

Research Brief

Migrant Worker Recruitment Costs

Malaysia

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Recruitment fees in **Malaysia** vary according to many factors. The components of recruitment fees, in addition to whether the worker arrives through formal or informal channels, the involvement of agents via private employment agencies, whether the employer pays the fees or passes the fees to the worker and when the fees should be paid are among the areas blurred by lack of stringent regulations and enforcement in Malaysia. At present, employers who hire fewer than 50 workers are required to recruit their workers through outsourcing agencies. The higher fees charged by the agents have pushed the Malaysian government to consider direct recruitment plans or what are referred to as Government to Government (G2G) plans. This scheme has allowed workers from certain source countries to be recruited directly and assisted in reducing the exorbitant placement fees.

Background

Malaysia has a population of 30.6 million and a local workforce of 14.3 million (as of end 2015).¹ There is a large foreign workforce presence, both legal and illegal (six million foreign workers, half of them working in the country illegally)², making up about 20% of the total labour force.³ Low-skilled or semi-skilled workers make up the majority of foreign workforce in permitted sectors⁴ such as agriculture, plantation, manufacturing, construction, and service, with a visible presence of Indonesian (more than 1 million by end-2014) and Bangladeshi workers in recent times.⁵ In 2015, the top five countries of origin were Indonesia, Bangladesh, Myanmar, Nepal, and India.⁶

Private Employment Agencies

The Malaysian government has attempted to regularise the arrival of foreign workers through outsourcing companies (private employment agencies), a system introduced in 2005. In 2014, there were 277 of these companies in place. At the highest, there were 400 outsourcing companies in Malaysia, according to a report by the Institute of Labour Market Information and Analysis.⁷

Malaysian employers are required to recruit their foreign workers through these outsourcing companies, and that is a must for employers who are recruiting fewer than 50 workers.⁸ The outsourcing companies' responsibilities include negotiating contracts, arranging workers' visas, paying workers and providing accommodation, food and insurance, says the Malaysian Employers Federation. This list of responsibilities indicates the activities which could possibly incur costs and constitute components of recruitment fees for those who use this route to hire their workers.

Although the responsibilities of the private employment agencies have been clearly outlined, criticism of their roles and responsibilities surfaces all the time and forces the government to design more ad-hoc

¹Foreign labour helps Malaysia: World Bank. (2015, December 19). Retrieved from <http://www.straitstimes.com/asia/foreign-labour-helps-malaysia-world-bank>.

²Ibid.

³Foreign Workers: Malaysia's 'Invisible' Workforce. (2015, February 10). Retrieved from <http://www.malaysiandigest.com/features/541277-foreign-workers-malaysia-s-invisible-workforce.html>.

⁴Recruitment terms and conditions of foreign workers. Immigration Department of Malaysia, Ministry of Home Affairs. (Last updated, 2016, September 9). Retrieved from <http://www.imi.gov.my/index.php/en/main-services/foreign-worker>.

⁵Top 10 of 2014 – Issue #7: Exploitation of Foreign Workers in Asia. (2014, December 11). Retrieved from <http://www.migrationpolicy.org/article/top-10-2014-issue-7-exploitation-foreign-workers-asia>.

⁶TRIANGLE II Quarterly Briefing Note, Malaysia. July-September 2016). Retrieved from http://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/documents/publication/wcms_531472.pdf.

⁷Immigration in Malaysia: Assessment of its Economic Effects, and a Review of the Policy and System. 2013. Institute of Labour Market Information and Analysis (ILMIA).

⁸Practical Guidelines for Employers on the Recruitment, Placement, Employment and Repatriation of Foreign Workers in Malaysia. 2014. Malaysian Employers Federation.

policies, which complicates the system further. Not only the foreign workers, but the employers and the government too fall victim to private employment agencies. The Deputy Prime Minister of Malaysia, Ahmad Zahid Hamidi, in February 2016, introduced a rehiring program. The purpose of the programme is to legalize at least 2 million illegal foreign workers, the majority of whom are from Indonesia. The agents were openly criticized for pocketing levies from the employers but failing to register their workers⁹ and hence were said to be contributing to the increase in the number of “illegal workers” in Malaysia.

