



TRENDS IN SOUTHEAST ASIA

CAN MALAYSIA ELIMINATE FORCED LABOUR BY 2030?

Lee Hwok Aun and Adrian Pereira

ISEAS
YUSOF ISHAK
INSTITUTE

ISSUE

2

2023

TRENDS IN SOUTHEAST ASIA

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Published by: ISEAS Publishing
30 Heng Mui Keng Terrace
Singapore 119614
publish@iseas.edu.sg
<http://bookshop.iseas.edu.sg>

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ISEAS Library Cataloguing-in-Publication Data

Name(s): Lee, Hwok Aun, author. | Pereira, Adrian, author.

Title: Can Malaysia eliminate forced labour by 2030? / by Lee Hwok Aun and Adrian Pereira.

Description: Singapore : ISEAS-Yusof Ishak Institute, January 2023. | Series: Trends in Southeast Asia, ISSN 0219-3213 ; TRS2/23 | Includes bibliographical references.

Identifiers: ISBN 9789815104059 (paperback) | ISBN 9789815104066 (ebook PDF)

Subjects: LCSH: Foreign workers—Malaysia. | Forced labor—Government policy—Malaysia.

Classification: LCC DS501 I59T no. 2(2023)

Typeset by Superskill Graphics Pte Ltd

Printed in Singapore by Mainland Press Pte Ltd

FOREWORD

The economic, political, strategic and cultural dynamism in Southeast Asia has gained added relevance in recent years with the spectacular rise of giant economies in East and South Asia. This has drawn greater attention to the region and to the enhanced role it now plays in international relations and global economics.

The sustained effort made by Southeast Asian nations since 1967 towards a peaceful and gradual integration of their economies has had indubitable success, and perhaps as a consequence of this, most of these countries are undergoing deep political and social changes domestically and are constructing innovative solutions to meet new international challenges. Big Power tensions continue to be played out in the neighbourhood despite the tradition of neutrality exercised by the Association of Southeast Asian Nations (ASEAN).

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Can Malaysia Eliminate Forced Labour by 2030?

By Lee Hwok Aun and Adrian Pereira

EXECUTIVE SUMMARY

- Forced labour, encompassing various types of coercive practices and rights violations, is an entrenched problem in Malaysia. Recent years have seen more decisive and concerted efforts to resolve the problem and repair Malaysia's damaged reputation, but the country's forced labour woes escalated amid COVID-19, with exposés and trade embargoes in 2020–21.
- Most consequentially, the US has imposed withhold release orders (WROs) on major rubber glove manufacturers and palm oil producers. For two consecutive years, 2021–22, Malaysia has occupied the lowest Tier 3 in the US Trafficking in Persons report. In November 2021, the country's National Action Plan on Forced Labour (NAPFL), formulated through tripartite engagements with the participation of the International Labour Organization, was launched, with the third National Action Plan on Trafficking in Persons (NAPTIP 3.0) operating in tandem.
- The NAPFL outlines strategies and integrated measures for eventually eliminating forced labour by 2030, which requires systemic solutions commensurate with the magnitude of underlying problems. Forced labour has persisted despite the official termination of labour outsourcing and increased intergovernmental bilateral initiatives to better manage foreign worker flows.
- Continual challenges in the labour supply industry and the administrative system, including the problematic overlapping powers of the Ministry of Home Affairs and Ministry of Human Resources, complicate the creation and implementation of a more just, effective and accountable migrant worker system.

- Government-to-government (G2) agreements, through Memorandum of Understanding, have become the established platform, but are marred by inconsistency and lack of transparency.
- The new government of Malaysia will need to address deep-seated issues and confront vested interests, domestically and in the labour source countries, to realize the aspiration of eliminating forced labour by 2030.

Can Malaysia Eliminate Forced Labour by 2030?

By Lee Hwok Aun and Adrian Pereira¹

OLD PROBLEM, NEW URGENCY

The spotlight has fallen on the persistent problem of forced labour in Malaysia lately, due to both infringements and policy responses. Forced labour encompasses harsh exploitation and abuse, but also less overt forms of coercion such as retention of passports, squalid living quarters and debt bondage, some of which have seemingly become endemic to the country. The intertwined phenomena of labour outsourcing and undocumented status have exacerbated worker vulnerability to forced labour conditions. Recent high-profile cases, especially involving import bans on rubber glove manufacturers and palm oil producers, and the country's downgrade in the US Department of State's Trafficking in Persons (TIP) report from three years in a row on Tier 2 Watch List to Tier 3 in 2021 and 2022 (US Department of 2021a; US Department of State 2022).²

The past year also witnessed formal institutional landmarks in the fight against forced labour and the concurrent problem of human trafficking. In June 2021, Malaysia renewed its national action plan on trafficking in persons for a third five-year term (NAPTIP 3.0). On

¹ Lee Hwok Aun is Senior Fellow in the Malaysia Studies Programme at the ISEAS – Yusof Ishak Institute, Singapore. Adrian Pereira is Executive Director at the North-South Initiative. The authors thank Andika Wahab and Asha Rathina Pandi for helpful comments on an earlier draft of this paper. The usual disclaimer applies.

² Malaysia also regressed in the International Trade Union Confederation (ITUC) Global Rights Index which evaluates respect for workers' rights. Malaysia's rating dropped from 4 in 2020 to 5 in 2021 (<https://www.globalrightsindex.org/en/2021/countries>).

26 November 2021, the National Action Plan on Forced Labour (NAPFL) was launched, which set the ultimate goal of eradicating the problem within a decade. This objective, oriented around justice and basic rights, fits within Malaysia's professed adherence to decent work standards and its broader ambition of reducing reliance on labour-intensive, low-wage production, and fostering quality high-wage jobs.

Why does forced labour persist, and can Malaysia put an end to it by the target date of 2030? This article proceeds by surveying migrant flows and key features, followed by a brief overview of relevant laws and policies. We consider major structural and operational problems that have perpetuated forced labour, and Malaysia's efforts to combat forced labour that were initiated prior to the pandemic. We then examine salient cases since 2020 that have dented Malaysia's reputation and underscored the importance of a robust and credible response. The NAPFL's scope and ambition may concur with the magnitude and complexity of the problem, but Malaysia must apply a more systemic approach and focus on effective and transparent implementation to deliver on the promise of eradicating forced labour.

FORCED LABOUR DEFINED

The International Labour Organization (ILO) Forced Labour Convention No. 29, adopted in 1930, defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Expanding on this, the ILO has established that "Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities."³ For monitoring and enforcement purposes, forced labour comprises eleven indicators (SAP-FL 2012):

³ There are exemptions. The following are not regarded as forced labour: compulsory military service, normal civic obligations, prison labour (under certain conditions), work in emergency situations (such as war, calamity or threatened calamity), and minor communal services (within the community).

1. Abuse of vulnerability
2. Deception
3. Restriction of movement
4. Isolation
5. Physical and sexual violence
6. Intimidation and threats
7. Retention of identity documents
8. Withholding of wages
9. Debt bondage
10. Abusive working and living conditions
11. Excessive overtime

Human trafficking and migrant smuggling overlap with various forced labour indicators, and both, alongside other phenomena such as forced marriage, are elements of modern slavery (ILO and Walk Free Foundation 2017). This article will focus on forced labour.

Malaysia is principally committed to combatting forced labour. The 1957 Constitution of independent Malaya, and subsequently of the Federation of Malaysia, prohibits slavery and “all forms of forced labour”, except for compulsory service for national purposes and other provisos aligned with international norms. Three months after independence, Malaya acceded to the ILO Forced Labour Convention (No. 29).⁴

MIGRANT WORKERS IN MALAYSIA: KEY TRENDS AND IMPLICATIONS

It is important to locate our inquiry in the context of migrant worker flows and the dynamics of labour documentation. We thus abide by the UN definition of a migrant worker as articulated in the 1990 International

⁴ The Abolition of Forced Labour Convention No. 105 adopted by the ILO in 1957 primarily concerns forced labour imposed by state authorities, with specific prohibitions on forced labour as punishment for political views, as a means of labour discipline or discrimination, or for the purposes of economic development. Malaysia ratified Convention 105 in 1957 but denounced it in 1990.

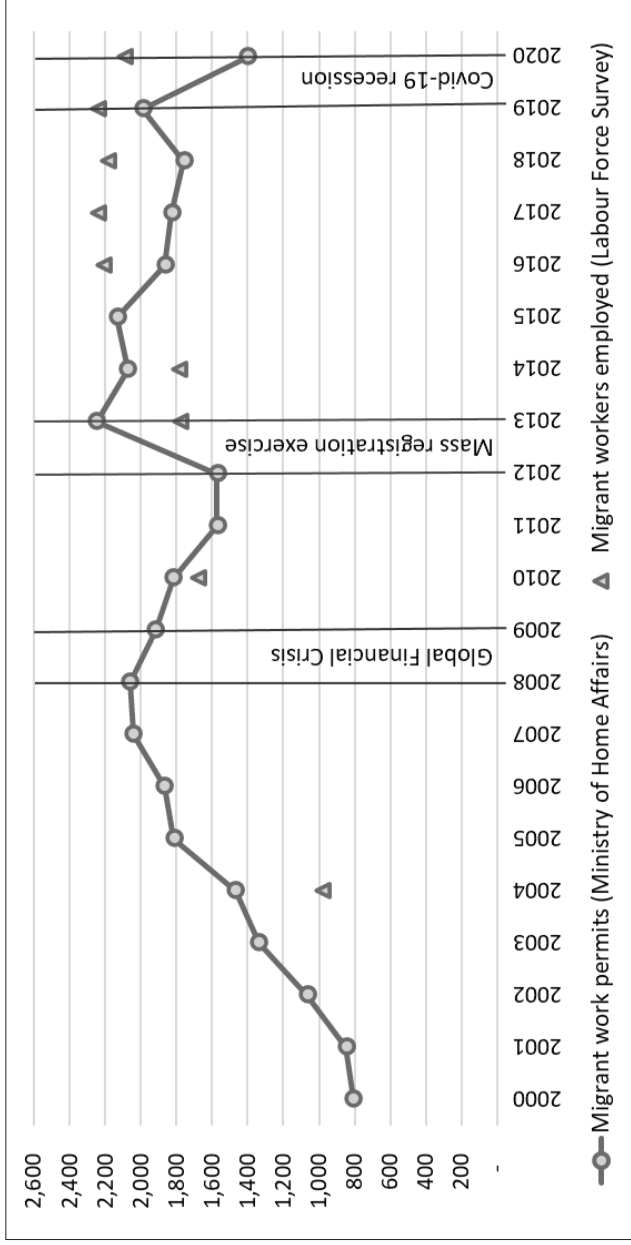
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”⁵ Hence, “migrant worker” subsumes “foreign worker”, the more widely used term in Malaysia’s official documents.

