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► **Malaysia: Review of admission and recruitment practices of Indonesian workers in the plantation and domestic work sectors and related recommendations**



# **Malaysia: Review of admission and recruitment practices of Indonesian workers in the plantation and domestic work sectors and related recommendations**

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Views expressed in this report are those of the author, who assumes responsibility in case of any errors or omissions.





## Abbreviations and acronyms

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<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women, 1979
<b>DLW</b>	decent living wage
<b>G-to-G</b>	government-to-government
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Their Families, 1990
<b>ILO</b>	International Labour Organization
<b>IRA</b>	Indonesian recruitment agency
<b>MEF</b>	Malaysian Employers Federation
<b>MOHR</b>	Ministry of Human Resources [Malaysia]
<b>MOU</b>	Memorandum of understanding
<b>MRA</b>	Malaysian recruitment agency
<b>MTUC</b>	Malaysian Trade Union Congress
<b>NGO</b>	Non-governmental organization
<b>RM</b>	Malaysian ringgit [currency]
<b>RSPO</b>	Roundtable on Sustainable Palm Oil
<b>SDG</b>	Sustainable Development Goal
<b>UN</b>	United Nations



## 1. Introduction

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Sustained economic growth, rapid industrialization, high rates of urbanization in recent decades, and the relatively low labour force participation among women have led to Malaysia becoming an important destination for migrant workers from other countries, particularly from the Association of Southeast Asian Nations (ASEAN) region and South Asia (Bangladesh, India, and Nepal). While there are varying estimates of the actual number of migrant workers in Malaysia, the Ministry of Home Affairs listed 2 million migrant workers from 15 countries of origin as being employed in Malaysia in 2018, which does not include those in irregular status. A World Bank study estimated the number of migrant workers in irregular status in Malaysia to range between 1.23 million and 1.46 million persons (World Bank, 2017a).<sup>1</sup> All migrant workers – skilled and low-skilled – have contributed to rapid economic development in Malaysia, filling important gaps in the labour market over the years (World Bank, 2015).

The bulk of migrant workers admitted to Malaysia are in elementary occupations (also termed “low-skilled” workers). As of June 2019, Indonesian migrant workers were the biggest group of regular migrant workers in Malaysia at 704,175 individuals. Indonesian migrant workers constitute the highest number of migrants in both the plantation and domestic work sectors, at 201,050 and 92,405 workers, respectively (appendix table A1). To give a sense of the scale of Indonesian workers’ dominance over the domestic work sector, the number two country of origin – the Philippines – only has roughly a third as many domestic workers in Malaysia (32,277). The focus of this study is on Indonesian migrant workers who migrate to Malaysia for work in the domestic work and plantation sectors.

Domestic workers and plantation workers are among the most vulnerable to abuse and exploitation, and among the most difficult to reach groups of migrant workers in Malaysia. This is due to several factors: nature of their work; shortfalls in labour migration governance; limited access to support and remedies; insufficient attention to protection of labour rights; and unethical recruitment, contracting, and employment practices of recruitment agencies and employers (Harkins, 2016). Plantation workers face problems with difficult conditions of work in remote locations; while domestic workers also have limited mobility, being confined to the private households of their employers. Poor enforcement of laws affects both groups of workers. The situation of migrant domestic workers employed in Malaysia – predominantly women – continues to be a human rights concern, as they are excluded from many of the basic labour protections afforded to other sectors (UN, 2018).

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<sup>1</sup> The International Organization for Migration (2019) provides different estimates. It states that the number of documented foreign workers in Malaysia increased from 1.7 million to 2.2 million between 2010 and 2017. Their estimate of undocumented migrant workers is 2.4 million at the end of 2018 – but the basis of the estimates is not provided.



## 2. Objectives of the study

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The long-term objective of the International Labour Organization–US Department of State Improved Migration Governance Project is to ensure that migrant workers in the domestic work and plantation sectors in Malaysia are better protected through a strengthened knowledge base on labour migration, targeted services, standard employment contracts, and improved recruitment and employment practices (ILO, 2017a; ILO 2019a).

Within the above overarching goal, the specific objectives of this study are:

1. Review the efficiency of legal pathways for migrant workers in the domestic work and the plantation sectors;
2. Make recommendations on streamlining and simplification of admission processes, as well as on regulation of recruitment and its enforcement in order to achieve better outcomes for domestic workers and plantation workers.

### Why are admission procedures and recruitment practices important?

Migrant admission procedures and recruitment practices play a major role in determining the outcomes of labour migration. Evidence shows that recruitment fees significantly erode the benefits workers may derive from labour migration. ILO/KNOMAD<sup>1</sup> surveys on migration costs have shown that worker-paid migration costs and recruitment fees absorb a high share of worker earnings, especially for low-skilled and semi-skilled migrant workers (ILO and World Bank, 2019).

At the same time cumbersome recruitment and admission procedures may lead potential migrants to more risky channels and irregular migration. Thus, protection of the rights of migrant workers is closely related to admission and recruitment practices.<sup>2</sup>



## 3. Definitions and Methodology

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### 3.1 Definitions

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#### Migrant worker(s) and foreign worker(s)

The ILO Convention on Migration for Employment (Revised), 1949 (No. 97) defines a migrant worker as “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment” (Article 11). The definition found in the International Convention on the Protection of the Rights

of All Migrant Workers and Their Families, 1990 (ICRMW) is broader: “The term ‘migrant worker’ refers to 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” (Article 2(1)).

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<sup>1</sup> KNOMAD (Knowledge Partnership on Migration and Development) is a research programme conducted by the World Bank.

<sup>2</sup> Sustainable Development Agenda Goal 10.7 states: “Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”. One of the two indicators for this Sustainable Development Goal (SDG) is Indicator 10.7.1: “Recruitment cost borne by employee as a proportion of monthly income earned in country of destination”. The ILO and the World Bank – as custodians of SDG Indicator 10.7.1 – are pilot testing its measurement in Bangladesh, Malaysia, Mexico, Pakistan, the Philippines, Senegal, Sri Lanka, and Thailand.

Malaysia uses the term “foreign worker” to refer to workers hired from other countries. This is equivalent to the term “migrant worker” used in ILO instruments. Such workers can be temporary workers or permanent workers, depending on the admission procedures. In general, plantation workers and domestic workers hired from other countries are temporary workers issued with temporary employment passes for a fixed duration by Malaysian authorities.

Indonesia, however, uses the term “migrant worker” in its legislation, including Law 18 of 2017 on Protection of Indonesian Migrant Workers. According to this Law, “Indonesian Migrant Worker means any Indonesian citizen who will work, currently works, or has done a work for wage outside the territory of the Republic of Indonesia” (article 1(2)). This broadly corresponds to the definition of ICRMW.

This report will use the term “migrant worker” to refer to foreign workers, in conformity with international practice.

### Recruitment

The ILO Migration for Employment Convention (Revised), 1949 (No. 97) distinguishes among recruitment, introduction, and placement of workers for employment overseas. According to the Convention (Annex I, Article 2):

- (a) the term “recruitment” means:
  - (i) the engagement of a person in one territory on behalf of an employer in another territory, or
  - (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;
- (b) the term “introduction” means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of paragraph (a) of this Article; and
- (c) the term “placing” means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of paragraph

(b) of this Article.

The more recent ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs define recruitment as including “the advertising, information dissemination, selection, transport, placement into employment and – for migrant workers – return to the country of origin where applicable” (ILO, 2019b, p. 12).

### Recruitment fees and related costs

According to the ILO (2019b, p. 28): “The terms ‘recruitment fees’ or ‘related costs’ refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.” Therefore, any fees or cost paid by migrant workers either in the origin country or destination country are included. Table 1 summarizes the ILO definition of recruitment fees and related costs.

The ILO General Principles and Operational Guidelines for Fair Recruitment clarify that recruitment and placement should be free of all charges to migrant workers:

Recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits (ILO, 2019b, p. 28).

A number of origin countries and destination countries in ASEAN, including Indonesia and Malaysia, have, however, legalized such fees. While Law 18 of 2017 on the Protection of Indonesian Workers clearly states that no placement fees should be placed on migrant workers, this has not been elaborated through rules or regulations as yet.<sup>1</sup> Related costs in the ILO Fair Recruitment General Principles and Operational Guidelines are defined as “expenses integral to recruitment and placement within or across national borders.” The guidelines note that the competent authority has the flexibility to determine exceptions, after consultation with the most representative organizations of workers and employers, and subject to certain conditions including consistency with international labour standards.

<sup>1</sup> Interview with the Ministry of Manpower in Indonesia suggested that workers may still have to pay costs such as obtaining a passport.

► Table 1

**ILO definition of recruitment fees and related costs**

Recruitment fees	Related costs (include) <sup>1</sup>
<ul style="list-style-type: none"> <li>a. Payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;</li> <li>b. Payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;</li> <li>c. Payments made in the case of direct recruitment by the employer; or</li> <li>d. Payments required to recover recruitment fees from workers.</li> </ul>	<ul style="list-style-type: none"> <li>i. Medical costs: payments for medical examinations, tests, or vaccinations;</li> <li>ii. Insurance costs: costs to insure the lives, health, and safety of workers, including enrolment in migrant welfare funds;</li> <li>iii. Costs for skills and qualification tests;</li> <li>iv. Costs for training and orientation: expenses for required trainings;</li> <li>v. Equipment costs;</li> <li>vi. Travel and lodging costs: expenses incurred for travel, lodging and subsistence</li> <li>vii. Within or across national borders in the recruitment process;</li> <li>viii. Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process.</li> </ul>

<sup>1</sup>When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process.” (ILO, 2019b, p. 29). These cost categories could be further developed by governments and social partners at the national level.

