, Agriculture, Plantation, Mining and Quarrying,

¹ Malaysia: Estimating the number of Foreign Workers (A report from the Labor Market Data for Monetary Policy task), World Bank, dated 28 March 2019

² International Organization for Migration, The United Nation Migration Agency. World Migration Report 2018

³ Foreign Workers Management-Service Information, Ministry of Home Affairs, accessed on 19 May 2020, <http://www.moha.gov.my/index.php/en/pengenalan-perkhidmatan-pengurusan-pekerja-asing>

and Services [limited to sub-sector: Restaurant (cooks only), cleaning and sanitation, Island Resorts, Hotels, Gold Caddy (men only) and Cargo Handling (Airports and Seaports)]

Levy Payment Rates

Sectors	Levy Rate
Manufacturing	RM1,850
Construction	RM1.850
Plantation	RM640
Agricultural	RM640
Mining and Quarrying	RM1,850
Services	RM1,850

b) Approved Foreign Worker Source Countries

The following table is a list of people from source countries and sectors allowed for them respectively:

No.	Country	Gender		Sector
		Male	Female	
1.	Thailand	/	/	Manufacturing, Estate, Agriculture, Services, Construction, Quarrying and Mining
2.	Cambodia	/	/	
3.	Nepal	/	/	
4.	Myanmar	/	/	
5.	Laos	/	/	
6.	Vietnam	/	/	
7.	Philippines	/	X	
8.	Pakistan	/	/	
9.	Sri Lanka	/	/	
10.	Bangladesh	/	/	
11.	Turkmenistan	/	/	
12.	Uzbekistan	/	/	
13.	Kazakhstan	/	/	
14.	India	/	/	Services (Sub-sector of Indian community businesses), Construction (High Tension Cable workers), agriculture and estate
15.	Indonesia	/	/	Manufacturing (Female), Services, Agriculture, Estate, Construction, Mining and Quarrying

The Economic Planning Unit reported in its Population and Labour Force Statistics that in Malaysia, foreign labour supply from their source countries are as follow Indonesia (39%), Nepal (24%),

Bangladesh (13%) and Myanmar (7%). Foreign labours served in construction, agriculture and plantations, manufacturing, service and domestic work. The jobs undertaken by foreign labours are mostly low-skill, low-wages jobs, those often rejected by Malaysians and involved 3D (Dirty, Difficult and Dangerous) sectors.⁴

Employment Statutes enforced in Malaysia⁵

All workers regardless local or foreigners should be treated with fairness, dignity and equality. Thus, a series of employment statutes are enforced in Malaysia. The following is a table that describes the coverage of the following statutes for foreign labours. The statutes include:

- a) Employment Act 1955 (the law applicable for Sabah and Sarawak are the Labour Ordinance Chapter 67 and Chapter 76 respectively);
- b) Employment (Termination and Lay-off Benefits) Regulation 1980;
- c) Employees Provident Fund Act 1991;
- d) Employees' Social Security Act 1969;
- e) Industrial Relations Act 1967;
- f) Trade Union Act 1959 (Revised 1982);
- g) Occupational Safety and Health Act 1994; and
- h) Workmen's Compensation Act 1952

Table of Employment Statutes enforced in Malaysia

Act	Coverage for foreign labour	Same as local labour
Employment Act 1955	Protection on terms and conditions of employment (includes payment of wages, hours of work, termination of contract of services, holidays and other) Clause to invoke - Protection clause for local worker Part XIIB ss.60k to 60c in regards to appointment and termination of foreign labour and complaint of discrimination of local worker as compared to the foreign worker	Yes
Workmen's Compensation Act 1952	Section 8 - Compensation payable by employer in cases of injury, death, partial or total disablement. Section 5 - Occupational disease	Yes

⁴ Population and Labour Force, The Official Website of Economic Planning Unit, Ministry of Economic Affairs (2015) cited in Loganathan T, Rui D, Ng C-W, Pocock NS (2019) Breaking down the barriers: Understanding migrant workers' access to healthcare in Malaysia, PLoS ONE: 14(7): e0218669