It is important to note that valid permit holders can also fall victim to forced labour. Nonetheless, the persisting presence of undocumented labour is a major obstacle to Malaysia’s efforts to eradicate the problem. Figure 1 shows the number of work permits as disclosed by the Ministry of Home Affairs, which precisely represents documented workers in the country, and the estimated number of migrant workers according to the Labour Force Survey (LFS), which is based on a sampling of households nationwide. The LFS does not differentiate documented from undocumented workers and since 2016 has aptly counted more migrant workers than work permits. Still, sampled households harbouring undocumented workers will likely under-report their presence, and the LFS’ omission of dormitories and workplaces such as plantations or construction sites, clearly contributes to undercounting of migrant labour.

A few brief observations are pertinent. Fluctuations in the past decade and a half can be traced to structural factors and policy reactions. The number of work permits steadily increased from 2000 to 2008, then declined until 2012, during which undocumented workers evidently increased. A sudden spike in 2013 resulted from a mass crackdown-and-registration exercise. Subsequently, during the 2016–19 interval, the number of work passes dipped and rebounded—even while the migrant workforce estimated from the Labour Force Survey (LFS) stabilized at 2.0–2.2 million. A precipitous fall in 2020 corresponds with laid-off workers or non-renewed pass holders returning *en masse* to their home countries and the halted entry of new migrant workers. The post-

⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted 18 December 1990 by General Assembly resolution 45/158, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>

Figure 1: Migrant Work Permits and Migrant Workers Employed, 2000–20



Sources: Work permits—2000–13: MEF (2014); 2014: World Bank (2015); 2015–19: data.gov.my; 2020: authors' personal correspondence. Migrant workers employed—DOSM (various years).

COVID-19 milieu provides an opportunity for a comprehensive reset that concurrently reduces foreign labour dependency, enhances the worker management system and remedies forced labour.

The undocumented worker population in Malaysia is, as anywhere, difficult to ascertain—and this is further complicated by inconsistent official accounts. Government disclosures put the total migrant worker population at 6.7 million in 2014 and 3.8 million in 2016—an implausibly steep drop. According to the Labour Force Survey (LFS), the number of migrant workers, encompassing documented and undocumented cases, increased from 1.8 million in 2013 to 2.2 million in 2016. Drawing on various national surveys, Lee and Khor (2018) estimate the number of migrant workers to be upwards of 3.85 million, and up to 5.50 million, in 2016, which corresponds with 2.1–3.7 million undocumented workers. A more recent estimate by World Bank (2019) puts the total number of migrant workers at 2.96–3.26 million in 2017, of which undocumented workers fall in the range of 1.23–1.46 million. The LFS-based estimate of migrant workers in 2020 declined less steeply than the number of work permits, indicating a continued presence of undocumented workers.

The sectoral profile of work permits provides important context for the relative concentration of migrant workers, with implications for resolving forced labour (Table 1). Manufacturing accounts for the largest

Table 1: Migrant Workers’ Share of Employed, within Sectors (2015)

Sector	Economic Census¹	Work permits and Labour Force Survey²
Agriculture	55.9%	28.4%
Construction	35.8%	34.4%
Manufacturing	25.9%	30.7%
Services	3.4%	3.0%
<i>All sectors</i>	<i>16.4%</i>	<i>14.3%</i>

Note: 1. All registered establishments; 2. Work permits per total employed (Labour Force Survey).

Source: Authors’ calculations from DOSM (2016), DOSM (2017), data.gov.my

number of permits, but we observe different scenarios when it comes to the concentration of migrant workers within sectors. Statistics also depend on the source. The most recent Economic Census, which collects data from all registered establishments, shows a much higher share of migrant workers in agriculture (plantation and non-plantation), followed by construction, manufacturing and services. The concurrent estimate based on the number of work permits and LFS-based employed population suggests a substantial undercounting of migrant workers, especially in agriculture. Other sources underscore the high reliance on migrant workers in construction and agriculture, with plantations predominant in the latter. A 2013 survey by the Malaysian Employers Federation also put the share of migrant workers—documented and undocumented—at 70 per cent in construction and plantations (MEF 2014). Malaysian Palm Oil Board data concur with the 70 per cent foreign share of the sector’s workforce, with further detail that migrant workers constitute more than 85 per cent of field workers (Chandra Segaran 2015).

The work and geographic orientation of these sectors—manual and outdoor labour in construction and agriculture (also rural located), urban concentration of service jobs—impact on the scope for reducing dependency on foreign labour and the government’s capacity to monitor work conditions. Structural features are deep-seated, including subcontracted labour which had become a “defining characteristic of oil palm plantations by the 1980s” (Navamukundan 1997, p. 12). Plantation work is acutely labour-intensive; 92 per cent of jobs are classified as manual and semi-skilled, including harvesting fruit bunches and transporting the crop to mills, along with fertilizing trees, weeding, pest and disease control, and field maintenance. The construction sector, in which manual jobs and skilled but physically demanding jobs dominate, is also known to have a high presence of undocumented workers.⁶

⁶ The Master Builders Association of Malaysia (MBAM) has estimated that there are an additional 700,000 foreign workers not captured in the government estimates (authors’ personal correspondence with MBAM senior official, 24 June 2016).

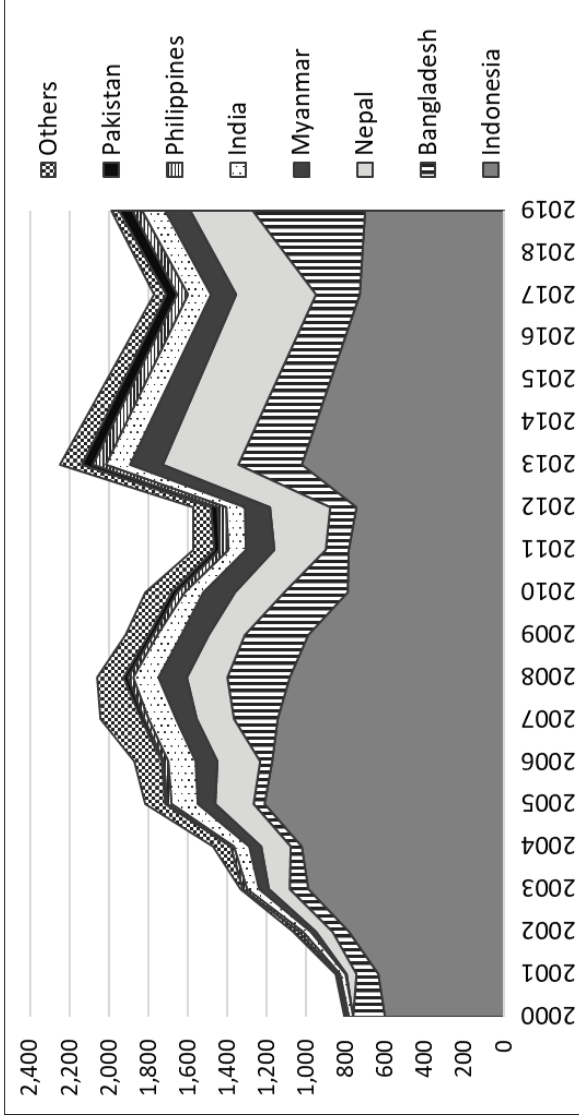
Geographic factors shape labour migration and add layers of governance complexity (Figure 2). Indonesia has continuously been the largest source country of Malaysia's migrant labour, naturally due to proximity, including the long and porous borders of Sabah and Sarawak. However, Indonesia has become much less dominant over time; their share in total work permits fell from 75 per cent in 2000 to 35 per cent in 2019. Other source countries, especially Bangladesh and Nepal, have increased their presence. Indonesian workers constitute considerable proportions of the workforce in construction, plantations and agriculture, and Bangladesh has been a major source for construction and manufacturing and lately in plantations, while Nepalis are more likely to be found in manufacturing and services (ILO 2020a).⁷ Recent years have also seen episodes of countries halting worker entry to Malaysia, and bilateral MoUs being signed with Nepal and Indonesia (for domestic workers), while negotiations are underway with Bangladesh. Vested interests of recruitment agencies and commercial entities in the labour supply industry prevail in both the receiving and sending countries, sometimes in joint ventures of nationals of both countries. The prospects for combatting forced labour ride significantly on the design, harmonization and enforcement of bilateral arrangements.

MALAYSIA'S INSTITUTIONS AND PRACTICES

From an institutional perspective, a country's capacity to uproot forced labour depends on laws and policies in place, and more consequentially on governance and implementation. Malaysia has taken a circuitous route, marked by three decades of development of a migrant worker management system which has overseen massive flows and ebbs of

⁷ Construction and plantations account for 51 per cent of Indonesian work permits; manufacturing and construction for 74 per cent of Bangladeshi work permits; manufacturing and services for 94 per cent of Nepali work permits (author's calculations from ILO 2020a).

Figure 2: Number of Documented Migrant Workers in Malaysia, by Nationality, 2000–19



Note: Data for 2014, 2015, 2016 and 2018 are not available.

Sources: 2000–2013: MEF (2014); 2017: *The Star*; “Zahid: 1.78 million foreign workers in Malaysia”, 27 July 2017, <https://www.thestar.com.my/news/nation/2017/07/27/zahid-1point78-million-foreign-workers-in-malaysia/>; 2019: data.gov.my

migrant workers—but that has also been marred by the perennial inability to resolve the problems of undocumented workers, forced labour, and trafficking in persons. The reputational damage of repeated exposés by research or advocacy groups and official sources such as the US government, and the financial losses due to trade-related bans or warnings, have galvanized more sustained and coordinated policymaking in recent years.

The 1991 promulgation of the Policy on the Recruitment of Foreign Workers, and the introduction of a levy system, constituted a turning point (Kaur 2014). The concomitantly introduced temporary work permit system embodied Malaysia’s efforts to regulate foreign labour inflows; documented workers are officially conferred legal protections, and are generally less vulnerable to forced labour compared to undocumented workers. In principle, the levy serves as both a signal and a penalty. Differences in the levy rate by sector or skill level indicate policy priority in job creation. The levy, being applied only to non-citizens, also constitutes a penalty for not hiring Malaysian workers—provided employers are forced to pay it. However, the levy system has been poorly administered, as discussed later, and even pass holders receive substantially less protection than Malaysian workers, notably through employers or agents holding workers’ passports or pre-empting workers from joining unions. Weak worker protections, curbs on labour organization, and a private sector broadly averse to taking the “high road” of treating workers well and enabling their productivity, have been compounded by massive migrant labour recruitment since the 1990s and the entrenchment of a lucrative labour supply industry (Lee 2017). Until 2019, workplace insurance was sparsely provided to migrant workers. The annulment of permits when workers lose their jobs, alongside the requirement for annual permit renewal, continually confers overwhelming leverage on employers.