Source: ILO, 2019

**Domestic work/domestic worker**

The ILO Domestic Worker Convention, 2011 (No. 189) defines domestic work as “work performed in or for a household or households” (Article 1(a)), and defines a domestic worker as “any person engaged in domestic work within an employment relationship” (Article 1(b)). The definition covers both national domestic workers and migrant domestic workers.

While domestic workers can be female or male, the majority are female workers. Indonesia describes domestic workers as “informal workers”, as distinguished from “formal workers”. The 1955 Employment Act of Malaysia used the term “domestic servant”, which has now been replaced with the better term “domestic employee” in the proposed Employment (Domestic Worker) Regulations, 2019. The Malaysian Immigration Department uses the term “foreign domestic helper” to refer to domestic workers.<sup>2</sup> However, these

workers – especially female domestic workers – are more than mere helpers; they are full-time workers who carry out all household activities and assigned working for long hours each day.

<sup>2</sup> <https://www.imi.gov.my/index.php/en/foreign-domestic-helper-fdh.html>

### Plantation(s)

According to the ILO Plantations Convention, 1958 (No. 110):

*... the term plantation includes any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibres (sisal, jute and hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers (Article 1).*

They are, thus, agricultural undertakings that regularly employ hired workers and are mainly concerned with the cultivation or production of monocultures for commercial purposes. “While plantations have long been organized to produce commodity crops for export, there has been a shift in trade relations from the simple market transactions between buyers and suppliers that were typical in the 1970s, to the emergence of tightly knit and integrated global supply chains (ILO, 2017b, p. 3).

In Malaysia, plantations mainly consist of oil palms, followed by rubber and coconut.

## 3.2 Methodology of the study

---

The methodological approach adopted in this study is in essence a combination of literature and documentation review, including of:

- recent migration cost surveys carried out by the ILO Improved Migration Governance project (Earthworm Foundation, 2019; PE Research, 2019);
- extensive consultations with key stakeholders for obtaining their specific perspectives on admission procedures and recruitment practices in the plantation and domestic work sectors; and
- review and analysis of options for better outcomes.

The consultant undertook field missions to Malaysia and Indonesia, and held consultations with a wide range of stakeholders in labour migration, covering government officials, employers’ and workers’ organizations, civil society organizations, associations of recruitment agencies, and key informants.

### ► 3.2.1 Desk review of documents, project reports, and studies

The desk review for this study covered review of official documents, research studies sponsored by the Improved Migration Governance project or other ILO projects, and third-party research

concerning migration, particularly relating to Indonesia and Malaysia.

### ▶ 3.2.2 Consultations with stakeholders

#### Field missions and consultations with stakeholders

The consultant undertook field missions to the two countries for five working days each for consultations. Meetings and consultations were held with major stakeholders in labour migration: concerned government officials, trade unions, employers' organizations (in Malaysia only), civil society organizations, academics, and key informants. Please see Appendix II for meeting schedules.

#### Focus group discussions

Focus group discussions were conducted with selected non-governmental organizations (NGOs) concerned with domestic workers in Kuala Lumpur, and in Jakarta with trade union and NGOs to gather first-hand information and prompt an exchange of views, and also to solicit ideas on promising practices and suggestions for improvement.

#### Feedback received during a one-day validation workshop in Kuala Lumpur, 20 December 2019

The ILO IMG Project organized a one-day workshop in Kuala Lumpur on 20 December 2019 to validate the findings of this study, as well as those of two other IMG Project studies on migration costs in the domestic work and plantation sectors in Malaysia. The objectives of the workshop were: (a) to present the findings of various studies supported by the IMG Project; and (b) gather feedback from the participants for finalization of the three studies. It was attended by representatives of concerned government ministries and agencies (including from the Ministry of Human Resources and the Ministry of Home Affairs), and representatives of employers' and workers' organizations, recruitment agencies, civil society and migrant worker groups, legal institutions and academia, and diplomatic missions of origin countries. The author of the present study made a presentation of the main findings and recommendations of the study. Representatives of the Malaysian Employers' Federation, the Ministry of Human Resources, and the Malaysian Trades Union Congress made specific comments on the study, followed by an open discussion. The study has benefitted from the feedback received, which has been taken into account in the final report.

## 3.3. Limitations of the study

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The study has been based mostly on secondary sources and information supplied by key stakeholders. Given budget and time constraints, field visits had to be limited in duration, and some stakeholders could not be interviewed. However all key stakeholders were invited to the consultations where the findings were presented. Published statistics on plantation and domestic workers from Indonesia to Malaysia are quite limited. There is hardly information available on undocumented workers in the two sectors, including their migration histories or conditions of work. The usual disclaimer applies that the author is responsible for any errors and omissions in the analysis.



## 4. Normative frameworks on labour migration, and recruitment

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The normative foundation for migration governance and protection of migrant workers is wide ranging, starting with United Nations (UN) universal human rights instruments and ILO core Conventions. These have been widely ratified by most countries. Indonesia has ratified all eight ILO core Conventions

relating to freedom of association, forced labour, child labour, and discrimination. All other ILO labour standards apply to all migrant workers, including standards on social security, conditions of work, employment policy, labour inspection, occupational safety and health, among others.

### 4.1 Ratification of human rights Conventions

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Both Indonesia and Malaysia have ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is highly relevant for the protection of women migrant workers.<sup>1</sup> Indonesia has ratified all core Conventions of the ILO while

Malaysia has ratified six of them, except the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).<sup>2</sup>

### 4.2 Migrant-specific Conventions

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Three migrant-specific international Conventions – the ICRMW, ILO Convention No. 97, and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – constitute an international charter of migrant rights.

The Sabah State of Malaysia ratified ILO Convention No.97 in 1964 under British rule, but excluded Annexes I-III. Indonesia ratified the ICRMW in 2012. Appendix tables A2a and A2b provide information on ILO Conventions ratified by Indonesia and Malaysia, respectively.

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<sup>1</sup> CEDAW General Recommendation No. 26 on women migrant workers has elaborated on guidelines for their protection.

<sup>2</sup> The core Conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).



## 4.3 Specific Conventions relating to recruitment and domestic workers

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There are specific Conventions which apply to fair recruitment issues. The ILO Private Employment Agencies Convention, 1997 (No. 181) and accompanying Recommendation (No. 188) are the current international standards applicable to private employment agencies. Convention No. 181 establishes the principle that workers shall not be charged “directly or indirectly, in whole or in part, any fees or costs” (Article 7). It also requires ILO member States to provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies, including through the conclusion of bilateral agreements.

The Domestic Workers Convention, 2011 (No. 189) and the related Domestic Workers Recommendation, 2011 (No. 201) apply to domestic workers – both national and migrant. Only the Philippines has ratified Convention No. 189 in Asia; while Fiji, Japan, and Mongolia have ratified Convention No. 181.

Another important related instrument is the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), which has been ratified by Sri Lanka and Thailand in Asia. Article 2 of the Protocol refers to “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process”.

## 4.4 Instruments relating to plantations

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Decent work in plantations is a priority for the ILO (2017b). There are several ILO instruments relating to the plantation sector:

- a. Plantations Convention, 1958 (No. 110) and accompanying Recommendation, 1958 (No. 110).
- b. Protocol of 1982 to Convention No.110.

These instruments outline a series of principles concerning:

- engagement and recruitment of migrant workers;
- contracts of employment and abolition of penal sanctions;
- wages;
- annual holidays with pay;
- weekly rest;
- maternity protection;
- workmen’s compensation;
- the right to organize and collective bargaining;
- freedom of association;
- labour inspection;

- housing; and
- medical care (ILO, 2017b).

The objective is to ensure decent work for plantations workers. As the ILO (2017b, p. 1) notes:

*Despite their economic importance and their potential to contribute to sustainable development, in some countries’ plantations are characterized by decent work deficits. Low incomes, excessive working hours, widespread casualization, poor working and living conditions, harassment and low productivity are a reality on plantations around the world.*

Forced labour practices and child labour are among other indicators of decent work deficits.

The 1982 Protocol added other crops and other undertakings of a similar nature to plantations for coverage under Convention No. 110.

Neither Malaysia nor Indonesia have ratified the Convention or the Protocol.

## 4.5 Non-binding ILO frameworks

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There are two non-binding frameworks of special relevance. The first is the ILO Multilateral Framework on Labour Migration (ILO, 2006), comprising non-binding principles and guidelines for a rights-based approach to labour migration (ILO, 2006). It includes guidelines on the licensing and supervision of recruitment and contracting agencies for migrant workers under its Principle 13.

The second is the ILO General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs mentioned above. First issued in 2016, the General Principles and Operational Guidelines are meant to address growing recruitment abuses, and they apply to national workers as

well as migrant workers. Implementation of these principles and guidelines at the national level should occur after consultation between social partners and the government. There are 13 general principles, including one on fees and costs: “No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers” (ILO, 2019b, p. 13). The general principles are followed by 31 operational guidelines for the benefit of governments, employers, enterprises, public employment services, and labour recruiters. These were supplemented by the Definition of Recruitment Fees and Related Costs in 2019.

## 4.6 Other global frameworks

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The Sustainable Development Goals Agenda 2030 recognizes the importance of decent work and well managed migration. SDG 8 aims to promote inclusive and sustainable economic growth, with full and decent work for all. SDG 10 aims to reduce inequalities within and among countries. SDG Target 10.7 is to facilitate orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well managed migration policies. One of the recommended indicators (10.7.1) for Target 10.7 is the “recruitment cost [being] borne by the employee as a proportion of yearly income earned at country of destination”. As noted above, the ILO and the World Bank are custodians of this indicator.

More recently, member States of the UN – including Indonesia and Malaysia – adopted the non-binding Global Compact on Safe, Orderly and Regular Migration. Objective 6 of the Compact calls on member States to “facilitate fair and ethical recruitment and safeguard conditions that ensure decent work”, and to “prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers in order to prevent debt bondage, exploitation and forced labour” (UN General Assembly, 2018, pp. 12–13).



