

MIGRATION IN MALAYSIA: EMPLOYERS' RESPONSIBILITIES AND INEQUALITY PERSPECTIVE IN LAWS

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ABSTRACT

The relationship between migration and development is close and complex. International migration has to a certain extent contributed to the economic development of Malaysia. The push factors of the migrant country and the pull factors of the recipient country in the case of Malaysia resulted in huge influx of foreign workers. However there has been acrimonious debate on the issue which attracted the attention of various groups of people in the country. While the conservative critics identify foreign workers as a great threat to the Malaysian economy, society and culture, the liberals often rationalize their existence with a positive argument that Malaysia requires them for the national infrastructure development. These issues can have negative impact on both sending and receiving countries; it can also put the local employers in a difficult situation where they have huge responsibilities towards the nations and of course their employees as well; in this case, the migrant workers. Employers are always seen to be at the advantaged position while the employees or migrant workers are always the victims. Owing to bureaucracy, the employers often find the legal procedures of importing workers are lengthy and tedious process. In addition to that, employees are often not up to the employer's or sector's expectation where semi-skilled or unskilled workers are sent and not the skilled ones. Training the unskilled workers will take time and of course incur expenditure. Employers are also at risks of losing the trained and skilled workers to the employers who offer better salary and working environment.

This paper focuses on the responsibilities and inequality from the perspectives of laws and justice in relation to employing migrant workers. It is hope that these discussions and suggestions will have positive impact - economically, socially and politically.

Keywords: employer, employment, migration, policy

INTRODUCTION

In the last few decades, Malaysia experienced a very high level of industrial development; and its industrial sector is now becoming increasingly important day by day. This sort of industrial development obviously generates a huge demand of the work force for immediate employment in the industrial and manufacturing sectors. The rapid expansion of manufacturing and industrial sectors created a large number of employments in the country. But as there is a great scarcity of domestic labour force in the country, they have to depend largely on the foreign workers for their burgeoning industrial plans. The importation of migrant workers into Malaysia is a necessity when the country has been facing an acute shortage of labour force. But with this, there has been a simultaneous entry of a huge number of illegal immigrants as well. The records in the Malaysian Police Headquarters and Immigration Department estimated that there are over 1.8 million illegal immigrants with the ratio of 1:1 with the legal and documented migrants. However, in 1996 and 2011, the government urged all the employers in the country to legalize the illegally employed migrant workers to enjoy the privilege of general amnesties granted by the government.

LEGAL AND ILLEGAL MIGRANTS

Similar to the legal workers, the illegal workers were also employed but at a very low wage rate. It is a known fact that employers prefer these illegal migrants due to several reasons. First of all, because of their unlawful status, they are less demanding in terms of their salary. Secondly, to boost their production, the employers can get them to work extra time with a minimum wage payment. But there is another important reason which compels the employers to hire the illegal workers. Owing to bureaucracy, the employers often find the legal procedure of importing migrant workers a lengthy, tedious process. Therefore, they recruit illegal migrant workers who are readily available for employment. The course of registration process was to be borne by the Malaysian employers, not the authorities of the origin country or employees. Furthermore, for every illegal employee, the employers has to go through several procedures such as preparing them for the medical check-up, paying standard fee for works permit and visa documents. These amounts become burdensome if the employers have hundred of illegal workers and this leads them to continue hiring illegal migrants as workers. Legalization also means that the employer are bound by a two year contract to the workers and this does not suit many employers in the plantation and construction sectors who normally use migrant workers in a much shorter terms and dump them once the work is completed. In this regards many employers refuse to comply with the new ruling as they bring about extra financial burden.

POLICIES AND CONSTRAINTS

The resurgence of migration has brought new challenges to the Malaysian state. Malaysia thus, had to established policies in areas such as labour migration, refugee and human trafficking; and is at another cross road of re-articulating its migration frameworks to better manage migration. The state's current regulatory structures and other control system are also evolving and its -periodic amnesties, detention and deportation programmes and responses to the refugee crisis are being played out against the background of the human rights of all migrants. However the policies that attempt to regularize and register illegal immigrants as well as measures taken to prevent them from entering the country had limited success despite the facts that several changes and measures were taken.

Consider also that, to employ a migrant worker through an approved agent, employers have to spend an average of RM2500 to RM8000 per migrant according to employment sector. It is also pertinent to note that despite the fact that the number of approved and legal agents has increased, the number of illegal agents has also risen. As a result, there was a considerable number of illegal in-flow of migrant workers through illegal agents, particularly for small and medium sized industries since the cost of hiring workers through illegal agents is far lower than the approved agents.