The Manpower Department’s procedure for migrant workers to change employers stipulates six permissible conditions related to company closure, distress or restructuring, or owner’s demise, but not forced labour, exploitation or abuse. If a migrant worker resigns, he/she is expected to return home and begin the recruitment process from scratch. Since this would be tedious and incur high recruitment fees, the workers

often decide either to stay with the employer despite being in forced labour conditions, or abscond and become an undocumented worker in Malaysia. Workers who abscond will have their permits cancelled by the Immigration Department and hence may face charges of not having the right visa or documentation as per the Immigration Act 1959.

High cost and debt, and prohibition of switching employers, contribute to workers' movement from documented to undocumented, and thus deprive workers of formal protections. This variant of the undocumented worker problem is more prevalent on the Peninsula. A further issue is that employers, having paid high recruitment fees, may also be more inclined to extract more labour from the workers, and more reluctant to release workers from a contract even if problems emerge. In Sabah and Sarawak, the more porous border corresponds with the high presence of undocumented workers from the entry point, especially on plantations.

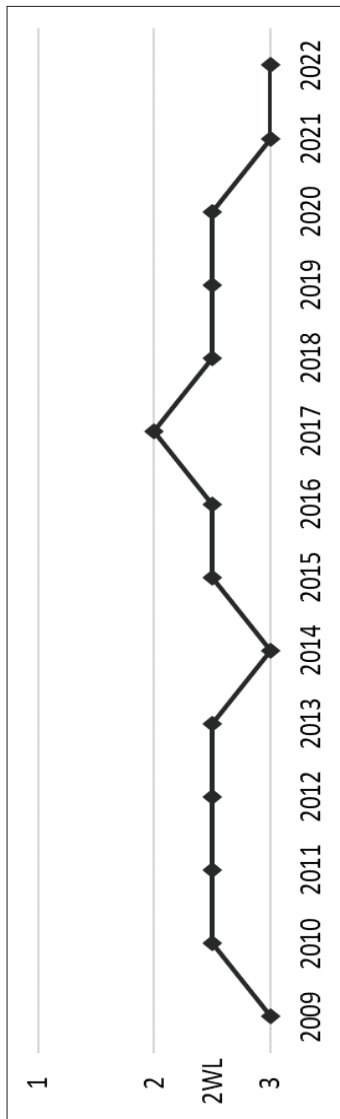
Over the years, various reports have highlighted the mistreatment and vulnerability of migrant workers. Human Rights Watch uncovered abuses against domestic workers in 2004, and Amnesty International's (2010) assessment of labour exploitation and protection in Malaysia substantively documented workers' testimonies of exploitation, harassment, and abuse. The more open-ended structure of the interviews afforded considerable scope for workers' voices and singular perspectives to be recorded. Verité's (2014) studious investigation and detailed report brought various important issues and contentious practices of Malaysia's employment system to light, including high fee payments, passport withholding, and vulnerability to employers under the work permit system. Verité found that 37 per cent of electronics workers are paid by an employment agent instead of the factory operator. As expected, only migrant workers were found to be in forced labour conditions. SOMO (2013) also found evidence of migrant worker exploitation in the electronics sector. Fair Labor Association's (2018) rigorous desk-based investigation identified forced labour risks in the palm oil sector. Under international pressure, Malaysia has directed some attention to human trafficking. The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM) was passed in 2007, and the National Action Plan on Anti-Trafficking in Persons and Anti-Smuggling of Migrants launched in 2010.

Besides supply chain monitoring, international frameworks and bilateral engagements, especially involving the United States, have also applied pressure or inducement to undertake labour reforms. The US Department of State's annual Trafficking in Persons report monitors the problem worldwide, and its four-tiered ranking of countries—with 3 being the worst—constitutes an influential reference point. Since 2010, Malaysia has been placed on the Tier 2 Watch List for most years but fell to Tier 3 in 2014 and 2021–22 (Figure 3). While the appraisals are documented in a public report, this does not preclude diplomatic and geopolitical considerations. Tier 3 status entails restrictions on non-humanitarian and non-trade aid, but the US government may apply discretion in waiving such consequences for some countries. As part of Trans-Pacific Partnership Agreement (TPPA) negotiations, in 2015–16 the US began to engage with some countries, including Malaysia, on a labour consistency chapter (LCC) that aligns labour laws and institutions with ILO standards. These efforts partly sought to induce the local labour movement and the Malaysian working class to accept the TPPA. Regardless of the international relations context, reports and engagements on trafficking in persons and forced labour, chiefly by the US but also other countries, can impact on remedial actions, and hence warrant due attention.

Malaysia was also a participating country in the ILO's Global Bridge Project initiated in September 2015 with funding from the US Department of Labour, and under obligation to ratify the Forced Labour Protocols as part of Trans-Pacific Partnership (TPP), later CPTPP, conditions.⁸ External scrutiny through many channels has also applied pressure on Malaysia. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) for the ILO Forced Labour Convention (No. 29) 2018 report on Malaysia's implementation of the convention highlighted migrant workers' vulnerability to forced labour. Civil society organizations have intensively campaigned for more decisive

⁸ The project, titled "From Protocol to Practice: A Global Action on Forced Labour" in full, involved seven countries: Dominican Republic, Malaysia, Mauritania, Nepal, Niger, Peru and Uzbekistan.

Figure 3: Malaysia's Tier Ranking in the US Department of State's Trafficking in Persons Report (2WL = 2 Watch List)



Source: US Department of State (2022).

and coordinated action to redress the problems of human trafficking and forced labour, which have repeatedly infringed on human rights and caused reputational damage to Malaysia. In this milieu, and alongside education programmes and tripartite engagements, often facilitated by the ILO, Malaysia has formulated more holistic responses.

The post-2018 era has also witnessed some notable developments that signal a national impetus—with persisting obstacles—to redress systemic problems. In October 2018, five months after Malaysia’s first change of federal government at the 14th general election, the Pakatan Harapan administration commissioned the Independent Committee on Foreign Worker Management (ICFWM) to conduct a thorough study on the recruitment of migrant workers in Malaysia. The report and findings were submitted to the Malaysian Cabinet in 2019 but lamentably were not disseminated, and to date remain under wraps, prompting the Human Rights Commission of Malaysia (SUHAKAM) to urge the government to make it public in February 2022.⁹ In 2019, the Government of Malaysia together with its tripartite partners MEF and MTUC signed an MoU with the International Labour Organization on the Decent Work Country Program (DWCP) 2019–25 (ILO 2020a).¹⁰ The DWCP is aligned with Sustainable Development Goal 8 which strives to “promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”, based on three priorities: (1) Rights at work—promoting and protecting rights at work; (2) Future of work—strengthening national capacities to meet the needs of current and future work, and; (3) Labour migration—strengthening labour migration governance.

Laws governing housing and amenities and work-related insurance were amended in 2019, which stipulate clearer regulations that bolster

⁹ *Malaysian Reserve*, “Suhakam: Address Forced Labour Issues Now”, 21 February 2022, <https://themalaysianreserve.com/2022/02/21/suhakam-address-forced-labour-issues-now/>

¹⁰ Decent Work principles of the ILO encompass: (1) Standards and fundamental principles and rights at work; (2) Employment; (3) Social protection; (4) Social dialogue.

protection for migrant workers. The Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 (previously named Workers' Minimum Standards of Housing and Amenities Act) retained requirements for health and hygiene, including transportation of sick employees to hospitals, and importantly added a requirement that living quarters provided to employees must obtain a Certificate for Accommodation.¹¹ The amendment expands the scope for regulating standards of housing and amenities for employees who are provided accommodation by their employer, accompanied by an upward revision in the permitted wage deduction for rent, from RM50 to RM100.¹² The Employees' Social Security (SOCSO) Act 1969 amendment extends SOCSO coverage of employment injury insurance for workplace or work-related travel mandatorily to non-citizens. By March 2020, 1.42 million migrant workers had been registered for SOCSO.

Forced labour arguably derives more from operational and administrative problems than legislative shortfalls, in five salient aspects. First, Malaysia has allowed a lucrative industry of labour supply and associated services to become entrenched, with a vested interest in maximizing profits from importing labour and with structural features that cause workers to incur high fee payments and debt, thus exacerbating their vulnerability to forced labour conditions. Labour outsourcing, involving a third party in the worker-employer relationship, proliferated into an industry that went beyond facilitating recruitment to de facto employment of workers, thus undermining accountability and

¹¹ Yvonne Khor Gee-Weon, "COVID-19 and housing for migrant workers in Malaysia", MIDEQ (Migration for Development and Equality), 26 May 2021, <https://www.mideq.org/ar/blog/covid-19-and-housing-migrant-workers-malaysia/>

¹² Documented migrant workers, for whom employers' provision of accommodation is conventionally stipulated in contracts and overseen by bilateral MoUs, will be generally covered, although there remains some scope for interpretation of the application of the law, resulting in some industries expressing concerns (Fatimah Zainal, "Compulsory Housing Is News to Us, Say Employers", *The Star*, 12 July 2019, <https://www.thestar.com.my/news/nation/2019/07/12/compulsory-housing-is-news-to-us-say-employers/>)

commodifying labour. Such structures of employment, which negate the line of responsibility between employer and employee, have been widely identified as a major source of labour abuse and legal noncompliance (ILO-ROAP 2016; Wise 2013).

The proliferation of outsourcing companies, under the watch of Malaysia's Ministry of Home Affairs, reflects the encroachment of profit motives onto migrant worker management.¹³ Licences for such operations were formally terminated in 2019, which the Malaysian Employers Federation recognized as a positive step for workers.¹⁴ Workers must now be directly hired, and labour suppliers cannot intervene as middlemen. This major change formally reduces worker precarity and lends clarity to the working relationship between the employer and employee. However, irregular forms of employment persist, continually blurring employers' responsibilities. Outsourcing companies have observably reinvented themselves to become "management companies" and continue to manage the workers despite the permits being under the name of the employers. Indirect employment remains prevalent in some sectors like those involving security guards and cleaners, with fluid movement across work sites. On-the-ground observations and research surveys have found workers not identifying the operator of their workplace as their employer. Bhutta et al.'s (2021) survey of 1,470 workers found over a third in indirect employment. Specifically, 36 per cent reported

¹³ The total number of outsourcing companies licensed by the Ministry of Home Affairs touched 400 at its peak, with a significant number involving retired government officials as directors and stakeholders. The latest publicly available list puts the total at 279, though unofficially, a substantial number of these have wound down, due to the termination of new quotas, putting the latest tally close to 200. A list of outsourcing companies registered with MOHA is available at http://www.moha.gov.my/images/maklumat_bahagian/PA/Senarai_Syarikat_Outsourcing_2015.pdf. The updated information is obtained from the author's interview with the Foreign Workers Department, 25 August 2016.