## 5. Legislative and regulatory frameworks on admission and recruitment of migrant workers, especially plantation workers and domestic workers

Several recent reviews have gone into a detailed analysis of the legal frameworks relating to migration and recruitment issues in Malaysia and Indonesia (see Harkins, 2016;

ILO, 2018; ILO and UN Women, 2016; UN, 2018; Bar Council Malaysia, 2019; MEF and ILO, 2019; Wheelan, et al., 2016). Only a summary will be provided here.

### 5.1 Malaysia

#### The Employment Act of 1955

This is the primary legislation relating to employment of national and migrant workers. It defines a “foreign employee” as “an employee who is not a citizen” (article 2(1)). Part XIIB of the Act deals with the employment of foreign employees. The Act requires employers to furnish information on foreign employees and prohibits termination of a local worker to employ a foreign worker. In cases of redundancies, employment of foreign workers has to be terminated first.

Domestic workers are covered under “domestic servants” – “a person employed in connection with the work of a private dwelling-house and ... includes a cook, house servant, butler, child's nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use” (article 2(1)). Domestic servants are briefly covered under Part XI, which deals only with termination issues. Domestic workers are excluded from many of the provisions of the Act – sections 12, 14, 16, 22, 61, and 64 and parts IX, XII, and XIIA. The Act's provisions exclude domestic workers from entitlement to maternity protection, rest days, or holidays, and hours of work and conditions of service are also not protected (ILO, 2018). There is consensus that the protection provided under the Act is inadequate for domestic workers (UN, 2018; ILO, 2018; Wheelan et al., 2016).

#### Passports Act 1966 (Act 150)

The Passports Act 1966 outlines that only those with lawful authority (an immigration officer, police officer, or customs officer) can hold a passport issued in the name of another person. Passport retention is an offence under section 12(1)(f):

*Any person who, without lawful authority, has in his possession any passport or travel document issued for the use of some person other than himself; ...shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit (RM10,000) or to imprisonment for a term not exceeding five (5) years or to both.*

This is very important for migrant workers because their passports are often held by employers, restricting their mobility.

#### Immigration Act 1959/63 (Act 155)

The Act penalizes foreigners for illegal entry and overstay, and any person (including Malaysians) who harbours irregular migrants in their premises. Under sections 55B and 56(1) (d) of the Act, any person – including employers – can be subjected to a fine between RM10,000 and RM50,000, or imprisonment not exceeding 12 months, or both for each irregular migrant employed, and could also be subjected to a whipping of up to six strokes if they are found to be employing more than five irregular migrants at the same time.

Section 55E of the Act extends the liability to a company supervisor or manager who has direct interest or control in allowing migrants with irregular status to enter or stay in the premises of the company. Such supervisors or managers

may be subject to a fine of between RM5,000 and RM30,000, or imprisonment not exceeding 12 months, or both, for each irregular migrant.

### **Private Employment Agencies (Amendment) Act 2017**

The amendment of the Private Employment Agencies Act 1981, which came into force from 1 February 2018, has introduced many changes for better regulation of the activities of private employment agencies, particularly to protect jobseekers from being exploited and to prevent forced labour practices. Under the amended Act, a private employment agency must now be a company incorporated under the Companies Act 2016. It has categorized recruitment agencies into three groups: A (only places local workers), B, and C. Agencies with license B can only place Malaysian jobseekers locally and abroad and hire foreign domestic workers in Malaysia. Those with licence C can place Malaysians abroad and hire all categories of foreign workers. The paid-up capital, license fees, and deposits are highest for Group C.

The Act provides for securing the safety, health, and welfare of persons at work, and to protect others from unsafe work practices. It applies to all sectors, including domestic workers. The Act places a ceiling on placement fees of one month of basic wages.

### **Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 (Act 446 – Amended in July 2019)**

A 2019 amendment expanded the coverage of Act 446, which previously applied only to estate employees, to other employment sectors, but it is only applicable to Peninsular Malaysia and Labuan. The Act imposes the duty on an employer and a centralized accommodation provider to provide decent and adequate amenities to employees, and imposes duties with respect to the health and safety of employees who are provided with accommodation.

### **Employers Undertaking**

The Ministry of Human Resources (MOHR) has made it compulsory for employers who have been granted a certificate to hire migrant workers to sign the Employers Undertaking, a pledge by employers to adhere with certain conditions. These include: paying full levy cost in employing migrant workers; paying wages accordingly; and not to withhold passports, among others.

### **Proposed Employment (Domestic Employee) Regulations 2019**

The MOHR has recently proposed an amendment to the Employment Act of 1955, issuing a draft regulation titled Employment (Domestic Employee) Regulations 2019. The draft Regulations describe a domestic worker as a “domestic employee”, a welcome change from the previous wording of “domestic servant”. The draft Regulations cover elements of the:

- work contract;
- work permit;
- payment of wages;
- employment permit and place of employment;
- food and medical treatment;
- accommodation;
- rest periods and rest day;
- prohibition of ill treatment and exploitation;
- respect for religious beliefs and repatriation; and
- penalties (fines) on employers for violation of provisions in regulations.

The draft Regulations are still under review, according to MOHR sources. The ILO, social partners, and NGOs have provided detailed feedback on the draft Regulations. The ILO has pointed out that some provisions are inadequate to provide effective protection, and noted the need to closely align the regulations with the provisions in Convention No. 189. These include the need for:

- laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties;
- conclusion of agreements to prevent abuses and fraudulent practices in recruitment, placement, and employment; and
- taking of measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

## 5.2 Indonesia

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From 2004 to 2017, the main Indonesian legislation to govern migration and ensure protection of migrant workers was the Law No. 39/2004 on the Placement and Protection of Indonesian Workers Overseas. However, the Law's focus was on recruitment issues, and contained limited provisions for protecting the rights of migrant workers.

Indonesia's ratification of the ICRMW in 2012 required a revision of the legislation to conform to the provisions of the Convention. As a result, in 2017 the Indonesian Government replaced Law No. 39/2004 with Law No. 18/2017 on the Protection of Indonesian Migrant Workers. Under the new law, regional governments – instead of private companies – are to oversee the placement of workers and the provision of predeparture vocational training. These changes are intended to address the issue of high recruitment fees for workers, which may result in debt bondage. The Government has yet to bring in rules and regulations for implementation of the law.



## 6. Admission procedures for domestic workers and plantation workers

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The Memorandum of Understanding (MOU) on the recruitment of Indonesian workers between the Government of the Republic of Indonesia and the Government of Malaysia of 2004 provides the framework for hiring all workers (including plantation workers) but excluding domestic workers. The recruitment process for Peninsular Malaysia contains 13 steps as shown in the MOU (see figure A1 in the appendix). Slightly different processes involving local institutions, but comprising the same number of steps, have been outlined for Sabah and Sarawak.

Admission procedures for domestic workers are governed by the 2006 Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers and its amending Protocol signed in 2011. The amendment was triggered by criticisms of the provisions of the 2006 MOU by various stakeholders. The 2011 amendment asserted the right of domestic workers to hold their passports and to communicate with their families. It also stipulated that the payment of monthly wages must be made into a bank account. It provided for one rest day per week (with the option to

compensate with overtime payment). The MOU included a standard employment contract; spelled out the recruitment costs to be borne by the employer and by the worker; and outlined the responsibilities of the employer, worker, and recruitment agencies in Indonesia and Malaysia.

The Malaysian Government has introduced a Multi-Tier Levy System that aims to reduce dependence on migrant workers by making it costly for employers to hire migrant workers. The levy varies by sector, with the highest levy per worker imposed on the manufacturing, construction, and services sectors (RM1,850, equivalent to US\$422). The lowest levy is for domestic work at RM410 (US\$98), and the plantation and agricultural sectors are subject to a levy of RM640 (US\$153). Since 2018, the levy is to be paid by employers.

► Table 2

### Fee structure by sector for levy, Visit Pass (Temporary Employment), and processing fee

Sector	Levy				Processing	Visa
	Peninsula	Sabah/Sarawak	VP(TE)			
Manufacturing	RM1 850 (US\$443)	RM1 010 (US\$242)		RM60 (US\$14)	RM125 (US\$30)	
Construction	RM1 850 (US\$443)	RM1 010 (US\$242)		RM60 (US\$14)	RM125 (US\$30)	
Plantation	RM640 (US\$153)	RM590 (US\$141)		RM60 (US\$14)	RM125 (US\$30)	
Domestic worker	RM410 (US\$98)	RM410 (US\$98)		RM60 (US\$14)	RM125 (US\$30)	Based on nationality
Agriculture	RM640 (US\$153)	RM410 (US\$98)		RM60 (US\$14)	RM125 (US\$30)	
Services	RM1 850 (US\$443)	RM1 490 (US\$356)		RM60 (US\$14)	RM125 (US\$30)	
Services (Island Resort)	RM1 850 (US\$443)	RM1 010 (US\$242)		RM60 (US\$14)	RM125 (US\$30)	

Note: Conversion rate used is US\$1 = RM4.18

Source: Immigration Department, Ministry of Home Affairs, Government of Malaysia.

The Eleventh Malaysia Plan 2016–2020 has highlighted the “heavy reliance on low-skilled foreign workers, particularly in labour-intensive activities” (EPU, 2015, pp. 5–18). Under the Plan, Malaysia aims to use the levy system to better regulate the entry of low-skilled foreign workers and to limit the share of foreign labour to 15 per cent by 2020. However, the scope for reducing migrant workers in both the domestic work and plantation sectors seems limited, given the very high dependency of both sectors on migrant workers. The cultivation of oil palms – the main plantation crop – is labour intensive, and it is unlikely that labour saving technology can be introduced in the short-to-medium term.