Workers reportedly pay agents more than US\$1,000 to come to the country and these fees often do not include necessary costs such as visas, passports and airfares, that workers also normally bear, although legally, employers are supposed to provide for these.¹⁰ Highlighting the difference between hiring foreign workers through employment agencies and a government-to-government engagement, a government official said, “For example, when you talk about bringing an Indonesian worker, the cost can be around RM7,000¹¹ to RM8,000 but if it's a government-to-government arrangement, it should be between RM2,000 and RM3,000 only.” He added, “We have always said that agents should not be given the role to bring workers in because it is just adding to cost. They just want to make quick money.”¹²

A report outlining the findings of a survey of 77 Cambodian domestic workers by the United Nations Inter-Agency Project on Human Trafficking (UNIAP) in 2011 further illustrates the scale of fees charged by the agents and how the domestic workers have become more vulnerable.¹³ The report shows that the Cambodian domestic workers paid between US\$810 and US\$1,200 to the recruitment agencies. The agencies then charged Malaysian employers a fee which ranged between US\$1,190 and US\$1,529. The domestic workers end up working without pay between 4.5 and 12 months, to repay their employers “the debt they are said to have incurred”.

Costs for workers other than domestic workers are generally higher. In his 2014 statement to the UN Committee on the Protection of the Rights of All Migrant Workers, Jolovan Wham, the Executive Director of the Humanitarian Organisation for Migration Economics (HOME) in Singapore noted that in Malaysia, recruitment fees can be as high as US\$3,500 and wages as low as US\$300 a month, and while recruitment

⁹Malaysia to ‘rehire’ 2m illegal workers. (2016, February 6). Retrieved from <http://www.straitstimes.com/asia/se-asia/malaysia-to-rehire-2m-illegal-workers>.

¹⁰Foreign workers struggle in Malaysia. (2014, April 12). Retrieved from <http://www.aljazeera.com/video/asia-pacific/2014/04/foreign-workers-struggle-malaysia-201441241436516513.html>.

Policy Brief: Recruitment Fees and Migrants’ Rights Violations. 2015. Retrieved from <http://madenetwork.org/sites/default/files/Policy-Brief-Recruitment-Fees-Migrants-Rights-Violations.pdf>

¹¹ RM – Ringgit Malaysia, Malaysia’s currency. The exchange rate on December 1st 2016 was 4.675 RM to a US\$1.

¹²MEF welcomes trade minister’s call for direct foreign worker recruitment. (2016, February 22). Retrieved from <http://www.themalaymailonline.com/malaysia/article/mef-welcomes-trade-ministers-call-for-direct-foreign-worker-recruitment#sthash.fTsx4TYS.dpuf>.

¹³Recruitment Agencies and the employment of Cambodian domestic workers in Malaysia. 2011. United Nations Inter-Agency Project on Human Trafficking (UNIAP).

agents are guilty of such malpractices, the Malaysia government facilitates “the exploitation of these workers through weak laws, ineffective enforcement and weak cooperation with sending countries”.¹⁴ It was reported that employment agencies “are able to make a net profit of between RM3,000 (US\$738) and RM4,000 (US\$985) for each foreign worker they bring in, by charging companies between RM8,000 (US\$1969) and RM12,000 (US\$2,953) per head”.¹⁵

Private Employment Agency Act

Private employment agencies and recruitment fees in Malaysia are regulated under the Private Employment Agencies Act 1981 (No. 246).¹⁶ The agencies are expected to operate with a license issued by the Ministry of Human Resources. The Schedule of the Act also prescribes fees for services that a private employment agency can charge. Any extra fees charged would contravene the Act and agencies would be penalised (fined and/or imprisoned), depending on the exact offence.¹⁷ According to the schedule, agencies can charge not more than RM12 (US\$3) for registration fees for all categories of local employment, and placements fees of not more than 20% of the initial month’s pay for a local placement.¹⁸ In cases where the employers have already paid the agency for the services rendered, it is not legal to charge the worker the placement fees. While there is a cap (20%) on the total amount of the placement fee recruitment agencies can charge migrant workers, there is a lack of enforcement, so that many migrant workers continue to pay exorbitant amounts to get a job in Malaysia. Furthermore, the cap is on the initial month’s pay, which provides a loophole through which high pay (and hence a high placement fee) may be promised to the worker but subsequently reduced after the first month.

The weakness of the Act lies in its original goal at inception. The Act was initially developed to regulate the agencies which handled domestic employment and were responsible for sending Malaysian workers abroad. To date, the Act has not been modified to regulate the agencies responsible for recruiting and hiring foreign workers to be employed in Malaysia.

¹⁴Statement by Mr. Jolovan Wham. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. (2014, April 7). Retrieved from <http://www.ohchr.org/Documents/HRBodies/CMW/Discussions/2014/JolovanWham.pdf>.