¹⁴ Fatimah Zainal, "Better Welfare for Foreign Workers", *The Star*, 12 March 2019, <https://www.thestar.com.my/news/nation/2019/03/12/better-welfare-for-foreign-workers-employers-laud-abolishment-of-outsourcing-outfits-managing-forei>

not having a work permit associated with their workplace. The reasons include factories having multiple sites with a work permit only attached to one of them, or work permits registered with the subcontractor and not the employing company.¹⁵

The persistently high cost of migration into Malaysia—mainly in the form of fees to recruiters (Testaverde et al. 2017)—undeniably contributes to workers’ debt and vulnerability to exploitation. A web of privatized services, from health screening to work permit and visa application procedures, has burgeoned, ostensibly to expedite processing, eliminate middlemen, and facilitate digitalization. Analysis of the added value of these privatizations finds their contribution to be predominantly in paper pushing or duplicating functions under the government’s purview (Low 2021b). Digitalization holds out the potential of more streamlined and expedited services. However, the lucrative rewards of monopolistic contracts appear to be irresistible, as reflected in various companies, most prominently Bestinet and Ultra Kirana, being embroiled in allegations of corruption.¹⁶ While not a direct causal link with forced labour, the quest for profit cannot be denied as a factor that augments fees extracted and the volume of labour flows. In 2017, Nepal halted sending workers to Malaysia due to inordinately high fees and debt trap risks. Investigations revealed that various redundant services were privatized to politically aligned entities (Sapkota and Alhadjri 2018). Migration resumed sixteen

¹⁵ Bhutta et al. (2021) also found that, before migrating, 31 per cent (455) of surveyed workers (and particularly those employed via subcontractors) reported that their recruitment agency had threatened or intimidated them to prevent them from speaking about recruitment fees. Post-migration, workplace intimidation is centred around ensuring productivity, impeding contract terminations, and inhibiting workers from raising individual and collective grievances. 8 per cent of workers had their passports kept by the company.

¹⁶ *Malay Mail*, “Bestinet Office Raided by MACC – Report”, Kenneth Tee, “Foreign Visa System Trial: Ultra Kirana Director Says Lobbied Zahid, Ex-PM Najib for Support to Fend Off Would-Be Competitors”, 11 May 2022, <https://www.malaymail.com/news/malaysia/2022/05/11/foreign-visa-system-trial-ultra-kirana-director-says-lobbied-zahid-ex-pm-na/2058312>

months later, in October 2018, after both countries signed an MoU with protections against these problems (ILO 2021). This experience underscores the specificity, and need for transparency and accountability, in the bilateral MoUs on labour migration that Malaysia also has with Bangladesh, China, Indonesia, Pakistan, Sri Lanka, Thailand and Vietnam.

Second, policy inconsistency and lack of transparency, coupled with weak enforcement, have undermined the government's efficacy in regulating migrant flows and labour standards.

The implementation of the migrant worker levy is instructive of Malaysia's rather reactive policy formation and failure to make sustained and consistent progress. The worker levy payment has formally been the responsibility of the employer, but worker wage deductions have become a norm. After years of complaints about this practice, the government pronounced that employers would have to pay the levy in 2009—only to reverse this decision in 2013, as a transitional concession to facilitate compliance with minimum wage. The concession to employers remained in place until 2018, when employers were required to sign an undertaking that they would, among other things, pay migrant worker levies rather than deduct from salaries, and not withhold workers' passports, as commonly practised.

While various laws and regulations have been proposed to help resolve forced labour, different enforcement agencies remain compartmentalized and lacking in the integration of their operations. The Inter-Agency Task Force under the purview of MAPO, the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants established in 2007, has yet to make breakthroughs in inter-agency collaboration, notably in the slow pace of human trafficking convictions.

Third, overlapping government jurisdictions, including the arguable misplacement of ministerial roles, have undermined migrant labour management. While the responsibility, authority and knowledge base in labour matters is vested in the Ministry of Human Resources (MOHR), migrant labour approval decision-making is split between MOHR and the Ministry of Home Affairs (MOHA). Hermono, Indonesia's ambassador to Malaysia, identifies "bureaucratic politics between ministries and agencies, with different sides and proxies seeking to maximize their own

interests” as the root cause of Malaysia’s migrant labour woes.¹⁷ MOHR oversees employers’ applications for migrant worker quotas, but until very recently, MOHA held the power to approve the final allocation and selection of source country. The decisive powers held by MOHA have been associated with the tendency to respond to migrant labour problems as a security issue. Its record of presiding over the proliferation of the labour outsourcing sector and privatization of immigration fuelled the profit-driven labour supply industry, and a litany of abuses including fraudulent identities and “special approval” of migrant worker passes that exceeded the number processed through regular channels, underscore the suspected mismanagement under MOHA’s watch (Chairman of the PAC 2020). Hishamudin Yunus, the former Court of Appeal judge and chair of the ICFWM raised concerns about MOHA’s special approvals, in November 2020, suggesting that the matters raised by the PAC were also incorporated into the ICFWM’s report.¹⁸

The transfer of decision-making authority from MOHA to MOHR has been advocated for many years and gained some traction, notably with the Foreign Workers Centralized Management System (FWCMS) initially falling under MOHA’s domain recently declared to be under MOHR oversight.¹⁹ Much room for improvement remains in terms of alignment of jurisdictions and decision-making power and reduced inter-ministerial contestation. This continues to be an area of fluidity and indecision, not least the perplexing decision of the Pakatan Harapan-led unity government to transfer oversight from MOHR back to MOHA,

¹⁷ Ambassador Hermono, remarks at the Migrant Care “Social Policy Dialogue” webinar, 16 June 2022.

¹⁸ Jason Thomas, “Ex-Judge Calls for End to ‘Special Approvals’ in Foreign Worker Recruitment”, *Free Malaysia Today*, 27 November 2020, <https://www.freemalaysiatoday.com/category/nation/2020/11/27/ex-judge-calls-for-end-to-special-approvals-in-foreign-worker-recruitment/>

¹⁹ Bernama, “25 Recruitment Companies from Bangladesh Chosen to Avoid Monopolistic Practices—Saravanan”, 19 June 2022, <https://bernama.com/en/general/news.php?id=2092523>

which at the time of writing has triggered fierce criticism.²⁰ It should be noted that administrative reforms are necessary but not sufficient for eliminating forced labour, given the presence of systemic problems that cut across government ministries.

Fourth, corruption and weak law enforcement remain general maladies in Malaysia, with an acute prevalence in migrant labour due to the wide scope for graft and lumbering pace of prosecution. Arrests have also been publicized from time to time, implicating officials, migrant smugglers and human trafficking syndicates.²¹ More recent cases, involving fraud in the migrant worker rehiring scheme as part of COVID-19 policy response, demonstrate the endemic nature of corrupt practices.²² Indeed, Malaysia's poor record of prosecution and successful convictions of human trafficking cases constitute the main factors in the country's low-tier ranking in the Department of State's report. The lack of breakthroughs in the upper echelons of trafficking syndicates concurs with the assessment by Hoffstaedter and Missbach (2021) that "symbolic punishment of low-ranking officials reinforces networks of control, power hierarchies and cooperation of the state in illicit markets." The penalty enforceable on employers for violating labour laws is also

²⁰ Chester Tay, "One-Stop Centre for Foreign Workers Now under Home Affairs Ministry's Purview, Says Sivakumar", *Edge Markets*, 21 December 2022, <https://www.theedgemarkets.com/article/onestop-centre-foreign-workers-now-under-home-affairs-ministrys-purview-says-sivakumar>; *Free Malaysia Today*, "FMM Slams Flip-Flop over Placement of One-Stop Centre", 23 December 2022, <https://www.freemalaysiatoday.com/category/nation/2022/12/23/fmm-slams-flip-flop-over-placement-of-one-stop-centre/>; *New Straits Times*, "Better to Have Single Agency to Handle Foreign Workers' Employment: MCMTC", 26 December 2022, <https://www.nst.com.my/business/2022/12/864409/better-have-single-agency-handle-foreign-workers-employment-mcmtc>

²¹ Ali Nufael, "Malaysia Police Arrest 94 Linked to Human Smuggling Ring", *Benar News*, 3 October 2019, <https://www.benarnews.org/english/news/malaysian/trafficking-syndicate-10032019170233.html>; Salleh Buang, "Immigration Officers Arrest a Big Blow to Country", *New Straits Times*, 30 November 2020, <https://www.nst.com.my/opinion/columnists/2020/11/645522/immigration-officers-arrest-big-blow-country>

²² Bernama, "RTK Syndicate Raking in RM2 Million Busted", 10 June 2022, https://www.bernama.com/en/crime_courts/news.php?id=2089833

viewed as inadequate, evidenced by a reported RM41,500 fine meted out by the labour department on a labour complaint involving 184 migrant workers and claims of RM5 million in unpaid wages, as well as excessive overtime and unlawful passport retention.²³ The difficulty in accessing justice in Malaysia has even led some victims of forced labour to file civil suits against supply chains in countries where the brands and buyers are located.²⁴

Fifth, migrant labour issues in Malaysia have suffered deficient tripartite engagement and democratic participation of civil society in the formulation process. The government, as custodian of public policy, has repeatedly side-lined the voice of labour. In fact, Malaysia has meted out harsh treatment on migrant rights defenders over the years, from pressing Sedition Act charges against Irene Fernandez of Tenaganita in the 1995 to deporting whistle-blower Md Rayhan Kabir in 2020.²⁵ Both exposed

²³ A series of Reuters reports uncovered that in 2019 and 2020, 184 migrant workers filed three complaints against Goodyear Tire & Rubber Co. The Industrial Court ruled in the workers' favour, primarily on the grounds that migrant workers are entitled to the terms of the collective agreement even though they are not union members. The company has appealed the rulings. (Mei Mei Chu and A. Ananthlakshmi, "U.S. Tyre Maker Goodyear Faces Allegations of Labour Abuse in Malaysia, Documents Show", Reuters, 31 May 2021, <https://www.reuters.com/business/exclusive-us-tyre-maker-goodyear-faces-allegations-labour-abuse-malaysia-2021-05-31/>; Mei Mei Chu and A. Ananthlakshmi, "U.S. Investigators Question Goodyear Malaysia Workers over Labour Practices", Reuters, 23 November 2021, <https://www.reuters.com/world/asia-pacific/exclusive-us-investigators-question-goodyear-malaysia-workers-over-labour-2021-11-23/>

²⁴ A. Ananthlakshmi, "Ex-Workers at Malaysian Supplier Sue Kimberly-Clark, Ansell over Alleged Labour Abuse", Reuters, 11 August 2022, <https://www.reuters.com/legal/ex-workers-malysias-brightway-sue-kimberly-clark-ansell-over-alleged-labour-2022-08-10/>

²⁵ "Irene Fernandez Defends Rights of Migrant Workers Despite Conviction", Amnesty International ASA 28/015/2004, December 2004, <https://www.amnesty.org/en/wp-content/uploads/2021/09/asa280152004en.pdf>; *Al Jazeera*, "Malaysia to Expel Bangladeshi Who Featured in Al Jazeera Report", 25 July 2020, <https://www.aljazeera.com/news/2020/7/25/malaysia-to-expel-bangladeshi-who-featured-in-al-jazeera-report>

cases of worker abuse that were eventually verified, but paid a very hefty price for their advocacy.²⁶ Most recently, Channel 4 reported the account of a whistle-blower in a British-linked supply chain in Malaysia who alleged being assaulted by local enforcement officers.²⁷ The ILO's (2019) situation and gap analysis, seeking to identify issues to be addressed for Malaysia to undertake ratification of the ILO Forced Labour Protocol, highlighted the lack of a "labour compliance strategy" that forges collaboration with relevant partners, including employers organizations, trade unions and civil society organizations.