According to Malaysian regulations, domestic workers can be hired only from the following countries: Cambodia, India, Indonesia, the Lao People’s Democratic Republic, the Philippines, Sri Lanka, Thailand, and Viet Nam. Depending

on the source country, employers of domestic workers also have to satisfy minimum income requirements. Currently Malaysian employers hiring an Indonesian domestic worker are required to possess a net income of at least RM3,000 per month; whereas the minimum net income level for employers hiring a Filipino domestic worker is RM5,000 per month.<sup>1</sup>

Admission procedures are characterized by lengthy documentation procedures. A World Bank study on Indonesian migration found that “the current process of becoming a documented migrant worker [in Malaysia] is burdensome, with 22 separate administrative steps, and can take up to three months, creating a disincentive for prospective migrants to choose the documented path” (World Bank, 2017b, p. 5). The Malaysian Employers Federation guide Recruitment and employment of migrant workers in Malaysia (MEF and ILO, 2019) noted that 14 documents are required

<sup>1</sup> Details can be found at the Immigration Department website: <https://www.imi.gov.my/index.php/en/foreign-domestic-helper-fdh.html>.

from employers to submit applications at the Immigration Department for a Visa with Reference and Visitor Pass (Temporary Employment). As noted above, the MOU of 2004 for Indonesian workers also outlines a total of 13 steps to be followed in Indonesia and Malaysia for worker approval and placement (appendix chart A1).

Migrant workers who hold a Visitor Pass (Temporary Employment) permit must adhere to these conditions:

- family members are not allowed to accompany the worker to or live in Malaysia;
- change of employers or employment sectors is not allowed; and
- marriage is prohibited with local or foreign citizens.

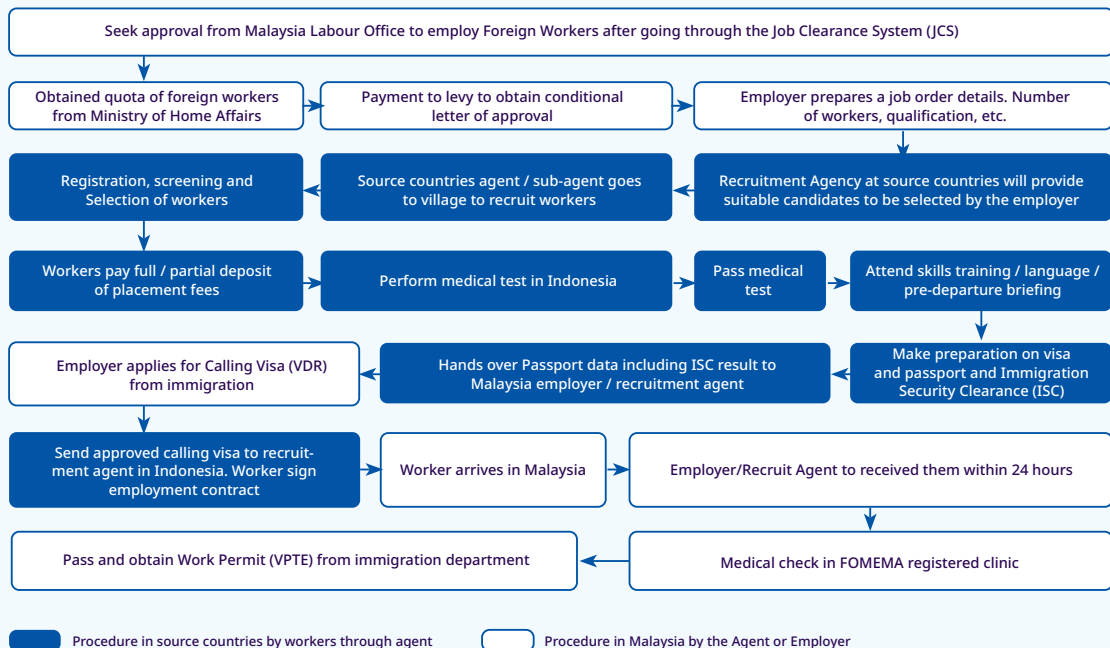
## 7. Recruitment practices for domestic workers and plantation workers

Indonesian regulations do not allow direct recruitment of migrant workers by employers, and therefore, Malaysian recruitment agencies (MRAs) must engage with Indonesian recruitment agencies (IRAs) to hire Indonesian workers. The main IRAs depend on their internal networks at the village, district,

municipal, and provincial levels to identify and recruit potential migrant workers who will be trained in the capital or provincial cities. These layers of intermediaries give rise to multiple charges and costs for low-skilled and low-educated migrants.

▶ Figure 1

### Steps involved in formal procedures to employ migrant workers



Source: Reproduced from PE Research, 2019, figure 1.

One issue in the recruitment of Indonesian workers is the lengthy timeframe of the application process for domestic workers – about 90 days – compared that for formal sector workers (about 30 days). The main reason for this disparity is the 60 days required for training domestic workers (Patunru and Uddarojat, 2015).

The Indonesian Law 18/2017 aims at restructuring the entire recruitment system through a decentralized approach. The selection, training, and briefing of potential migrants will be the responsibility of the government at different levels, especially the provincial level. Recruitment agencies are expected to be the last link in enabling the overseas placement of Indonesian workers. The objective is to minimize migration costs for workers.

However, there are several problems with this proposed process. Although the Law 18 was promulgated in 2017, the related rules or regulations have not been issued yet. The deadline for their issue was November 2019, which has already passed. In the meantime, the previous rules of Law 39 of 2004 may still be applied. Even if the new regulations are adopted immediately, it may take a couple of years for them to be operational or implemented on a decentralized basis. In the transition period, therefore, IRAs may follow the same practices as in the past. As such, the transition process must be monitored closely by the Government. For example, effective transfer of IRA-run training centres to state-led training centres may require time. The “no placement fees” principle also needs to be enforced from the beginning.

## 7.1 Domestic worker recruitment

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The high employer cost of recruitment of domestic workers from Indonesia has been highlighted by stakeholders in both Malaysia and Indonesia. While there are no reliable figures, field consultations have indicated that a Malaysian employer must pay between RM10,000 and RM15,000 to hire an Indonesian domestic worker through formal channels – i.e., using private recruitment agencies. The Malaysian newspaper *New Straits Times* quoted even higher figures – RM12,000 to RM18,000 – in 2017. The above estimates range from the equivalent of US\$2,400 to US\$4,000.

This high cost benefits neither the employer nor the worker; though it may benefit recruitment agencies in Indonesia and Malaysia. Interestingly, employers hiring plantation workers faced much lower costs than those hiring domestic workers.

Several reasons may explain the high cost of domestic workers compared to plantation workers. The origin of the high cost is on the Indonesian side, where a multiple layers of intermediaries from the village level to the capital city may charge varying amounts.

Some advances and loans given to workers may be added to the employer cost, with the intention that the sum be recovered later from the salaries of workers. Malaysian regulations permit a maximum of a 50 per cent deduction from wages in any month. Two medical examinations – one in Indonesia and a second in Malaysia – also add to costs. The employer levy now borne by Malaysian employers is another cost element.

<sup>1</sup> The ILO uses the term “private employment agencies” to refer to them. See ILO Private Employment Convention, 1997 (No. 181).  
<sup>2</sup> Recruitment associations interviewed for this study were not able to provide an accurate breakdown of the cost. One Indonesian recruitment association provided an estimate, but it was incomplete and therefore, could not be used. It should be noted that PE Research’s survey of domestic workers and plantation workers – a key data source for this report – collected data on worker-paid costs only (PE Research, 2019).



Placement fees by IRAs and MRAs also seem to be high. MRAs charge employers about RM3,000 per worker. The 2011 Protocol amending the 2006 MOU has institutionalized a cost structure for hiring domestic workers (table 3). The Malaysian employer cost was estimated at RM2,721 (US\$900), and the cost to the worker was fixed at RM1,800 (US\$600).<sup>3</sup> The worker had to pay the IRA a fee of about RM589 (about US\$200); while the employer had to pay the MRA a sum of RM635 (\$212). These fees may be paid upfront by the employer and later deducted in instalments from the wages

of workers. However, the recruitment fees and costs determined in the 2011 MOU seem to be unfair to the worker, with several cost items (such as visas and the levy) being paid by the worker. Since 2011, these cost items may have increased. The 2006 MOU and the 2011 Amending Protocol have not made much contribution to domestic worker protection, according to some (Malahayati, 2015; Whelan, J. et al., 2016).

► Table 3

**Revised cost structure of recruitment and placement of Indonesian domestic workers – Annex to the 2011 Protocol to MOU of 2006**

a. Fees to be borne by employers	RM	b. Fees to be borne by domestic workers	RM
Annual levy	360	Medical check-up in Indonesia	143
Work process and document	85	Transportation cost from original city of Workers to the original exit point in Indonesia	80
Stamping, airport clearance, documentation, service tax, food and lodging, insurance, etc.	645	Visa imposed by the Malaysian Embassy	16
Medical check-up in Malaysia	190	Travelling document	43
Fees for Malaysian agency	635	Insurance	143
Transportation cost from the original exit point in Indonesia to the place of employment in Malaysia	500	Government levy	48
Airport tax and handling	100	Training (50%) *	196
Training (50%) *	196	Competency examination	39
<b>Total</b>	<b>2 711</b>	Accommodation	502
		Fee for Indonesian agency	589
		<b>Total</b>	<b>1 800</b>

Source: Annex to the 2011 Protocol to the 2006 MOU for Placement of Domestic Workers between Indonesia and Malaysia.

<sup>3</sup> Using 2011 average exchange rate of US\$1 = RM3

Another common issue raised by employers and recruitment associations is the phenomenon of absconding workers. Employers may lose their investment in such cases. If workers leave the job within the first three months, recruitment agencies are under obligation to supply a replacement worker. It is important to document such cases and the reasons for absconding. Often it may be due to abusive treatment or non-payment of wages. Passport retention by employers is another undesirable practice. Absconding workers immediately become undocumented and run the risk of abuse and exploitation, as well as detention and deportation.