¹⁵Huge profit for suppliers bringing in 1.5 million Bangladeshis, say trade groups. (2016, January 15). Retrieved from The Malaysian Insider. Here exchange rate used is US\$1 = RM 4.06.

¹⁶Private Employment Agencies Act, 246. (1981, incorporating all amendments up to 1 January 2006). Retrieved from <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/11246/117929/F1685702427/MYS11246.pdf>.

¹⁷Act 246, Section 14, 29, and 32.

¹⁸Act 246, Schedule.

Up until 2009, employment agencies were supposed to pay the annual levies for each migrant worker they bring in, after which the state mandated that employers pay the levies instead.¹⁹ Agencies had ensured that they incorporated this cost into what they charged to workers. It remains to be seen how the shift in responsibility for paying the annual levy from the migrant worker to the direct employer improves the circumstances of migrant workers, since there is no guarantee in the form of legislation that employers cannot deduct this levy from the worker's pay. This was recognized in the 2014 report by the Malaysian Employers Federation.²⁰

The Future

Most recently, in an effort to reduce its reliance on foreign labour²¹, Malaysia has halted the recruitment of new migrant workers, instituted a rehiring programme through which employers can legally register their illegal migrant workers, and revised the proposed levy hikes in consultation with industry players. These came into effect on 19 March 2016.²² It remains to be seen how these measures will impact the regulation of placement fees. Sabah and Sarawak, whose state governments approve migrant worker employment autonomously, are not freezing hiring.²³

Policies are incoherent as there is little coordination and transparency among relevant ministries (Home Affairs-Immigration section, Human Resources, and Labour Department): a World Bank report of December 2015 notes that "(T)here are more than 10 different ministries and departments within these ministries, directly engaged in the approval of immigrant labour.." It recommends that third-party recruitment agents who bring in migrants should be phased out and employers should be put directly in charge and made responsible.²⁴

¹⁹Recruitment terms and conditions of foreign workers. Immigration Department of Malaysia, Ministry of Home Affairs. (Last updated, 2016, September 9). Retrieved from <http://www.imi.gov.my/index.php/en/main-services/foreign-worker>.

²⁰Practical Guidelines for Employers on the Recruitment, Placement, Employment and Repatriation of Foreign Workers in Malaysia. 2014. Malaysian Employers Federation.

²¹Boon or bane? Malaysia's foreign worker dilemma. (2015, December 29). Retrieved from <http://www.channelnewsasia.com/news/business/boon-or-bane-malaysia-s/2384792.html>.

²²Registration of Undocumented Migrant Workers Start on 15 February. (2016, February 15). Network of Action for Migrants in Malaysia (NAMM).

Rehiring Programme for Illegal Workers. Retrieved from <http://rehiring.imi.gov.my/>.

Govt revises levy for foreign workers. (2016, March 19). Retrieved from <http://www.mtuc.org.my/govt-revises-levy-for-foreign-workers/>.

²³Sarawak says not freezing foreign worker hiring like Putrajaya. (2016, March 24). Retrieved from <http://www.themalaymailonline.com/malaysia/article/sarawak-says-not-freezing-foreign-worker-hiring-like-putrajaya>.

²⁴Malaysia Economic Monitor:Immigrant Labour, cited in Migrant labour helps Malaysia: World Bank. (2015, December 19). Retrieved from <http://www.straitstimes.com/asia/migrant-labour-helps-malaysia-world-bank>.

According to a review of labour migration policy in Malaysia by the International Labour Organisation (ILO), the government plans to phase out employment agencies as outsourcing agencies.²⁵ The review reports that the Memorandum of Understanding agreed with Bangladesh had reduced the recruitment fees paid by workers by 8-10 times in the plantation sector, showing that direct dealings with the origin country can help reduce placement fees by fixing them. Therefore phasing out the employment agencies could be a good move from the workers' point of view.

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²⁵Review of labour migration policy in Malaysia, ILO Regional Office for Asia and the Pacific. (2016). Retrieved from http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_447687.pdf.

TWC2 Recruitment Costs Research Working Group

The great majority of migrant workers pay large sums of money in order to obtain jobs in other countries. The costs, often exorbitant, leave workers debt-ridden and in a more vulnerable position to pernicious labour abuse. At TWC2, we recognise the consequences of recruitment costs and the urgent need to eliminate such fees.

This report is part of a series of papers analysing the policies in various countries regulating recruitment costs. Through this evaluative process, we hope to be able formulate effective policy recommendations in reducing the recruitment costs of workers who come to Singapore.



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