⁵ Migrant Workers: Adequacy and Sufficiency of Law in Foreign Workers The Law and Practice in Malaysia, Farheen Baig Sardar Baig, dated 2013

Trade Union Act 1959	Foreign citizen can join and participate in the activities of a registered trade union	Yes
Industrial Relation Act 1967	Regulate employer, employee and their trade unions. If foreign labour is not a member of local trade union, they shall have no access to collective representation. Non-union member however could still have coverage of collective agreements or awards of industrial court made under the act. In any event of unjust or unfair dismissal, union or non-union member could access this act to seek justice	Yes
Employee Social Security Act 1969	No coverage for foreign employees since 1993 for the foreign labour were protected under the Workmen's Compensation Act 1952. However, there is a compulsory insurance scheme outlined by SOCSO called EI-SOCSO mainly for occupational incidents. (Read EI-SOCSO in following section)	No
Employee Provident Fund Act 1991	Foreign employees that received prior notice in writing to the EPF board and employer are eligible to apply. However, if the employee participated in another approved scheme in Malaysia, s/he is not covered in this provision based upon para 8 of the First Schedule	Generally not applicable to foreigner except if elected to contribute to the fund
Occupational Safety and Health Act 1994	Employers are provided with safe, healthy and welfare at their workplace regardless local or foreigners	Yes
Labour Ordinances of Sabah (Chapter 67) and Sarawak (Chapter 1949)	This piece of legislation aim to provide minimum benefits for foreign labour and the chapter is explicitly applicable for foreign employees	Yes

*Health Related Policies for Foreign Workers.*⁶

The government have place two of its mandated insurance scheme as a mandatory requirement for the annual renewal of work permits of documented migrant workers which is the Hospitalisation and Surgical Scheme for Foreign Workers (SPIKPA) and the Employment Injury Scheme for Foreign Workers under the government's Social Security Organisation (EI-SOCSO). The following are the details for both of the scheme mentioned above:

a) *Hospitalisation and Surgical Scheme for Foreign Workers (SPIKPA)*

SPIKPA is a mandatory private medical insurance scheme which can be purchased from 25 insurance providers. The scheme includes an annual coverage of RM10,000 for hospital admissions and surgery at Ministry of Health hospital. The annual premium is RM120 per worker. This scheme is mandatory for foreign labour with the premium paid by either employer or employee. However, this is exempted for domestic helpers and workers in plantation where employer could opt-in by paying the premiums.

b) *Employment Injury Scheme for Foreign Workers under the government's Social Security Organisation (EI-SOCSO)*

EI-SOCSO is a social security scheme providing occupational illness or injury benefits in line with the SOCSO scheme for Malaysian except education benefits of enrolee's dependents and physical rehabilitation benefits. The contribution rate was pegged at 1.25% of the insured foreign labour monthly wages and paid by the employer. The benefits are accidental death compensation (maximum RM25,000), permanent disablement benefits based on 90% of the insured foreign labour daily wage (minimum of RM30 to a maximum of RM118.50 per day) and repatriation and funeral benefits.

Malaysia has in place a comprehensive framework to protect the rights and welfare of foreign workers however the exploitation continues to exist due to relaxed enforcement and motivated by cost-cutting measures by employers. Thus, there are ample room for improvement for Malaysia in developing a consistent and holistic policy design and long-term strategy on foreign labour. In times such as a pandemic of economic slowdown, the high number of foreign workers without jobs and their high concentration in less-than favorable living conditions poses a socio-economic challenge to the government and a burden of the state to care for them if they are infected.

The flaws of the system that the Covid-19 situation presented to were apparent when plights of many foreign labors came to light where employers stopped paying them during MCO and enforced business shutdown resulting in them having to survive with little food and necessities. Many were also too fearful of seeking medical treatment during this period and were left to the mercy of their employers or agents in Malaysia. As a result also, the authorities could never confirm if there were infections in foreign labor clusters and if there were related deaths or recoveries during the first few weeks of MCO (Note: Full

⁶ Loganathan T, Rui D, Ng C-W, Pocock NS (2019) Breaking down the barriers: Understanding migrant workers' access to healthcare in Malaysia, PLoS ONE: 14(7): e0218669

scale Covid-19 tests were only conducted on foreign workers in the last phases of the control movement order).