The 2011 Protocol expired in 2016, but the same provisions have continued to be applied in the absence of a new protocol, according to information received during the field missions. However, the cost structure must have changed substantially since 2011. For example, placement fees have risen markedly, with the MRAs charging about RM3,000 now (US\$718),<sup>4</sup> compared to the RM635 (\$212) stipulated in 2011. It was not possible to obtain the fee paid to Indonesian agents.

High recruitment fees and costs to be paid by migrant domestic workers are also a cause for concern. Contrary to fair recruitment principles that uphold zero placement fees to workers, NGOs pointed out that domestic workers may end up paying at least three to six months' wages as recruitment costs and repayment of loans advanced. However, preliminary findings of the ILO-commissioned migration cost survey of PE Research reported much lower net migration costs for Indonesian domestic workers. This may be due to the small sample, which was selected using snowballing techniques.<sup>5</sup>

The PE Research study covered 301 domestic workers – 107 Indonesian and 203 Filipino workers. Thus, the sample had an over-representation of Filipino workers, who probably enjoy better working conditions generally and enjoy higher salaries (with US\$400 as the designated minimum wage set by the Philippines Government). Of the 43 Indonesian domestic workers who reported zero migration costs in the PE survey, 24 also had wage deductions, which seems contradictory. As the

PE study explains, this could be due to advances received that were probably recovered later from workers (PE Research, 2019).

The PE Research study found that 60 per cent of Indonesian domestic workers experienced salary deductions. The same research has indicated that salary deductions were spread over several months: 70 per cent for 1–3 months; 18 per cent for 4–6 months; and, 9 per cent over more than six months. The most commonly reported (i.e., mode) amount of salary deducted was US\$744 (RM3,710); while the median amount reported was US\$587 (RM2,454) and the mean amount was US\$656 (RM2,742). The survey found that the mean monthly wage was US\$256 (RM1,070), which translates into about 2–3 months' worth of salary deducted.

The Private Employment Agencies (Amendment) Act 2017 of Malaysia has stipulated that migrant workers may be charged only one month's worth of their basic wage in placement fees. It seems that Indonesian domestic workers in Malaysia are being charged substantially more than the statutory limit for recruitment. According to the PE Research study, the overall migration costs of domestic workers (for both Indonesian and Filipino workers) were equivalent to about 0.7 of the monthly wage.<sup>6</sup> However, this is not consistent with the salary deduction figures quoted above. Given the very small sample of workers interviewed, this finding may not be generalized to all Indonesian domestic workers. For example, discussions with NGOs suggested wages ranging between RM700 and RM800 (US\$167–191) per month to be more common for domestic workers – significantly less than the RM1,070 average wage of the PE study. Moreover, female domestic workers in households work well beyond the standard eight hours per day. Therefore, it is more relevant to calculate hourly wages or earnings for a comparison of actual earnings. Table 4 provides information on hours worked; 67 per cent of domestic workers had worked 13 hours or more per day, and 45 per cent worked 15 hours or more. By contrast, 78 per cent of plantation workers had worked 10 hours or less per day. Thus, the hourly earnings of female domestic workers would be quite low.<sup>7</sup>

<sup>4</sup> The exchange rate used is US\$1 = RM4.18, based on average of exchange rates between 1 October and 13 December 2019 as reported by the Bank Negara Malaysia.

<sup>5</sup> The sample included only domestic workers whose employer agreed to letting the worker be interviewed. These employers may be among those providing better treatment and working conditions for their domestic workers.

<sup>6</sup> The data are not shown separately for Indonesian workers. It is possible that the Indonesian ratio would be higher given their higher cost and lower wages compared to Filipino domestic workers.

<sup>7</sup> This is also because these workers may not be paid overtime.

► Table 4

Summary comparison of days of work, rest days, and hours worked per day between plantation workers and domestic workers

	Plantation workers (n=391)	Domestic workers (n=310)
<b>Days of work</b>		
6	68%	55%
7	32%	42%
<b>Rest day</b>		
Yes	97%	69%
No	3%	31%
<b>Hours worked per day</b>		
<7 hours	4%	1%
7–8 hours	48%	10%
9–10 hours	26%	6%
11–12 hours	21%	16%
13–14 hours	1%	20%
15–16 hours	0%	31%
>16 hours	–	15%

– = nil.

Source: PE Research, 2019.

The Law of the Republic of Indonesia No. 18 of 2017 on Protection of Indonesian Migrant Workers has prescribed zero placement fees.<sup>8</sup> But workers continue to pay high recruitment costs because the provisions have not been enforced to date through the issuance and enforcement of corresponding rules and regulations.

There is no information on the situation of undocumented domestic workers. A World Bank (2017b) survey of Indonesian migration found that 51 per cent of the domestic workers in Malaysia were undocumented. In view of their vulnerability, these undocumented domestic workers are at risk of abuse and exploitation, and are without wage protection. Moreover, access to justice on the part of undocumented workers is very restricted in Malaysia (Bar Council Malaysia 2019).

<sup>8</sup> Article 30(1): “Indonesian Migrant Workers cannot be borne with placement cost.” Article 72: “Every Person is prohibited from: a. charging components of placement cost that have been borne by prospective Employer to Prospective Indonesian Migrant Workers”.

## 7.2 Plantation workers: Admission and recruitment

Plantations comprise large estates, medium estates, and small holdings (the latter accounting for about 40 per cent of the total), each with different implications for labour recruitment. Some of the plantations are government owned. Oil palms have now emerged as the leading plantation crop given

international demand for palm oil. The oil palm planted area has steadily expanded from 4.8 million hectares in 2010 to 5.8 million hectares in 2018 (table 5). The plantation workforce is largely of migrant origin – 77 per cent of all plantation workers (Earthworm Foundation, 2019; Navamukundan, 2018).

► Table 5

### Malaysia – Planted area under palm oil (hectares)

Year	Peninsular	% Share	Sabah	% Share	Sarawak	% Share	Total
2010	2 524 672	52.0	1 409 676	29.0	919 418	18.9	4 853 766
2011	2 546 760	50.9	1 431 762	28.6	1 021 587	20.4	5 000 109
2012	2 558 103	50.4	1 442 588	28.4	1 076 238	21.2	5 076 929
2013	2 593 733	49.6	1 475 108	28.2	1 160 898	22.2	5 229 739
2014	2 617 334	48.5	1 511 510	28.0	1 263 391	23.4	5 392 235
2015	2 659 361	47.1	1 544 223	27.4	1 439 359	25.5	5 642 943
2016	2 679 502	46.7	1 551 714	27.0	1 506 769	26.3	5 737 985
2017	2 708 413	46.6	1 546 904	26.6	1 555 828	26.8	5 811 145
2018	2 727 608	46.6	1 549 245	26.5	1 572 477	26.9	5 849 330

Source: Malaysian Palm Oil Board (PMOB)

There is no information publicly available on the distribution of foreign workers by crop. Appendix table A3 shows some employment information for rubber plantations, where total employment has ranged between 10,000 to 12,000 since 2010. An interesting feature is that contract employment has remained an important component over the last decade.

The total number of workers in the plantation sector is now below 300,000. While workers have been drawn from a number of different countries, Indonesia has remained as the main country of origin, although its share in total plantation workers has fallen from 93 per cent in 2000 to 73 per cent in 2018 (table 6 and appendix table A4). Bangladesh, in particular, has increased its share.

► Table 6

**Numbers of foreign workers in the Malaysian plantation sector, by major source country and selected years**

Year	Indonesia	Bangladesh	India	Others	Total	Total
2000	186 236	9 959		168	4 111	200 474 92.9%
2005	383 184	2 235	27 759		14 237	427 415 89.7%
2010	188 594	407	14 784		11 983	215 768 87.4%
2015	234 764	21 253	22 952		21 801	300 770 78.1%
2016	213 366	18 220	19 838		17 054	268 478 79.5%
2017	202 890	20 636	21 500		15 403	260 429 77.9%
2018	205 177	34 657	28 603		14 057	282 494 72.6%

Source: Ministry of Primary Industries and Immigration Department

But these numbers show only documented workers recruited through legal channels. It is known that there are substantial numbers of undocumented workers in the plantation sector, especially in the state of Sabah. A 2019 Solidar Suisse study on palm oil production in Sabah estimated that out of 1.2 million migrant workers in Sabah, 840,000 were in undocumented status, and there were between 50,000 to 200,000 undocumented children (Solidar Suisse, 2019).

Plantations must obtain approval of their workforce demand from the MOHR and the Ministry of Home Affairs. To gain such approval, plantations first have to carry out a labour market test to establish that no local workers are available for the positions. Once approval is granted, the plantation can issue job orders through the Indonesian Embassy. In some cases, approvals may be below the quota requested.

Compared to the domestic worker recruitment process, plantation worker recruitment seems to be more straightforward. However, there are no reliable data on the channels of recruitment and related practices at the macro level or by plantation type. Navamukundan (2012) noted that contract labour is common in the plantation industry. Large, reputed companies may not resort to intermediaries, and usually offer better terms and conditions for workers. Smaller plantation companies may use intermediaries or outsourcing companies. This can lead to various recruitment malpractices and violations of migrant rights.

The ILO-commissioned PE Research study found that all plantation worker respondents had paid for their migration costs up front, mostly through advances that had to be repaid. Workers had paid recruiters an average of US\$464 (RM1,960), with the median and mode payments at US\$448 (RM1,873).

Plantation workers mainly relied on agents, brokers, or recruiters to find their job in Malaysia (55 per cent of respondents). About 77 per cent of plantation worker respondents had borrowed money for migrating to Malaysia. About 52 per cent reported salary deductions, which were for repaying the advanced money and other costs (e.g., electricity, water, and agent fees).