Employers, while increasingly informed of the importance of countering forced labour, evidently have not applied such social consciousness on a widespread scale. Nonetheless, some positive change has transpired, in the form of tripartite engagements leading to the government-employer-trade union MoU on Decent Work and the formulation of the NAPFL.

HEIGHTENED EXPOSÉS AND RESPONSES

Since 2018, Malaysia has come under more intense scrutiny, including suffering various company-level sanctions and negative national assessments. Reactions to these exposés have also shifted from a seemingly reflexive denial towards a more tempered stance of clarifying and addressing the problems raised by external sources.

The spotlight has fallen on two industries: rubber gloves and palm oil. Table 2 summarizes the US Customs and Border Protection's (CBP) withhold release orders (WRO) and actions by other governments since September 2019. These sanctions, deriving from forced labour claims, surged during the COVID-19 concurrent health and economic crises, and

²⁶ In recognition of her "outstanding and courageous work to stop violence against women and abuses of migrant and poor workers", Irene Fernandez was conferred the Right Livelihood Award in 2005, <https://rightlivelihood.org/the-change-makers/find-a-laureate/irene-fernandez/>

²⁷ Darshna Soni, "Exclusive: Dyson Faces Legal Action over 'Forced Labour' and Exploitation", *Channel4 News*, 10 February 2022, <https://www.channel4.com/news/exclusive-dyson-faces-legal-action-over-forced-labour-and-exploitation>

Table 2: United States Withhold Release Orders (WRO) and Other Government Responses: Rubber Glove and Palm Oil Industry.

	Rubber Glove Manufacturers	Palm Oil Producers
Sep 2019	WRP: <i>US</i> WRO imposed	
Mar 2020	WRP: <i>US</i> WRO lifted; cleared to export to <i>US</i>	
July 2020	Top Glove: <i>US</i> WRO imposed	
Sep 2020		FGV Holdings Berhad: <i>US</i> WRO imposed
Dec 2020	Brightway: <i>Malaysia's</i> Ministry of Human Resources announces investigation of workers' accommodation	Sime Darby Plantation Berhad: <i>US</i> WRO imposed
July 2021		IOI: <i>US</i> probe into allegations of forced labour
Sep 2021	Top Glove: WRO lifted; cleared to export to <i>US</i>	
Oct 2021	Maxwell, Supermax: <i>US</i> WRO imposed	
Nov 2021	Maxwell, Supermax: <i>Canada</i> import ban Smart Glove: <i>US</i> WRO imposed	
Dec 2021	Brightway: <i>US</i> WRO imposed and <i>Canada</i> import suspension	
Jan 2022	YTY Group and subsidiaries: <i>US</i> WRO imposed	
June 2022	Supermax: place on 2-year observation of by <i>Norway's</i> sovereign wealth fund	

Note: New Zealand's Foodstuffs supermarket chain stopped importing Top Glove products in July 2020, and other sectors have also been implicated for forced labour, notably ATA, the manufacturing firm and Dyson supplier.

Sources: www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings; news reports.

in some ways were exacerbated by business shutdowns, plus heightened demand in the rubber glove sector amid the constraints.

However, as demonstrated by the cases of Top Glove and FGV Holdings Berhad, forced labour allegations also preceded the pandemic which incited initial denials but eventually resulted in the companies taking remedial measures to repair reputational and financial damage. In December 2018, *The Guardian* reported that workers of the world's largest glove manufacturer suffered forced labour conditions, especially excessive overtime, confiscation of passports and illegal withholding of pay.²⁸ The allegations were vigorously denied by Top Glove, and the government sided with the industry's behemoth, with then Human Resources Minister M. Kulasegaran rallying to the company's defence and rebutting the report's claims about excessive overtime.²⁹ In July 2020, CBP imposed a WRO on Top Glove, blocking exports to the US due to forced labour concerns, including wage deductions for recruitment fees that employers are supposed to pay.³⁰ The succeeding Human Resources Minister M. Saravanan said the allegations were baseless.³¹ Top Glove claimed that the company had been covering all such fees since January 2019, but had yet to settle prior fees paid by workers to recruiting agencies in sending countries. Those recruitment

²⁸ Hannah Ellis-Petersen, "NHS Rubber Gloves Made in Malaysian Factories Linked with Forced Labour", *The Guardian*, 9 December 2018, <https://www.theguardian.com/global-development/2018/dec/09/nhs-rubber-gloves-made-in-malaysian-factories-accused-of-forced-labour>

²⁹ Iskandar Shah Mohamed, "No Evidence of Worker Exploitation in Top Glove, Says HR Ministry", *New Straits Times*, 10 December 2018, <https://www.nst.com.my/news/nation/2018/12/439300/no-evidence-worker-exploitation-top-glove-says-hr-ministry>

³⁰ Liz Lee, "Amid Virus Crisis, U.S. Bars Imports of Malaysia's Top Glove over Labour Issues", Reuters, 16 July 2020, <https://www.reuters.com/article/us-top-glove-usa/amid-virus-crisis-us-bars-imports-of-malaysias-top-glove-over-labor-issues-idUSKCN24H0K2>

³¹ Bernama, "Forced Labour Claims against Top Glove Baseless: Saravanan", *Sun Daily*, 21 July 2020, <https://www.thesundaily.my/local/forced-labour-claims-against-top-glove-baseless-saravanan-KX3011792>

fees, which still violated the zero-fee policy and were reportedly audited at RM166 million³²—a minuscule fraction of its average annual profit of RM4,810 million for financial years 2020–21—were reimbursed by Top Glove in August 2020.³³ The settlement demonstrates both companies’ partial compliance with zero-fee policies and the capacity to eliminate recruitment fee charges to workers.

The company was cast in a negative light again due to COVID-19 outbreaks, in November 2020 and January 2021, which exposed the cramped and inhospitable conditions at its workers’ dormitories. Top Glove evidently acted in response to the CBP’s assessment, resulting in the lifting of the WRO on Top Glove in September 2021. However, besides financial losses, the company also suffered reputational damage and removal from the Malaysian Stock Exchange’s ESG-focused stock indices—FTSE4Good Bursa Malaysia Index, ASEAN 5 and Emerging Markets Index—in June 2021.³⁴

Palm oil giant FGV Holdings Berhad (FGVHB) has been embroiled in forced labour allegations for some years, momentarily triggered by a *Wall Street Journal* article of June 2015 citing migrant workers’ claims of harsh work and living conditions.³⁵ FGVHB denied the allegations but the Roundtable on Sustainable Palm Oil (RSPO) Complaints Panel,

³² Tan Siew Mung, “Top Glove to Pay RM166m to Migrant Workers, US Media Says”, *Edge Markets*, 6 October 2020, <https://www.theedgemarkets.com/article/top-glove-pay-us40m-migrant-workers-us-media-says>; Bernama, “Top Glove’s Net Profit Surges 346% to RM7.87bil”, *Free Malaysia Today*, 17 September 2021, <https://www.freemalaysiatoday.com/category/nation/2021/09/17/top-gloves-net-profit-surges-346-to-rm7-87bil/>

³³ *Malaysiakini*, “Top Glove Begins to Reimburse Migrant Worker Recruitment Fees”, 10 August 2020, <https://www.malaysiakini.com/news/538130>

³⁴ Uma Devi, “Top Glove Ousted from Three ESG-Related Indices in Latest Review”, *Business Times*, 15 June 2021, <https://www.businesstimes.com.sg/companies-markets/top-glove-ousted-from-three-esg-related-indices-in-latest-review>

³⁵ Syed Zain Al-Mahmood, “Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations”, *Wall Street Journal*, 26 June 2015, <https://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>

referencing that article, initiated an inquiry.³⁶ The panel’s findings were conveyed in a November 2018 letter to FGVHB which detailed the reasons for suspending the Seriting mill and its supply bases. Among the main factors behind this decision were various non-compliances perpetrated by the labour contractor (RSPO Complaints Panel 2018). In June 2019, a petition was filed with the US Customs and Border Protection against FGVHB, alleging forced labour, and specifying the use of child labour (Grant & Eisenhofer ESG Institute 2019). Interestingly, this transpired despite FGVHB having signed an MoU with Malaysia’s Human Rights Commission (SUHAKAM) for 2017–19.³⁷ FGVHB was eventually served a WRO detention by the CBP. The WRO was justified more broadly on a range of forced labour concerns, including the potential use of child labour.³⁸ However, reactions focused intensively on the latter. The Malaysian Palm Oil Certification Council even issued a statement explaining that children accompanying parents to the oil palm fields and helping with fruit picking is a “cultural norm”.³⁹ Andika and Ramli’s (2022) research underscores the importance of a nuanced approach to

³⁶ Bernama, “FGV Denies WSJ Allegations of Human Rights Abuses”, *New Straits Times*, 27 July 2015, <https://www.nst.com.my/news/2015/09/fgv-denies-wsj-allegations-human-right-abuses>

³⁷ “FGV, FELDA and SUHAKAM Collaborate to Promote Respect and Compliance for Human Rights in Business Operations”, FGV Holdings Press Release, 30 March 2017, https://www.fgvholdings.com/press_release/fgv-felda-and-suhakam-collaborate-to-promote-respect-and-compliance-for-human-rights-in-business-operations/?pagen=1

³⁸ U.S. Customs and Border Protection, “CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia”, 30 September 2020, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-palm-oil-produced-forced-labor-malaysia>

³⁹ The MPOC CEO maintained that it is a “cultural norm in the rural Asian and Malaysian communities, for children to accompany their parents or guardians at work in the agricultural sector during off-school hours for social safety reasons, especially if both parents work at the same time and place. In this circumstance, they may wish to help their parents to pick some loose fruits. This shall not be misconstrued as forced or child labour” (Chew 2020).

child labour rather than narrow and rigid stances. Meanwhile, plantation companies' non-compliances are broader in scope and have adversely impacted on the market share for FGVHB, as well as Sime Darby which was also issued a WRO.⁴⁰

Since 2018, Malaysia has been in a season of burgeoning migrant labour legislation and policy development, as discussed earlier. Efforts at combatting forced labour culminated in the launch of the National Action Plan on Forced Labour in November 2021 (Malaysia 2021). The NAPFL, a product of tripartite deliberations, with active engagement and guidance from the ILO, provides “a framework for the national efforts to eliminate forced labour in Malaysia” based on an internationally established 4Ps strategy: prevention of forced labour, protection of victims, prosecution, and partnership (ILO 2020b). Four strategic goals are set out, for improvements and reinforcements to: (1) knowledge base, awareness and understanding; (2) legal compliance and enforcement; (3) migration management, including recruitment; (4) remedy, support and protection for forced labour victims. The policymaking process involved a December 2018 – August 2019 background study, which found “limited data and evidence on forced labour in Malaysia” and noted that “most of the publicly available evidence is investigative journalism and sector-specific”. Even in palm oil, arguably the most researched sector, the “full extent of forced labour is not known” but “significant steps toward eradicating forced labour” had been taken at the national level (Malaysia 2021). Verified migrant cases, as supplementary data, could have reinforced the imperative for the NAPFL and give recognition to the lived experiences of migrant workers subjected to forced labour.