Constraints in the legalization of immigrants are also related to a number of other factors. One of them is the heavy responsibilities of the implementing body, in this case the Immigration Department, which has to cope with the problems of a huge number of applicants, changing rules and regulations in a short period and the different economic sectors. The task is monumental. The problems become even more complicated when the process of registration and legalization involves only those who are full-time employees and does not include immigrants who are petty traders, hawkers as well as their wives, children and close relatives whom they brought in together. In addition, the cost and expenses of registration and legalization of immigrants are very high. The cost of transportation to immigration depots throughout the country, expenses during the detention period and deportation to their respective countries have to be borne by the government.

The nature of the immigrants' movements in and out of the country in a short period caused difficulties in legalizing them. Some immigrants might have come in according to legal procedures but they did not return to their countries nor extend their expired visas. These groups of immigrants are very difficult to apprehend since they know of effective hiding areas and are also very close to some locals who would inform them of any exercise undertaken by the authorities. Moreover, preventive measures undertaken by the police and the Immigration Department are not easy to implement with the existence of huge and long coastal areas.

The Immigration Department under the Ministry of Home Affairs bears full responsibility for the policy implementation. The government reviews the employment situation regularly and industries that require migrant labour will be scrutinized before importation is allowed. Prior to this, the employers are required to forward their recruitment advertisements and reminded that local workers should be given priority. When such vacancies are not filled by the locals, the employers can apply to the

Immigration Department. Only then are the employers issued with a certificate to recruit immigrant workers who must have a passport and visa, and pass the medical check-up.

Strategies and policies towards immigrant labour in Malaysia have been formulated through a number of processes. To date, there has never been a comprehensive policy on the issue of illegals and immigrant labour. The immigrant arrivals cannot be successfully controlled without adequate mechanisms to overcome and to tackle the problem which creates adverse social, economic and political implications on the society and the local work-force. Such growing dilemma and issues are among the phenomena that the Malaysian Government cannot and should not neglect. Nonetheless, if the policies and measures introduced purposely and to terminate the inflow of immigrant labour are too stringent, the economic growth of the country may be jeopardized. Local and foreign investors may divert their investments and activities to other less developed countries of Asia or elsewhere. In this regard, contributions of immigrant labourers to sustainable economic growth and physical development of the country are significant. More consistent and comprehensive strategies and policies, rules and regulations and effective measures should be imposed not just to stop their illegal arrival, but also to detect their overstaying and to deport them. Conversely, the same approach should be taken to legalize accordingly. Furthermore, all parties and relevant authorities should make concerted effort in line with strategies to produce a larger local work force under the country's human resource development.

MEETING THE CHALLENGE

It has been suggested that the country should immediately go for installing high-powered technology for its development programmes which will reduce dependence on foreign workers. The locals often complain about migrant workers violating the norms and values of the society and not respecting the local culture. In this regard, Malaysia as the receiving country may request that the exporter countries introduce some orientation programmes before sending them to work in this country. Government of Malaysia should formulate a most transparent and comprehensive policy to deal with the migrant workers so that they can be utilized suitably in a better working environment and also at the same time, so that they do not hurt the sentiment of the local people.

EMPLOYERS' ROLES

Not to forget that employers are confronting numerous policy and practical challenges in employment of migrant workers, including : identifying, recruiting and ensuring entry of migrant workers through regular channels; complying with complex and lengthy administrative procedures, addressing document control; facing risks of sanctions for employing migrant workers without authorization; managing relations in multi-ethnic workplaces; and assuring proper workplace protection. Corporate social responsibility also requires that employers follow good practices in protecting migrant workers for example equal treatment and non-discrimination at workplace. Employers are also playing a major role in promoting and creating tools to encourage cultural understanding. Employers often lack the necessary expertise and resources to implement integration

strategies in-house. Tools that may be useful to develop a comprehensive and effective strategy for migrant workers include coordination at all level of governance; guidance and guidelines to raise awareness of employers of their rights and liabilities, standard setting by public sector and clear policies and goals. It must also be remembered that employers are also contributing to promoting development benefits of migration, not just to home-country but also to the countries of their migrant workers.

CONCLUSION

Very recently, the inflow of illegal immigrant workers reached a level that cannot be tolerated anymore. The government is now in the process of repatriating these illegal immigrants back to their own countries through mutual arrangement with the governments of the sending countries. The persistent economic problem and unstable status of many Asian currencies have somehow forced Malaysia to formulate and implement stricter and more stringent immigrant labour policies in order to return the country to its initial economic development tracts.

It is clear that foreign workers migration phenomenon is difficult to avoid especially when most of the country in the world today are more focus to maximize their economic development. Even the world is getting hi-tech, roles of human resources are still important especially in particular sectors and traditional. Shortage of human resources in a country will cause development of foreign resources in order to cater domestic employment demands.

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