Unlike domestic workers, plantation workers are entitled to Malaysia's statutory minimum wage of RM1,100 per month (US\$263). The PE Research survey found that the average monthly earnings of plantation workers were US\$342 (RM1,430) per month. While this is higher than the minimum wage, plantations are known to use piece rate systems that can result in wage variations. The PE survey found that 60 per cent of respondents earned more than promised wage of US\$274 (RM1,145), and 22 per cent earned less than was promised. Plantation workers had to work for an average of 1.4 months to pay for the cost of migration.

Employer costs per plantation worker are, thus, much lower than those for domestic workers. An ILO-commissioned Earthworm Foundation (2019) study of plantation employers reported US\$406 (RM1,697) as the cost per worker borne

by the employer (table 7).<sup>9</sup> Workers reported US\$430 (RM1,797) as the recruitment cost paid to the sponsor and the agent. These are very similar to those reported in the PE study.

► Table 7

**Total cost of recruitment breakdown reported to be paid by "Company 1"<sup>1</sup> at pre-departure and post-arrival**

Items	Amount paid (RM)	Amount paid (RM)
<b>Pre-departure</b>		
Levy	640	153
<b>Visa fees</b>		
Pas Lawatan Kerja Sementara (PLKS)	60	14 <sup>2</sup>
Visa fee		
Visa processing fee	125	30
Entry Visa fee	15	4
Total visa fees	200	48
<b>Bestinet<sup>3</sup> fees</b>		
Online medical fee	130	31
Stamping Visa fee	220	53
Immigration Clearance System fee	150	36
Total Bestinet fees	500	120
<b>Total pre-departure fees</b>	<b>1 340</b>	<b>321</b>
<b>Post-departure</b>		
FOMEMA <sup>4</sup>	180	43
Meals (during training / induction / placement)	25	6
Allowance during training / induction / placement (other than worker's salary)	150	36
<b>Total post-arrival fees</b>	<b>355</b>	<b>85</b>
<b>Total fees</b>	<b>1 695</b>	<b>406</b>

<sup>1</sup> The Earthworm Foundation study examined three Malaysian plantation companies, but recruitment cost estimates were provided only for a single company, designated as "Company 1" in the study report.

<sup>2</sup> The Earthworm Foundation study reports US\$48 here, though the correct number is US\$14.

<sup>3</sup> Bestinet is a private Malaysian IT company that coordinates a network of accredited medical test centres in Indonesia to streamline the medical check-up processes.

<sup>4</sup> FOMEMA is a company appointed by the Malaysian Government to undertake the Foreign Workers' Medical Examination programme.

Source: Earthwork Foundation, 2019.

<sup>9</sup> The Earthworm Foundation study has reported these estimates only for one company – designated as "Company 1" – out of three surveyed.

The Earthworm Foundation study, however, does not make clear whether the company reimbursed these amounts to workers. Forty-nine per cent of the workers employed by the surveyed company reported salary deductions, including for the levy (which is not legal). The same study found that the company did not verify the wages paid, the employment contracts used, or that subcontracted workers have access to grievance mechanisms. While 87 per cent of workers (n=116) had signed an employment contract, only 41 workers (35 per cent) reported being provided with their own copy. Four per cent of the workers reported their passports being held by the employer (Earthworm Foundation, 2019).

While the general applicability of the above survey findings is undetermined, several independent studies have revealed recruitment malpractices and forced labour in the oil palm sector. They are much more prevalent in certain states, such as Sabah, and especially among small holdings, compared to large plantations. Workers may experience unethical recruitment, withholding of identity documents, and low wages in some plantations, with limited access to complaint or redress. Navamukundan (2018) has drawn attention to the prevalence of a triangular employment relationship in the plantation sector that disconnects the direct employment relationship between workers and employers through the mediation of labour contractors.

Piece rate systems can result in wages lower than the minimum wage due to the disparity between low crop and high crop seasons (among other reasons), with workers earning between RM500 to RM2,000 per month (Das, 2018). The Solidar Suisse study on the oil palm sector in Sabah found that monthly wages ranged from RM364 to RM1,352 in two plantations studied, and stated that employers often did not respect minimum wage laws. Labour brokers and outsourcing companies are responsible for many unethical recruitment practices and violations of the basic labour rights of plantation workers (Vartiala and Ristimäki, 2014; Asia, 2018; FLA, 2018; Bar Council Malaysia 2019; Solidar Suisse, 2019).

Generally, undocumented migrant workers in plantations may suffer greater abuse and exploitation. The Solidar Suisse (2019) study estimated 840,000 undocumented workers in Sabah, and between 50,000 to 200,000 undocumented children. Undocumented migrants are dependent on the plantation operators for their work

permits and employment. The study observed: “Undocumented migrants on the plantations are the norm rather than the exception” (p. 26) and “the root cause for forced- and child labour” (p.15). Plantation owners maintain the existing migration regime as a means of securing low-cost labour.

The Roundtable on Sustainable Palm Oil (RSPO) in 2018 developed principles and criteria for sustainable palm oil production, which has been adapted to Malaysia by the Malaysian National Interpretation Working Group (RSPO and MYNI-WG, 2019). Several principles and criteria apply to ethical recruitment and worker rights:

- Principle 1: “Behave ethically and transparently”, which applies to recruitment and contracts;
- Principle 6: “Respect workers’ rights and conditions”, which is directed toward ensure safe and decent working conditions.

Under Principle 6, the first criterion is the prohibition of any form of discrimination, including charging of fees for recruitment. Companies have to demonstrate that recruitment, selection, hiring, access to training, and promotion are based on workers having the skills, capabilities, qualities, and medical fitness necessary for the jobs available. Sub-principle 6.6 – “No forms of forced labour or trafficked labour are used” – is most relevant for recruitment. It prohibits the following:

- retention of identity documents or passports;
- charging workers for recruitment fees;
- contract substitution;
- involuntary overtime;
- lack of freedom of workers to resign;
- penalties to the workers for termination of employment;
- debt bondage; and
- withholding of wages.

Another innovative feature of the RSPO guidelines is the need for payment of a decent living wage (DLW) to workers (box 1). The Malaysian National Interpretation Working Group has carried out an illustrative calculation of the DLW for plantation workers in Peninsular Malaysia, Sabah, and Sarawak for 2016: RM1,825, RM1,138, and RM1,159 per month, respectively. The DLW for Peninsular Malaysia is higher than the current minimum wage of RM1,100 per month.

**Box 1**  
**Definition of a decent living wage according to RSPO guidelines**

**Decent Living Wage:** The remuneration received for a standard work-week by a worker in a particular place, sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, healthcare, transport, clothing and other essential needs, including provision for unexpected events.

Source: RSPO, 2018, p. iii.

Regular audits are needed to assess the extent to which oil palm companies satisfy these criteria. To cite one example, the RSPO has sanctioned FGV Holdings Berhad (formerly FELDA Global Ventures) for forced labour practices, possible trafficking in migrant workers, and numerous other violations of Malaysian labour laws, including high fees paid by migrants to recruitment agents; unlawful salary deductions for food, water, and electricity; inability to terminate contracts; recruitment practices indicative of use of trafficked workers; and poor accommodation conditions.

A recent study of the oil palm sector in Malaysia concludes: “[W]hile large palm oil companies have shown modest progress in realizing their human rights obligation – the lack of regulatory framework, resources, direct market pressure and membership to sustainability standards continue to serve as critical challenges in compensating the gaps in human rights governance” (Wahab, 2019, p. 1).

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## 7.3 Recruitment practices and irregular migration

An important issue to review is the link between current admission procedures and recruitment practices and workers opting to migrate through irregular channels. It is known that cumbersome, lengthy, and non-transparent formal procedures and costly formal recruitment channels can divert potential migrants into risky and informal/irregular channels (World Bank, 2015; 2017a).

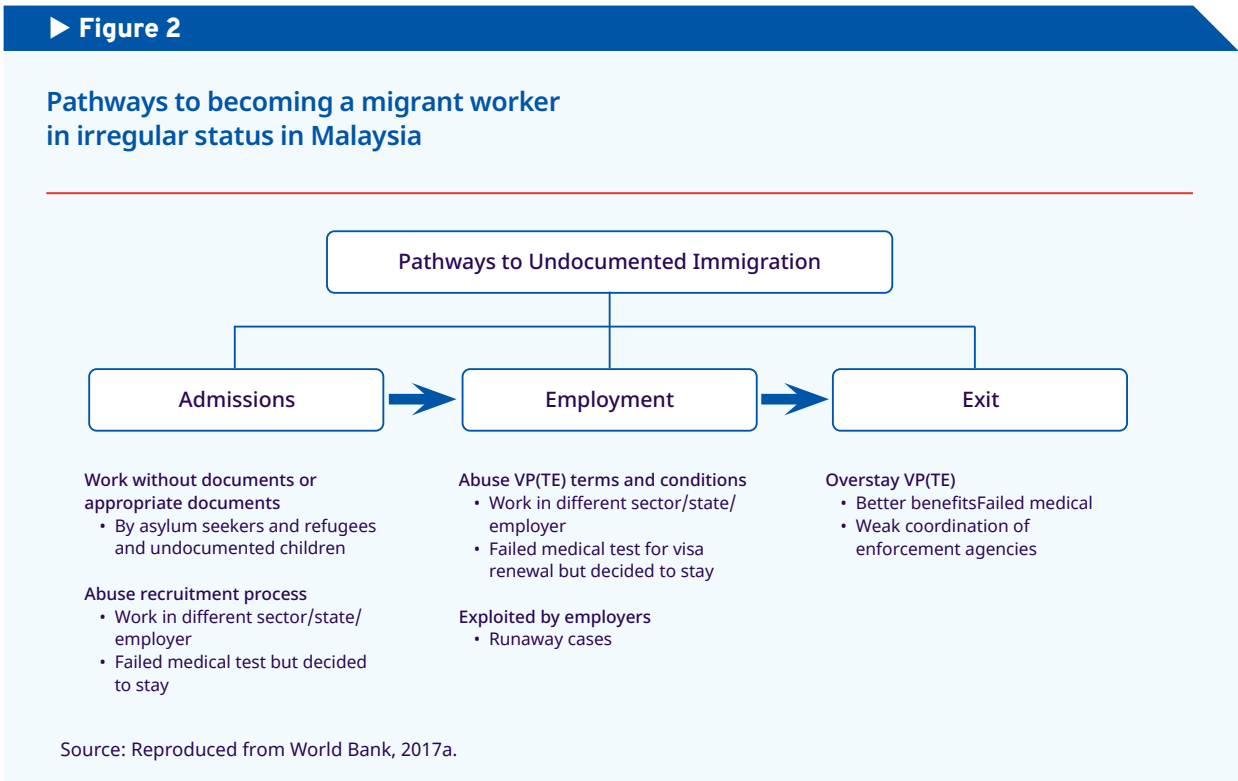
This is especially the case in Indonesia, which has demanding documentation requirements for even low-skilled workers, as noted above. The unclear division of responsibility between the MOHR and the Ministry of Home Affairs in Malaysia is also challenging for employers and migrant workers. In addition, long waiting times to obtain workers (about six months in some cases), reduced quotas below actual