Nonetheless, the promulgation of the NAPFL acknowledges both the entrenched and complex problems and the imperative of a comprehensive and integrated roadmap. The recommendations of the ICFWM would have been valuable but its report was not officially

⁴⁰ Mei Mei Chu, “Exclusive: Buyers Shun Major Malaysian Palm Oil Producers after Forced Labour Allegations”, Reuters, 8 February 2021, <https://www.reuters.com/article/us-malaysia-palmoil-exclusive-idUSKBN2A80DJ>

unsealed. Nonetheless, many stakeholders in the ICFWM’s process provided inputs to the NAPFL, which also commissioned situation and gap analyses that highlighted numerous factors perpetuating forced labour. Among the salient structural issues are: asymmetric power in the permit renewal process; lack of worker collective representation or grievance mechanisms which place employees in a vulnerable state, and the ; prevalence of undocumented labour. The appraisal also underscored inadequacies in the labour inspectorate and the importance of striving for zero-fee recruitment.

The NAPFL sets a ten-year timeline, with the current plan constituting the first five years, 2021–25. It also established a NAPFL steering committee based at the Ministry of Human Resources with the representation of MAPO, employer and professional organizations, unions, and civil society, and a timeline for milestones to be achieved, including the Forced Labour Protocol ratified in 2022 and recommendation for the Abolition of Forced Labour Convention, which Malaysia denounced in 1990, to be reratified. The NAPFL furnishes detailed targets and milestones, with an assignment of responsibilities and jurisdictions, as well as the demarcation of the intersections with the anti-trafficking in persons action plan (NAPTIP 3.0).

KEYS TO ENDING FORCED LABOUR⁴¹

Malaysia’s intentions are clear: to eliminate forced labour in all forms by 2030. Alongside that ultimate goal also resides others, notably the wish to be listed in Tier 1 or 2 in the US Trafficking in Persons Report.⁴²

Developments in 2022 encapsulate the potentialities and sober realities, with an assemblage of positive formal steps but also some

⁴¹ The authors gratefully acknowledge information and insight received through correspondence with ILO Malaysia for this section.

⁴² Audrey Dermawan, “Malaysia Hopes to Improve to Tier 2 or 1 in Annual Human Trafficking Report”, *New Straits Times*, 1 March 2022, <https://www.nst.com.my/news/nation/2022/03/775835/malaysia-hopes-improve-tier-2-or-1-annual-human-trafficking-report>

partial measures and reversion to ingrained habits. On 17 March 2022, Peninsular Malaysia launched the “Ops Banteras” (Operation Eradicate) round of workplace raids, ostensibly to root out forced labour and human trafficking. This follows similar exercises in the past declared as crackdowns on undocumented workers.⁴³ Despite the new, broader professed aim, the redeployment of punitive methods that failed to address the systemic roots in the past, raises concerns about whether Malaysia has mustered adequate resources and political will to truly eradicate forced labour practices. Ongoing corruption investigations—including the case of migration services behemoth Bestinet and trafficking syndicates implicated in labour recalibration project—issue a grim notice that fraud and profiteering are deeply rooted, and can persistently undermine progressive reforms.⁴⁴

Legislative progress deserves recognition—with scrutiny of remaining gaps and inadequacies. Malaysia amended ATIPSOM in December 2021 by broadening the scope of the law and increasing punishments. On 21 March 2022, Minister of Human Resources M. Saravanan, on a visit to the International Labour Organization in Geneva, ratified ILO Protocol 29 on Forced Labour, which outlines

⁴³ Among the precedents in recent years are Ops Mega of 2017, and workplace raids in 2018 and 2021 (See Stacey Yuen, “Hundreds of Thousands Could Be Arrested in Crackdown on Malaysia’s Undocumented Migrants”, *CNBC*, 21 July 2017, <https://www.cnbc.com/2017/07/21/hundreds-of-thousands-could-be-arrested-in-crackdown-on-malaysias-undocumented-migrants.html>; NSTP Team, “No More Second Chances for Illegal Immigrants and Their Bosses Come July 1”, *New Straits Times*, 1 June 2018, <https://www.nst.com.my/news/nation/2018/06/375479/no-more-second-chances-illegal-immigrants-and-their-bosses-come-july-1>; Noah Lee and Nisha David, “Malaysia Repatriates 88,000 Undocumented Migrants under Amnesty Programs”, *Benar News*, 2 August 2021, <https://www.benarnews.org/english/news/malaysian/workers-repatriated-08022021161921.html>

⁴⁴ Chester Tay, “Bestinet Office Raided by MACC—Report”, *Edge Markets*, 6 July 2022, <https://www.theedgemarkets.com/article/bestinet-office-raided-macc—report>; Bernama, “RTK Syndicate Raking in RM2 Million Busted”, 10 June 2022, https://www.bernama.com/en/crime_courts/news.php?id=2089833

principles and procedures to effect the elimination of forced labour (Malaysia acceded to ILO Convention on Forced Labour in 1957).⁴⁵ That same day in Kuala Lumpur, the Dewan Rakyat passed a set of amendments to the Employment Act 1955, including a definition of forced labour and incorporation of some regulatory and punitive measures. These are positive steps. However, a closer look at the legislation finds forced labour to be narrowly defined.

NAPFL is a detailed plan that is emphatically agreeable in principle, and perhaps can only be faulted for overambition. Of course, Malaysia's will and capacity to deliver on the goal of ending forced labour by 2030 warrants a line-by-line analysis of each target, but it will serve this article better to discuss broader systemic issues that will be pivotal to Malaysia's success.

1. Reset the Migrant Recruitment and Employment System

Malaysia has recognized the centrality of the recruitment and employment processes to work migration, and the need for system reform in order to weed out forced labour practices, particularly those pertaining to debt bondage, withholding of wages, deception, and abuse of vulnerability. The overarching goal of reducing recruitment fees coalesces with the problem of the high price and heavy debt that place migrants in exploitable conditions from the onset. Minimizing the overall recruitment costs is paramount for enforcing the employer's obligation to pay all fees and achieving the moral imperative of zero fees charged to workers. High fees induce employers to foist the burden onto workers and elude detection by authorities.

On the employment front, numerous changes and enhancements are needed to protect workers. Malaysia must proceed with resolve and

⁴⁵ ILO, "Malaysia Ratifies the Protocol of 2014 to the Forced Labour Convention", 21 March 2022, https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_840054/lang--en/index.htm

efficacy in eliminating outsourcing and enforcing direct employment, including in agriculture and plantations, which operates on a perennial basis. Loopholes must be closed that have allowed for outsourcing arrangements and corrupt dealings to surface in the registration of previously undocumented workers under amnesty and rehiring programmes (Verité 2016). Sectors that require workers to be mobile across different work sites, and flexible to accommodate variable work schedules such as in construction and some service industries, may be permitted different employment arrangements, but these must be accountable to the same standards of worker protection. Malaysia needs to also break the cycles of undocumented labour build-up followed by crackdowns and mass detentions that have been repeated every few years.

Other crucial aspects of migrant worker recruitment and employment that affect their vulnerability and the vested interests of a labour supply industry concern the practical prohibition of changing employers and the widespread privatization of immigration services. The question of changing employers is intertwined with the problem of high fees. Employers, having incurred those expenses, will be unwilling to release workers directly under their care even when the employment relationship has soured, or will be inclined to use outsourced labour to avert fee payments from the onset. In light of the recurrence of rehiring workers on special programmes during crisis times or when the number of undocumented workers overflows, it is arguably more sensible and beneficial to regularize the practice of rehiring and raise workplace mobility in general—with suitable limits on sectors or skills. Malaysia's privatized services demand a thorough rethink on which, if any, operations are justified or if the public sector and foreign missions should be consolidated. These developments have proceeded hand-in-hand with digitalization, which can yield benefits in terms of circumventing middlemen and time and cost savings compared to previous paperwork and physical application processes. Various privatized and outsourced services amount to duplication of official functions with no value added, and players in the system have been continuously beset with allegations of corruption. The campaign against forced labour will progress, or stall, in tandem with the clean-up of the labour migration system.

The problem demands cross-border solutions. MoUs are primarily a framework for compliance that are not legally binding.⁴⁶ Nonetheless, they have become established as key mechanisms for managing labour migration. Mindful of its limitations, the need remains for the scope of MoUs to be broadened and referenced to domestic laws, and for consistency and transparency—especially in Malaysia, with its various agreements vis-à-vis labour source countries. The costs of migration are often deducted from wages upon arrival in Malaysia, but are mainly from informal borrowings in workers’ home countries (ILO-ROAP 2020). Zero worker fees emphatically require the collaboration of the sending country.

Discrepancies across MoUs also introduce problematic inconsistencies and reflect poorly on Malaysia as a labour-receiving country and a more advanced economy. The 2018 MoU with Nepal is a case in point. Emerging out of a groundswell of discontent toward high worker debt and traumatic experiences in Malaysia, this MoU stipulates that the government of Malaysia undertakes to protect Nepali workers from “all forms of harassment, abuse and forced labour” and even to provide a special pass for Nepali workers who have filed complaints to remain in Malaysia until settlement of the labour dispute. The MoU also permits changing employers in the event of business closure, or worker exploitation or abuse (Nepal-Malaysia 2018). There is abundant reason for this precedent to be applied across all MoUs. At the same time, the MoU with Bangladesh allegedly allows deductions for fees paid in Bangladesh, and this has been delayed due to backlash on the Malaysian government’s decision to appoint only twenty-five Bangladesh

⁴⁶ The ILO articulates a circumspect position with regard to MoUs: “Most countries of destination prefer MOUs, probably because as non-binding agreements they are easier to negotiate and implement—and to modify according to changing economic and labour market conditions. Countries may sign such agreements for political reasons, to reflect friendly relations or to reinforce cooperation in managing irregular migration.” (https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/WCMS_161105/lang--en/index.htm).

recruitment agencies.⁴⁷ MoU terms have been disclosed selectively and only after public outcry. The generally secretive nature of the MoU process precludes deeper scrutiny and constructive participation of civil society.