The fact of the matter is, health provision through government mandated insurance scheme however is only available for foreign labour with valid pass and still left undocumented foreign labour unable to access to their rights and facilities.

Industrial Dependency on Foreign Workers

The Malaysia economy relies heavily on foreign labour to perform low-skilled job despite nearing full employment since 1990 and high educational attainment among nationals. The International Labour Organization reported that approximately one-third of the workers in the agricultural, manufacturing and construction sectors are migrants. However, these numbers of foreign labour employment may fall short as the amount does not account for irregular foreign labour.⁷

Since 1980s, the dependence on foreign workers has increased across all states specifically during two periods where the share of foreign labour increased rapidly. The first period was during 1993 to 1996 whilst the second period was between 2009 and 2013. The degree of dependence on foreign labour varied from state to state. Sabah is the state with highest dependency on foreign labour and other states with significant dependence on foreign labours includes Selangor (15%) and Kuala Lumpur (13%).

The absence of data on foreign labours by sector in different states made it harder for a complete analysis of the foreign labour issues but what could be ascertained is that they are concentrated in agriculture sector in Sabah and Sarawak meanwhile manufacturing and services are concentrated in Johor, Selangor and Kuala Lumpur. Agriculture and manufacturing are the two key sectors that employs foreign labour.⁸

Foreign labour especially those who are undocumented are often subjected to serious violations of their labour and other rights. This creates a need for a comprehensive new policy that acknowledges the real extent of foreign labour dependence and regulates working condition more effectively. The policy should also ensure real minimum wages and treats worker humanely.⁹

Malaysia's dependency on foreign labour also has trickling effect on social and economic situation. The nation's youth unemployment rate in Malaysia stood at 10.9% in 2018 which is lower than the regional

⁷ Triangle in ASEAN Quarterly Briefing Note, Malaysia, Australian Aid and International Labour Organization, accessed on 19 May 2020, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_614381.pdf

⁸ Agglomeration, Human Capital and Foreign Labour: The Case of Malaysia, Cassey Lee, dated September 2019, https://www.iseas.edu.sg/images/pdf/ISEAS_EWP_2019_8_Lee.pdf

⁹ Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to Malaysia, 13-23 August 2019

average of 12.2% in Southeast Asia and the Pacific but the third-highest youth unemployment rate in ASEAN after Indonesia and the Philippines.¹⁰

The Malaysia Government awareness of the country's excessive dependence on foreign labours resulted in the formulation of the Eleventh Malaysia Plan medium development plan for 2016 which capped the share of foreign workers in the workforce to 15% by the year 2020. In 2017, foreign labours share at the workforce was reported to be at 18%. The government also intended to revise the levy on low skilled foreign workers to reduce employers' dependence on foreign workers. The recruitment of foreign workers will be streamlined by using a one-stop agency under the Ministry of Human Resources.¹¹

Rising Local Unemployment versus Foreign Worker Recruitment in Malaysia

According the Labour Force Survey Report First Quarter, the first quarter of 2020 witnessed an increase in unemployment rate by 0.3% to 3.5%. This was mainly attributed by the increase in the unemployment rate in March 2020 at 3.9% (546.6 million people) which reflected the negative impact of Movement Control Order (MCO).¹² Datuk Nor Shamsiah Mohd Yunus, Bank Negara Governor opined that the pandemic will severely affect the country's economic growth in the first half of this year. The second quarter will be affected heavily where the sudden and almost complete halt in economic activities under the MCO.