needs, and the high cost of hiring domestic workers in Malaysia may also persuade some employers to engage undocumented workers (World Bank, 2017a). Abuse and non-payment of wages may compel workers to abscond and become irregular, since workers migration status are tied to their employers. Similarly, workers may decide to stay on after failed medical tests. Bans and moratoriums on migration for employment also lead to migration under irregular conditions. Indonesia has imposed bans on domestic workers migrating to Malaysia at times. There is undocumented migration from poorer provinces in Indonesia to plantations in Sabah and Sarawak, with workers sometimes coming with their families, including children. These practices may continue due to laxity of law enforcement on both sides of the border.



Figure 2 shows the pathways to becoming a worker in irregular status in Malaysia during the admission, employment, and exit stages of the migration process, based on an analysis by the World Bank (2017a). The World Bank study identifies four factors that may lead employers to resort to undocumented workers:

- high employment cost;
- limited approval of workers demanded;
- long hiring process extending up to six months; and
- the high risk of paying a penalty for absconding workers.



## 8. Recruitment and placement options

There are three major recruitment options available to countries of origin and destination:

1. use of private recruitment agencies;
2. state-led recruitment or government-to-government (G-to-G) recruitment mechanisms; and
3. direct hiring.

### Use of private channels

In most Asian countries, migration for overseas employment is in the hands of the private recruitment industry, which has been successful in quickly exploiting market opportunities and expanding migration flows.

However, the downside has been various malpractices by part of the industry, resulting in protection gaps and forced labour practices. While governments have tried to regulate private recruitment agencies through licensing procedures and sanctions and penalties, there has been widespread ineffective enforcement of their regulation.

Migration flows between Indonesia and Malaysia have always been arranged by the private sector through Indonesian private recruitment agencies (IRAs) and Malaysian private Recruitment agencies (MRAs). Persistent high costs of recruitment for both employers and workers, and the exploitation of migrant

workers has justified the exploration of other recruitment options.

### G-to-G mechanisms

Government-to-government mechanisms are successful in combatting recruitment malpractices and reducing migration costs substantially.

This was the case with the Bangladesh–Malaysia G-to-G agreement during 2013–15 for employment of Bangladeshi workers in the Malaysian oil palm plantation sector (Wickramasekara, 2016). A special committee – the Malaysian Committee on Application of Bangladesh Workers<sup>1</sup> – chaired by the MOHR was formed to review and match employer applications for workers. Bangladesh’s Bureau of Manpower, Employment and Training acted as the public employment agency from the origin country, and the MOHR served as the destination country counterpart for state-led recruitment. While it was successful in reducing worker-paid migration costs substantially, the arrangement was changed to a G-to-G Plus system involving private recruitment agencies in 2016. Appendix figure A2 provides a flowchart of the process of hiring Bangladesh workers under this G-to-G system.

The Employment Permit System of the Republic of Korea is another example of a G-to-G system where origin countries supply workers through their public employment services. Indonesia currently has G-to-G programmes with the Republic of Korea, as well as with Japan under a recently signed Memorandum of Cooperation. Several studies have advocated expanding G-to-G systems to cover different categories of workers (World Bank, 2015; Wickramasekara, 2015).

The Malaysian authorities have made it clear that they favor G-to-G systems, and have proposed such arrangements to several origin countries, but origin countries – including Indonesia – have been reluctant to adopt the system.<sup>2</sup> This may be due to vested interests and the entrenched nature of private recruitment agencies, who would be at risk of losing business.

### Direct hiring by employers without intermediaries

Malaysia has experimented with direct hiring under the Maid Online System launched by the Ministry of Home Affairs in 2017. The Maid Online System provides a web portal for Malaysian employers to directly hire domestic workers from abroad without using intermediaries.<sup>3</sup> The main rationale for the online system is to reduce the cost of hiring. According to the Immigration Department, direct hiring of a migrant domestic helper would cost about RM3,600–3,800 (US\$860–900), which includes levy fees, a Visit Pass (Temporary Employment), a visa, and processes set according to the respective origin countries, as well as flight cost (Andria, 2018). The visas can be approved within roughly ten days.

There has been, however, no information shared on the operation of the system; on the number of workers hired and their nationalities; and their wages and working conditions. The recruitment associations and NGOs interviewed for this report highlighted that Indonesian women arriving as tourists on social visits may contact agencies once in Malaysia to find an employer. There is also concern that this sort of activity may give rise to trafficking by unscrupulous recruitment agencies, leading to forced labour situations. Recruitment associations are also concerned about the impact on their business.

In addition, the Maid Online System was introduced without consultations with origin countries. Both Indonesia and the Philippines – the major sources of migrant domestic workers in Malaysia – do not approve of direct hiring on the ground that they have no record of the arrangement, and by consequence their capacity to protect their domestic workers suffers. During the field visits for this study, NGOs interviewed were critical of the Maid Online System and direct hiring efforts, which echoed similar criticism found in some media reports (cited in: Yong, 2018). The Malaysian Employers Federation (MEF) however, believes that the online portal is a good system for combatting the unreasonably high cost to employers of hiring domestic workers.<sup>4</sup>

<sup>1</sup> Members of the committee consisted of the Ministry of Human Resources; Ministry of Home Affairs; Ministry of International Trade and Industry; Ministry of Agriculture; Ministry of Plantation Industries and Commodities; Constructing Industry Development Board; and Ministry of Domestic Trade and Consumer Affairs.

<sup>2</sup> Per presentations by MOHR delegates at the 20 December 2019 ILO Workshop in Kuala Lumpur.

<sup>3</sup> The portal can be viewed at: <https://maid-online.imi.gov.my/maid/main>.

<sup>4</sup> Per author’s discussion with Malaysian Employer Federation .



## 9. Good practices and interventions

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This chapter presents a selection of good practices and recent interventions in Malaysia and Indonesia that are working to improve the recruitment and employment process for Indonesian domestic workers and plantation workers in Malaysia, including the protection of migrant worker rights and welfare.

- Several guidelines and manuals have been produced recently in Malaysia on employing migrant workers with focus on recruitment and addressing forced labour:
  - The MOHR has published and disseminated a user-friendly booklet titled Guidelines and tips for employers of foreign domestic helpers (MOHR, 2017). This booklet covers useful information regarding laws and practices related to the employment of migrant domestic workers. It provides tips on how to hire and employ migrant domestic workers; on being a good employer; and on creating a harmonious atmosphere in the home/ workplace.
  - The Malaysian Employers Federation (MEF) has produced several guides to assist employers in the employment of migrant workers and combatting forced labour practices in collaboration with the ILO (MEF, 2014; Tang, 2019a; 2019b; MEF and ILO, 2019). The 2014 guide – Practical guidelines for employers on the recruitment, placement, employment, and repatriation of foreign workers in Malaysia – was based on a survey of MEF member companies, and provides detailed guidelines to employers covering the entire migration cycle. New 2019 guides on business’ responsibility in addressing and preventing forced labour practices are timely in view of international criticism of such practices in Malaysian companies.
  - The ILO’s Improving Migration Project has produced three infographics on rights and responsibilities for migrant domestic workers, migrant plantation workers, and migrant workers in general. These are user-friendly brochures that explain in simple terms admission and recruitment procedures, worker rights, and dos and don’ts. They have been widely disseminated to migrant workers through networks of NGOs and trade unions.
- The Malaysian Trades Union Congress (MTUC) has continued to actively collaborate with trade unions in origin countries (Indonesia, Nepal, Viet Nam, etc.) in protecting the rights of their workers in Malaysia. The MTUC has an ongoing collaboration with the Viet Nam General Confederation of Labour to share information and protect Vietnamese workers in Malaysia. It also provides direct assistance to migrant workers whose labour rights have been violated. A major activity is the running of Migrant Resource Centres in Kuala Lumpur/Selangor and Penang, which have provided valuable assistance to migrants and also handled cases resulting in compensation for claimants.
- The National Union of Plantation Workers is a long-standing trade union looking after the protection and welfare of plantation workers. It has been active in supporting the welfare and protection of plantation workers through various activities including collective bargaining.
- Several NGOs are very active in providing support to migrants, especially domestic workers in both Indonesia and Malaysia. In Malaysia, Tenaganita, Migrant Care Malaysia, Sahabat Vanita, the North-South Institute, and the International Domestic Worker Federation, among others, are active in advocacy for promotion of migrant rights and providing legal and other assistance to aggrieved workers, including victims of forced labour. In December 2018, a domestic workers coalition known as Ke Arah 189 (Towards 189) was launched with a view to better coordinating the efforts to address domestic workers issues, with a specific focus on the Convention No. 189, which Malaysia has yet to ratify.