2. *Decisive Shift to a “High Road” Strategy*

The persistent problem of forced labour is enmeshed with Malaysia’s inability to graduate out of low-wage, labour-intensive production and to move towards high-skilled, high-wage and more capital-intensive modes that also accord with decent work standards. A decisive shift to a “high road” strategy in Malaysia’s worker migration system, including enhancements in labour policy and labour market institutions more generally, accords with forced labour eradication. Sustained and holistic consolidation of labour standards and workers’ rights can contribute to eliminating, in particular, the forced labour indicators of excessive overtime, abusive working and living conditions, restriction of movement, and isolation. Employers’ mindset also plays a part in perpetuating low-road approaches. Under-investment in worker development and well-being persists when migrant workers are viewed as a production cost and temporary input—partly induced by the ten-year limit (plus three-year extension) on the employment pass.

Malaysia’s economy has substantially thrived by taking a low road of extracting labour and providing poor working and living conditions, while controlling worker mobility. While recent legislative and policy developments are augmenting migrant workers’ access to services, various protections are still lacking. For instance, while the Employment Act amendment of 2021 included a requirement that any employer guilty of human trafficking or forced labour offences is prohibited from hiring migrant workers, the scope of forced labour is distinctly narrow—

⁴⁷ G. Vinod, “Recruitment Fee: Saravanan’s Statement Very Worrying, Andy Hall Says”, *Focus Malaysia*, 5 June 2022, <https://focusmalaysia.my/recruitment-fee-saravanans-statement-very-worrying-andy-hall-says/>

notably in the exclusion of excessive overtime. A chequered picture—of new packages of social protections provided but some distinctly withheld—emerges in the form of Social Security Organization (SOCSCO) membership that has recently extended hitherto inaccessible workplace injury benefits to migrant workers, but the invalidity scheme remains inaccessible. Importantly, participation in the Employees Provident Fund (compulsory for Malaysian employees) is entirely at the employers’ discretion.⁴⁸ This considerable cost saving for hiring migrant workers, which perpetuates low-cost strategies in general, and is inimical to the dual national objectives of reducing the amount and increasing skill levels of migrant labour.

Efforts to modify the compulsory migrant worker levy to discourage mass recruitment of low-skilled workers, including the multi-tiered structure based on employer size as proposed in Budget 2023, should also be continued.⁴⁹ Productive utilization of the levy—which annually collects about RM1.8 billion at the current rates—such as, by designating its proceeds for advancing skills and facilitating this high-road shift, also warrants consideration. Such reforms primarily address worker productivity, but in facilitating a shift to higher skills and quality jobs, they can contribute to mitigating forced labour.

⁴⁸ Since 2019, it is mandatory for migrant workers to be provided employment injury coverage under SOCSCO, but not the invalidity scheme that is available to Malaysian workers. Injuries sustained at migrant workers’ places of accommodation are not covered by the employment injury scheme, although the accommodation is part of the work-related agreement between worker and employer (FMT Reporters, “Give Equal Protection to Migrant Workers, Socso Urged”, *Free Malaysia Today*, 29 October 2021, <https://www.freemalaysiatoday.com/category/nation/2021/10/29/give-equal-protection-to-migrant-workers-socso-urged/>)

⁴⁹ The current structure imposes levies that vary by region and sector: Peninsular Malaysia (RM1,850 for manufacturing, construction, services; RM640 for agriculture; RM410–RM590 for domestic workers); Sabah and Sarawak (RM1,010 for manufacturing and construction; RM1,490 for services; RM590 for agriculture; RM410–RM590 for domestic workers).

Other policy decisions have also contributed to migrant workers' subsidiary status. While not necessarily amounting to forced labour, these practices arguably perpetrate discriminatory attitudes and systemic exclusion. For instance, access to healthcare also starkly differentiates between citizens and non-citizens. In January 2016, the government fully removed healthcare subsidies for migrant workers.⁵⁰ High costs may push migrant workers into debt, or cause them to forego medical treatment.⁵¹

In tandem with the NAPFL, Malaysia is also developing the National Action Plan on Business and Human Rights (NAPBHR) and the National Action Plan on Elimination of Child Labour (NAPCL). The declared intention to join other countries globally in formulating these roadmaps is encouraging, but greater political resolve is needed to quicken their progress. The NAPBHR is proposed by the UN Working Group on Business and Human Rights for all UN member states, based on the UN Guiding Principles on Business and Human Rights (UNGPs). The National Implementation Plan on the Global Compact for Safe, Orderly and Regular Migration (GCM) adopted by the UN General Assembly on 19 December 2018, includes a reporting platform called the International Migration Review Forum (IMRF) where states are strongly encouraged to pledge concrete actions.⁵² This initiative is eminently relevant to Malaysia, which lacks a national GCM implementation plan.

⁵⁰ Tharanya Arumugam and Beatrice Nita Jay, "No Health Subsidies for Foreigners Since Jan 1", *New Straits Times*, 15 January 2016, <https://www.nst.com.my/news/2016/01/122294/no-health-subsidies-foreigners-jan-1-video>

⁵¹ According to the Ministry of Health's 2020 report, non-Malaysians contributed 45.34 per cent or RM211,021,591.26 to collected fees. Nevertheless, as for outstanding fees, non-Malaysians accumulated a staggering 80.20 per cent or RM43,292,457.24 (https://www.moh.gov.my/moh/resources/Penerbitan/Penerbitan%20Utama/ANNUAL%20REPORT/Annual_Report_MOH_2020.pdf).

⁵² UN Network on Migration, "UN Secretary-General Launches Report on the Implementation of the Global Compact for Safe, Orderly and Regular Migration", 17 February 2022, <https://www.iom.int/news/un-secretary-general-launches-report-implementation-global-compact-safe-orderly-and-regular-migration>

3. Effective and Transparent Implementation in Domestic and International Contexts

Any policy must be implemented with integrity and efficacy, but these points bear emphasis on the question of Malaysia's labour migration system. A few specific implications warrant a discussion, in three contexts: domestic, bilateral, and monitoring bodies.

Domestically, a number of measures, addressing key problems raised earlier, crucially impact on Malaysia's policy execution. Jurisdictional overlaps compounded by territorial contest between MOHR and MOHA have perpetrated the high cost and high debt system that entrenches undocumented labour and forced labour conditions. Malaysia's commitment to decent work and initiatives to combat forced labour is often expressed by the Ministry of MOHR—but concerted, interministerial effort is also needed, especially with MOHA. The ongoing “competition” between the two ministries has caused unnecessary bureaucratic hurdles and redundancy and slowed down genuine reforms in the recruitment and management of migrant workers. With many SOPs of both ministries kept confidential and away from the public eye, it was through the investigation of the Public Accounts Committee of Malaysia's Parliament that irregularities in the migrant worker quotas came to light.

The shift of authority from MOHA to MOHR, which seemed to be gaining traction until a recent reversal, must run to completion. Immigration matters will, of course, continue to be MOHA's jurisdiction, but the handling of migrant victims of trafficking and abuse must be steered by humane considerations. Currently, trafficking and undocumented worker cases detected through MOHR's investigations or enforcement raids and checks by various agencies, are almost straightaway conveyed to the immigration department, and effectively treated as a security matter with insufficient human rights guidance. There is a clear need to expand roles and resources for providing care for victims of forced labour and enabling grievances to be filed against their perpetrators, with a robust public defender programme. Within MOHR, operational and policy matters weigh heavily. The repeatedly raised problem of under-resourced enforcement agencies, especially the labour inspectorate, must be addressed. Beyond quantity, the competency and proactiveness of labour inspectors also matter.

The lack of prosecution in labour violation cases, especially human trafficking, has been a blot on Malaysia's record. There may be a glimmer of progress. MAPO's inaugural National Report of 2020/21 revealed that, out of a total 1,789 cases, 209 were charged and a mere 48 convicted. The latest report shows a marked increase, albeit from a low bar, to 157 charges and 113 convictions for the 2022 reporting period (MAPO 2021, 2022). At the same time, the US Department of State's (2022) discussion of Malaysia's retention in Tier 3 pointed to the inadequacy of enforcement personnel. Malaysia's government reported that it employed 44 labour inspectors focused on human trafficking for the entire country—a decrease from the 94 inspectors employed in the previous reporting period; the government assigned 30 of these inspectors to peninsular Malaysia, seven to Sarawak, and seven to Sabah where a large number of Malaysia's palm oil plantations were located. Labour disputes involving almost 18,000 workers resulted in employers being fined a derisory RM1.5 million for violating labour law. There is clearly enormous room for improvement in monitoring compliance and punishing offenders.

Systemic corruption, already highlighted at various junctures of this article, merits reiteration here, both as a predominantly domestic problem and also one that receives attention internationally. Corruption has featured in forced labour and human rights monitoring, notably in the US' Malaysian Country Report 2020 on Human Rights Practices (US Department of State 2021b).

The second context of implementation challenges pertains to engagements with labour source countries. Malaysia must forge on with greater consistency and credibility. This point flagged earlier must be reiterated as an implementation challenge. A gravitation to G2G (government-to-government) arrangements starting around 2012 was premised on cutting out middlemen and reducing costs, and increasing the onus on bilateral agreements to foster fairness and decency in labour migration. However, one of the flagships—between Bangladesh and Malaysia—has been roundly exposed for flaws and abuses. With low take-up in the G2G, reportedly because of collusion of recruitment agencies and brokers, the “G2G Plus” recruitment system emerged in 2016, which eventually became mired in controversy implicating both

state and non-state actors profiteering from the recruitment-related fees. One report even exposed the exorbitant recruitment fee paid by Bangladeshi workers and how that amount was distributed amongst various actors.⁵³

More recently, the Ministry of Human Resources of Malaysia has been embroiled in controversy related to signing an MoU with counterpart Bangladesh's Expatriates and Overseas Welfare Minister Imran Ahmed on 19 December 2021. The MoU which expires in December 2026 limits the number of operators to 25 labour agents and 250 sub-agents to conduct the recruitment. This decision, together with an earlier limit of 10 agents, has been widely criticized in both countries, with vastly experienced NGOs like Tenaganita questioning whether vested interests are involved.⁵⁴ Such a limit on the recruitment agents permitted to hire migrant workers precludes robust competition, potentially leading to the exclusion of ethical recruiters from the process. Recruitment agency associations from both Bangladesh and Malaysia stated that they are "totally against any process of syndication, monopoly, collusion involving selected recruitment agencies from any country".⁵⁵ The controversies accompanying this particular MoU undermine confidence

⁵³ Porimol Palma, "Hiring of Foreign Workers: Malaysia Wants to Revert to G2G", *Daily Star*, 31 July 2018, <https://www.thedailystar.net/backpage/hiring-foreign-workers-malaysia-wants-revert-g2g-1613779>; *NST Online*, "Daily Exposes How Previous Administration Created 'Monopoly' in Recruitment of Bangladeshi Workers", *New Straits Times*, 1 November 2018, <https://www.nst.com.my/news/nation/2018/11/427302/daily-exposes-how-previous-administration-created-monopoly-recruitment>

⁵⁴ Joseph Paul Maliamauv, "M'sia-Bangladesh MOU Fails to Address Many Labour Issues", *Malaysiakini*, 6 January 2022, <https://www.malaysiakini.com/columns/605783>; Porimol Palma, "Recruitment in Malaysia: 'Monopoly' Was Mostly KL's Doing", *Daily Star*, 1 November 2018, <https://www.thedailystar.net/frontpage/news/recruitment-malaysia-monopoly-was-mostly-kl-s-doing-1654663>

⁵⁵ Alyaa Alhadjri, "Malaysian Labour Agencies Back Bangladesh's 'End Syndicates' Call", *Malaysiakini*, 11 February 2022, <https://www.malaysiakini.com/news/610361>

in its integrity and its capacity to regulate labour flows and safeguard workers' well-being.