The unemployment rate will likely surpass the Bank Negara earlier forecast of 4% issued in April amid the extended MCO and weaker demand. Business closure will also result in unemployment rates spiking in April and May. However the Governor is optimistic that the country's economic growth will improve in the second half of the year with growth accelerating in 2021 as trade partners resume economic activities. She highlighted that health related industries (pharmaceuticals and medical supplies and equipment), electrical and electronics, logistics and retail are sectors that were taking advantage of the "new normal" by undertaking structural development to accelerate the adoption of technologies in line with social distancing measures amidst the pandemic.

The government has also cushioned the effects of unemployment by including the Employment Insurance Scheme, Wage Subsidy Programme, Employment Retention Programme and Reskilling and Upskilling Initiatives. With the optimistic outlook of economic activities recovery in the second half of this year, the labour market should gradually improve in tandem, with rehiring and job creations in some sectors.¹³

¹⁰ Youth Unemployment in Malaysia and the Region, Calvin Cheng, dated 10 January 2020, <https://www.isis.org.my/2020/01/10/youth-unemployment-in-malaysia-the-region/>

¹¹ Agglomeration, Human Capital and Foreign Labour: The Case of Malaysia, Cassey Lee, dated September 2019, https://www.iseas.edu.sg/images/pdf/ISEAS_EWP_2019_8_Lee.pdf

¹² Labour Force Survey Report First Quarter 2020, Department of Statistics Malaysia, dated May 2020

¹³ Unemployment rate likely to surpass forecast amid 'severe' Covid-19 impact on Malaysia-BNM Governor, The Edge Market, dated 13 May 2020, <https://www.theedgemarkets.com/article/unemployment-rate-likely-surpass-forecast-amid-severe-covid19-impact-malaysia-%E2%80%94-bnm-governor>

The government will also be revisiting its policy on foreign labour following difficulties encountered by some 2.3 million migrant workers (the amount might be higher as explained in previous sections) during the MCO. Dato Seri Mustapa Mohamed, Minister in the Prime Minister's Department (Economy) suggested that the number of foreign labourers could be controlled so that more jobs can be available for locals. However, he is aware that certain industries require foreign labour to meet its economic demand.¹⁴

Recommendations and Strategies

Covid-19

The present policy of the Malaysian government towards undocumented workers is only limited to arrest and deport, but undocumented workers who managed to hide their presence continue to work in the country albeit without access to formal healthcare system. The effectiveness of the current policy for doctors to report undocumented migrants seeking healthcare to police and immigration authorities is also in question especially when undocumented foreigners refuse to seek formal treatment. As a result of that too, many foreign workers and other illegal migrants have created a lucrative industry for unlicensed sale of medicines among foreign worker clusters, and clandestine doctors operating from sundry shops.¹⁵

The present policies exclude migrants from access to healthcare threaten the health security of all. During the pandemic, the government should focus on healing the nation effectively and covers across all spectrum of the labour force regardless of their background.

1. The government must not discriminate in providing health care access for foreign labour regardless of their status especially testing and treatment of Covid-19 without fear of arrest or detention.
2. The government should work with the stakeholders of these foreign labours which may include and not limited to employers, mission of the country of origin and civil society organization to have outreach program to the foreign communities to ensure that they have access to healthcare information and facilities.
3. All stakeholders must ensure the rights of foreign labours to salaries; wages and benefits are preserved and protected.
4. All stakeholders must comply with existing law pertaining to housing, accommodation, occupational safety and health for foreign labour especially regulations and policies pertaining to Covid-19.
5. During the pandemic and temporarily ceased activities of arrest and deport of foreign labour, an amnesty and legalization program for undocumented foreign labour should be in place to facilitate undocumented foreign labour and have them recorded systematically.

¹⁴ Govt to revisit policy on foreign workers, Free Malaysia Today, dated 4 May 2020, <https://www.freemalaysiatoday.com/category/nation/2020/05/04/govt-to-revisit-policy-on-foreign-workers/>

¹⁵ Illegal clinics and pharmacies operating with impunity <https://www.thestar.com.my/news/nation/2019/05/24/quacks-good-only-for-their-compatriot/>

6. All arrested foreign labours must address the name of their employers and the Ministry of Human Resources will create a blacklist for the irresponsible recruitment of foreign labour in Malaysia.
7. The blacklisted employers will undergo due diligence process to avoid repetition of the irresponsible recruitment of foreign labour.