Third, Malaysia needs to engage with external monitoring bodies in consistent and constructive ways. Real and sustained change must primarily be internally driven, but external scrutiny has undoubtedly given Malaysia added impetus to change. Such attention will continue. The US government WROs and TIP report have induced Malaysia's response to repair the reputational damage, while obligations to institutionalize protections against forced labour initiated by the Trans-Pacific Partnership have spurred ratification of the ILO Forced Labour Protocol, with various ramifications. It should be noted that the WRO decisions and the Tier 3 TIP evaluation have been contested for not being adequately rigorous and transparent about the grounds for their report on Malaysia.⁵⁶ On 12 July 2021, the European Union released a "Guidance" on "Due Diligence for EU Businesses to Address the Risk of Forced Labour in Their Operations and Supply Chains" which has a fairly comprehensive framework for supply chains to adopt operationally, even if not a legally binding statute.⁵⁷ Malaysia has raised its concerns about the veracity, and perhaps simplistic and dogmatic auditing processes. Malaysia's efforts in engaging with the US' CBP and the EU should continue, toward establishing common ground.⁵⁸ At the same time, the fact that governments or corporations of other countries, specifically

⁵⁶ Dawn Chan, "NGO Baffled Why Malaysia Ranked Tier 3 in US Human Trafficking Report", *New Straits Times*, 3 August 2022, <https://www.nst.com.my/news/nation/2022/08/819013/ngo-baffled-why-malaysia-ranked-tier-3-us-human-trafficking-report>

⁵⁷ "Guidance on Due Diligence for EU Businesses to Address the Risk of Forced Labour and Their Operations and Supply Chains", 12 July 2021, https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159709.pdf. Germany has gone one step further in mandating due diligence responsibilities throughout the supply chain, as part of its National Action Plan on Business and Human Rights (<https://www.business-humanrights.org/en/latest-news/german-due-diligence-law/>).

⁵⁸ Veena Babulal, "Malaysia to Meet CPB and EU by July to Clarify Forced Labour Assumptions", *New Straits Times*, 22 April 2022, <https://www.nst.com.my/business/2022/04/790939/malaysia-meet-cpb-and-eu-july-clarify-forced-labour-assumptions>

Canada, Norway and New Zealand, have also taken action against Malaysian companies, underscores the importance of a systematic and not ad hoc response (Table 2).

Malaysian stakeholders in labour migration should also engage more constructively in the adoption of whistle-blower channels. The need to monitor forced labour has prompted the development of digital solutions among various service providers to provide independent complaint mechanisms for the various supply chains. This is to ensure that migrant workers have a safe space in which to log reports and seek effective solutions. Among the organizations that have developed apps or web portals—which tend to be culturally attuned to migrant workers’ situations—include Elevate, Ethical Trade Initiative, Issara Institute, Responsible Business Alliance, and Migrant Recruitment Advisor-ITUC. These instruments can empower workers and monitor corporations and employers, but it is crucial for labour grievances to be reported directly to government authorities, such as through Working for Workers, MOHR’s app for Malaysian and non-citizen employees launched in May 2021. The efficacy of the app remains to be seen, especially for vulnerable migrant workers, given its lack of cross-cultural user-friendly features.

Audit systems remain the main source of independent assessments of labour practices, but these also have specific scopes and limitations that call for informed and vigilant engagement. Traditional social auditors, although generally rigorous in their work, are also susceptible to deception by employers and labour agents who can conceal forced labour evidence. This places the onus on other stakeholders to reference the reports accurately. For instance, Top Glove responded to forced labour allegations in 2020 by claiming that it had been conferred an A grade by the auditor Amfori. However, Amfori issued a statement to the converse, downgrading a Top Glove facility from A to D, “due to a lack of supporting evidence for the conclusions indicated in the early audit report”.⁵⁹ The fiduciary duty of publicly listed companies to disclose

⁵⁹ Tan Siew Mung, “Top Glove Downgraded from A to D in Social Compliance Audit—Report”, *Edge Markets*, 2 November 2020, <https://www.theedgemarkets.com/article/top-glove-downgraded-d-social-compliance-audit-%E2%80%94report>

forced labour findings of audit reports to their shareholders is a further area in which procedures and obligations need to be clarified.

4. Workers' Voice, Employers' Compliance and Sustained Tripartite Collaboration

Workers' interests and rights are crucially protected by their own collective organization and advocacy. Migrant workers face structural impediments to union participation. Employees who do not have a direct relationship with the employer or are subcontracted workers are effectively precluded from forming or joining a union, and may be excluded from collective agreement benefits enjoyed by directly employed co-workers. Migrant workers who do join unions are prohibited from holding office unless they get permission from the government.

Union membership, already at a dismal 3 per cent in the private sector among Malaysian workers, is even direr for non-citizens (Lee 2017). In 2018, out of 930,734 union members in 751 trade unions, a minuscule 20,080 were non-Malaysians, while only 14 unions, or 1.9 per cent of the total, have non-Malaysian members. In sum, only 1.1 per cent of migrant work permit holders are unionized (Department of Trade Union Affairs 2021). Structural obstacles to migrant worker union membership explain a significant portion of this exceedingly low presence, but Malaysia's trade unions have also, on their part, been tepid towards migrant worker inclusion. We should note that membership allows representation in collective bargaining, but the benefits of collective agreements are constitutionally extended to non-union workers. In July 2020, the Industrial Court of Malaysia ruled in favour of migrant workers of tyre manufacturer Goodyear Malaysia Berhad that the "complainants (migrant workers) are entitled to the same rights, they should not be discriminated and they are entitled to receive the benefits that are contained in the collective agreement".⁶⁰ This was despite the migrant workers not being members of the unions.

⁶⁰ Case No. 3/1-1119/19, Award No. 944 of 2020, <http://www.mp.gov.my/eicpp/MainServlet?action=cmgtView&caseId=31750>

Malaysia's employers play vital roles, beginning with taking greater ownership of their obligations and responsibilities. Repeatedly, it has taken embarrassing and damning exposés to jolt Malaysia into decisive action. Reports of poor worker living conditions compelled Act 446 amendments, which were supposed to take effect in September 2020 and were applauded as a means of redeeming Malaysia's reputation.⁶¹ However, by 31 October 2020, the government had received applications for Certificate of Accommodation for only 9 per cent of the 1.6 million work permits.⁶² Employers were given a six-month grace period for complying, but this had to be extended for a further six months.⁶³ Reports of deplorable living conditions keep recurring.⁶⁴ Economic conditions since 2020 have been challenging, but should also serve as a wake-up call for Malaysia.⁶⁵

The efficacy of Malaysia's effort to eliminate forced labour will also hinge on tripartite cooperation in the decade ahead. The NAPFL culminated from substantive tripartite deliberations, with workers,

⁶¹ Bernama, "Law on Foreign Workers' Housing Can Redeem Malaysia's Image, Says Saravanan", *The Star*, 9 March 2021, <https://www.thestar.com.my/news/nation/2021/03/09/law-on-foreign-workers039-housing-can-redeem-malaysia039s-image-says-saravanan>

⁶² *The Star*, "Accommodation for More Than 90% of Foreign Workers Not in Compliance with Housing Act", 3 December 2020, <https://www.thestar.com.my/news/nation/2020/12/03/accommodation-for-more-than-90-of-foreign-workers-not-in-compliance-with-housing-act>;

⁶³ *The Star*, "Bosses to Be Given More Time to Fulfil Housing Condition", 23 April 2021, <https://www.thestar.com.my/news/nation/2021/04/23/bosses-to-be-given-more-time-to-fulfil-housing-condition>

⁶⁴ *The Star*, "Dirty, Repulsive, Congested: Foreign Workers' Hostels Found in Deplorable Conditions", 28 April 2022, <https://www.thestar.com.my/news/nation/2022/04/28/dirty-repulsive-congested-foreign-workers039-hostels-found-in-deplorable-conditions>

⁶⁵ Peter Zsombor, "Malaysia's COVID Woes Spotlight 'Terrible' Migrant Worker Housing", *VOA News*, 6 December 2020, https://www.voanews.com/a/east-asia-pacific_malaysias-covid-woes-spotlight-terrible-migrant-worker-housing/6199239.html

employers and government, as well as civil society, actively involved. Sustaining momentum will ride on continual enhancement and integration of labour migration policy, and an all-of-society mode of implementation.⁶⁶

LOFTY ASPIRATIONS, STEEP HURDLES

The just-appointed Anwar Ibrahim administration inherits a complex problem and a decade-long roadmap for ending forced labour by 2030. If this seems lofty, that is only because Malaysia's labour system has for decades been mired in a low-road approach that has permitted forced labour practices to become entrenched. After many years of policy discourse, the fundamental problems and solutions are well understood. This aspiration also aligns with national development objectives of reduced reliance on low-skilled, low-wage migrant labour, and transformation to more skilled, higher-wage earning migrant labour, which go hand in hand with better labour standards.

With such convergence of policy focus and commitment, there are grounds to believe that Malaysia can make significant progress towards its goal of eliminating forced labour within a decade. However, reality demands a more tempered and sober expectation, and continual vigilance. Steep and numerous hurdles remain. Malaysia's achievement will depend on how well the country overcomes them.

⁶⁶ Since 2017, the Migrant Workers Right to Redress Coalition has been proposing a Comprehensive National Policy on Labour Migration for Malaysia which would integrate laws, policies and regulations related to migrant workers, and reduce redundancies that have negated administrative efficacy (<https://partisosialis.org/right-to-redress-for-migrant-workers/>).

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ISSN 0219-3213

TRS2/23s

ISBN 978-981-5104-05-9



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