Post Covid-19

Foreign labours are often portrayed as a potential threat to national security and negatively impacted the country's long-term social and economic development. Foreign labour policies in Malaysia were formulated by the Ministry of Home Affairs to control immigration and maintaining public safety instead of labour administration. The presence of a high number of foreign labour is the clearest manifestation of policy shortcomings in the federal government. The industries has relied on low cost labour to sustain the oil palm and manufacturing industry with no definitive policy to upgrade these industries.

During this pandemic, the government have the opportunity to transform the landscape of the industries and addressing the issues of foreign labour recruitment. Employers who have imported foreign labour legally or otherwise have abandoned them during the pandemic which have become a huge liability to the taxpayers during MCO. Although the government has announced that they will be revisiting the policies regarding foreign labours, however nothing in particular was mentioned. The following are recommendation while revisiting the policy pertaining to foreign labour.

1. Re-evaluate existing social protection framework for foreign labour.
2. Reconsider the source countries for foreign labour and evaluate the economic impact brought about by remittances to each source countries.
3. The government should conduct spot check on foreign labour recruitment agency to ensure they comply with the procedures.
4. Employers of foreign labour should be well versed in the possibly new policy and law pertaining to foreign labour. This is to ensure exploitation of foreign labour could decrease and people will have awareness about foreign labour.
5. The government should engage stakeholders to identify the industries that require foreign labour mainly those engaged with the 3D sectors and ensure the recruitment are legal.

The recommendation above is targeted to protect the rights of foreign labour. However, the Malaysia government must be able to deliver the plans outlined in the Eleventh Malaysia Plan which is to reduce the recruitment of foreign labour. Thus, the following are the strategies could be deployed:

1. The Malaysia government should revise the levy amount that was charged upon employers.
2. The policies on Industry 4.0 - Industry4WRD should focus on automated machinery to replace low skilled labour and Malaysian with low skill could be upskilled to maintain relevance and decrease the issues of unemployment.

3. The proposed streamlined recruitments of foreign labours must be communicated effectively to employers to ensure the numbers of recruitment will not exceed at any given time in order to maintain the targeted amount of foreign labour in the total labour force.
4. Malaysian must be re-educated to embrace the fact that 3D jobs is essential in the development of the country's economic. In line with education, 3D jobs may someday be elevated with the development of technology where people could be employed to work in 3D sectors with lesser risk and safer environment.
5. The government should include strategies to control labour migration into the upcoming Twelfth Malaysia Plan to ensure the continuity and relevance of decreasing low wage and low skilled foreign labour. This will show the government commitment to embrace the Industry Revolution 4.0.
6. Employers would be investigated by a working committee/agency to ensure they have exhausted all methods to recruit local labour before allowing them to engage foreign labour recruitment agencies.

The recent move by Malaysia to repatriate illegal or undocumented foreign workers who have been tested negative for Covid-19 is a way of clearing their high number in the country, but when the economy restarts or recovers, employers would apply for permits for new batches of workers, pay the levies (which is a revenue to the government) and hence the return of reliance on foreign workers across all industries in the country. As Malaysia moves towards develop status, it must stop taking foreign workers a "easy solution" to manpower shortages per se.

CONCLUSION

The pandemic has created unprecedented unemployment rate which endanger the labour market for both local and foreign labours. The existing law and policies have limitations in ensuring the safety of foreign labours and their job nature belongs to low wages, low skilled and 3D sectors. Thus, the above recommendation and strategies were aim to enhance and revise previous policy to ensure the country's economy and social development will be carried out effectively without sacrificing much of the vulnerable communities. The pandemic also taught industries to start engaging technologies which would requires more semi-skilled and skilled labour in every sector. This will also ensure an increasingly safer work environment for certain sectors. Thus, it is important to formulate comprehensive policy for both low skilled and semi-skilled/skilled labour to ensure relevance of foreign labour in the country's development similar to those during early 80s.

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