- In Indonesia, NGOs such as Migrant Care, the Migrant Workers Network (JBM), LBH Jakarta, Solidaritas Perempuan, and INFEST, as well as trade unions such as the SBMI, KSBSI, and Sarbumusi have intensively supported the protection of migrant workers, including actively lobbying the Government of Indonesia to issue the implementing regulations of the new Law

No. 18/2017 on Protection of Indonesian Migrant Workers. Some other organizations, particularly those associated with Christian churches and Islamic organizations, also very active in advocating for action against the trafficking of migrant workers, particularly in West Java, Central Java, East Java, and East Nusa Tenggara provinces.



## 10. Conclusions and recommendations

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### 10.1 Conclusions

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There have been several positive developments in both Malaysia and Indonesia relating to labour migration governance and fair recruitment of migrant workers. In Malaysia these include:

- the 2017 revision of the 1981 Private Employment Act;
- the proposed Employment (Domestic Worker) Regulations 2019;
- the phasing out of outsourcing companies in Malaysia by 2021;
- growing recognition on reducing worker-paid migration and recruitment costs;
- the appointment of an Independent Committee of Experts on the Management of Foreign Workers, and
- the shifting of the levy on use of migrant workers to employers are some of them.

In Indonesia, the most positive development has been the enacting of Law 18 of 2017 on Protection of Indonesian Workers, which aims to decentralize the migrant worker recruitment and placement process and reduce the dominant role of private recruitment agencies.

Interviews and focus group discussions for this study reveal a convergence of views among stakeholders on labour migration in several areas:

- There is growing recognition in Malaysia that one ministry should act as the lead agency for all matters concerned with labour

migration. Logically this is the Ministry of Human Resources (MOHR), which deals with overall employment and labour market issues.

- There is an emerging consensus that layers of intermediaries in the origin country have to be minimized within the recruitment of migrant workers. Related to this issue, stakeholders felt that the regulation of private recruitment agencies in both countries was inadequate.
- There is also growing recognition of fair recruitment principles, including zero placement costs for migrant workers. Concerns have been expressed about the lack of transparency of total migration and recruitment costs, and about various unlawful salary deductions by employers and recruitment agencies.
- Stakeholders also raised the need for using digital technologies innovatively in migration governance, including recruitment and protection of migrant rights.
- There is also priority placed by stakeholders on gender-responsive policies, especially in addressing domestic worker concerns and in negotiating MOUs.
- At the same time, many stakeholders felt that there was limited access to justice for migrant workers overall and in particular on recruitment and employment malpractices.

The Government of Malaysia has also signed a revised MOU with the Government of Nepal on hiring Nepalese migrant workers, and negotiations with the Government of Bangladesh on hiring Bangladeshi migrant workers are ongoing. The main driving force in these revisions is the need to lower migration costs for workers and employers. The governments of Malaysia and Indonesia have conducted several rounds of negotiations aimed at revising or replacing the 2011 Protocol to the MOU, which has now become a priority.

In view of the high dependence of domestic and plantation sectors on migrant workers, it is unlikely that these two sectors can make a contribution to the national target of reducing the share of migrant workers.

## 10.2 Recommendations

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The study makes some recommendations below for consideration by the two governments and by the ILO. These recommendations have taken

into account feedback received during the ILO Workshop on 20 December 2019 in Kuala Lumpur.

### ► 10.2.1 General recommendations for the consideration of the governments of Indonesia and Malaysia

The following are a series of general recommendations for consideration of both the Government of Malaysia and the Government of Indonesia:

- It is suggested that both countries explore wider recruitment options on at least a pilot basis. The Malaysian authorities mentioned during the ILO Workshop that they had proposed this option to several countries of origin, including Indonesia. The Indonesian Government should, therefore, explore the G-to-G mechanism option, especially for domestic workers, to address the high cost of migration to employers. Such an arrangement would also be in line with Law 8 of 2017 on the Protection of Indonesian Migrant Workers. Since the plantation sector is partly state-driven, with government-owned and government-linked companies, introduction of a G-to-G hiring option would be particularly useful. Such an arrangement could be initially tried out on a pilot basis and expanded based on performance. In reviewing G-to-G recruitment options, social partners in

Malaysia and Indonesia and concerned civil society organizations should be consulted.

- The two governments should give priority to the finalization of a new MOU on the hiring and employment of domestic workers to replace the 2011 Protocol on the MOU on domestic workers, which expired in 2016. Discussions revealed that several rounds of negotiations have already taken place. The new MOU should take into account new developments in legislation and international and regional developments. The international trend towards non-payment of placement of fees by workers, and the provision in the Indonesian Law 18 of 2017 on zero placement fees could be incorporated in the new MOU. Malaysia has already responded positively to a request by Nepal to minimize fees for migrant workers in their new MOU, signed in 2018. A G-to-G mechanism could be considered in the revision of the MOU.

- Both governments should emphasize transparency of the MOU and its effective implementation process through joint working groups and task forces comprising major stakeholders. Employers and workers – who are the key actors in the process of migration – have the right to be consulted and know of their rights and obligations contained in any signed MOU. Asian countries, such as India and the Philippines, and many developed countries maintain good practices in sharing copies of bilateral labour agreements and MOUs in the public domain. It is recommended that the text of the MOU, its annexes, and any important amendments be shared with major stakeholders and also placed in the public domain.
- Standard employment contracts should form an integral part of the MOUs. The recommendations of a recent ILO study on standard employment contracts could be used in improving their format and content (see Holliday, 2019). The extension of the minimum wage to domestic workers could also be considered. Social partners and civil society organizations, especially domestic worker organizations, and recruitment agencies should be involved in the negotiation, implementation, and follow up processes.
- The governance systems of domestic workers and protection of their rights in Hong Kong (China), Taiwan (China), and Singapore could be reviewed to learn from their good practices. Another aspect worthy of attention is the initiative of the United Arab Emirates regarding the development of competency standards for different occupations in the domestic work sector: head housekeeper; housekeeper; child carer; and home cook. Wages can be adjusted according to skills for these occupations.
- Both governments may consider ratification of the ILO Domestic Workers Convention, 2011 (No. 189) given the important role of domestic workers in labour migration for both countries. At the same time, they could consider ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29) and the Private Employment Agencies Convention, 1997 (No.181) to address persistent recruitment issues. ILO assistance could be sought in reviewing requirements and any obstacles to their ratification, and how to address them.
- Another priority is a strategy for more effective regulation of private recruitment agencies through grading and ranking and the provision of incentives. There are good practices from countries such as the Philippines in this area. Both governments need to step up enforcement efforts through improved labour inspection systems and capacity-building activities. The regulations and their enforcement should be updated based on international and national standards on recruitment. Voluntary codes of conduct and self-regulation by private recruitment agencies, with accountability, may be promoted as supplementary measures.
- It is important for both governments to gather information and data relevant for the planning and operation of labour migration programmes. Major gaps include the absence of information on recruitment costs and fees, and on wages and working conditions of both domestic workers and plantation workers. The importance of reducing the cost of recruitment is recognized in the ILO General Principles and Operational Guidelines for Fair Recruitment as well as in the 2030 Agenda for Sustainable Development, under a dedicated indicator, SDG Indicator 10.7.1. Recent surveys by PE Research and the Earthworm Foundation with ILO and donor support are good initiatives that have to be implemented on a broader scale. A benchmark study using the World Bank-ILO standardised methodology to measure SDG indicator 10.7.1 and, thereafter, biennial surveys of recruitment costs can be undertaken either as stand-alone surveys or integrated into regular surveys undertaken by national statistics offices to report against SDG Indicator 10.7.1. There is need for better data on recruitment and labour practices in the plantation sector, as well as better monitoring and labour inspection.
- Following the above recommendation, the two governments should also consider aligning national laws and regulations with the ILO General Principles and Operational Guidelines for Fair Recruitment – most importantly, its principle that workers shall not, directly or indirectly, be charged any fees or costs related to their recruitment and placement.

## ► 10.2.2 Recommendations for the consideration of the Government of Malaysia

The following are a series of recommendations for the consideration of the Government of Malaysia:

- It is suggested that the Government of Malaysia give serious consideration to bringing domestic work under the Employment Act and to extending protection to domestic workers on an equal footing with all other workers. If this is not feasible, the Government could expedite the finalization of the Employment (Domestic Employee) Regulations 2019 based on feedback received from the ILO and civil society organizations on the draft and on provisions of the ILO Domestic Workers Convention, 2011 (No. 189). This is important because non-binding MOUs cannot provide adequate protection for migrant domestic workers.
- It is important that a single ministry act as the lead agency for all matters related to the admission, recruitment, and governance of labour migration. Logically, this should be the Ministry of Human Resources (MOHR), which has the capacity to review labour market needs and ensure the protection of migrant workers. This is in line with the Eleventh Economic Plan of Malaysia proposal for streamlining the recruitment of foreign workers by placing it under a single administration with the MOHR assuming the lead role in policy-making for foreign worker management (EPU, 2015). Recruitment processes can be streamlined through the One-Stop Centre.
- It is suggested that the Government publish the report of the Independent Committee of Experts on the Management of Foreign Workers, and take appropriate action after review.
- The performance of the Maid Online System should be made more transparent, and the situation should be reviewed on an urgent basis. The system should be consulted upon with origin country governments. In principle, the system could indeed provide more job matching options for employers and jobseekers alike, provided safeguards against abuse are installed. Note could also be taken of emerging domestic worker governance models, such as Tadbeer Centres in the United Arab Emirates and the Musaned system in Saudi Arabia. The modified system should be brought under the responsibility of the MOHR.
- There should be more effective monitoring of recruitment practices, of compliance with minimum wage laws, and of wage protection in the plantation sector. The presence of large numbers of undocumented workers – including women and children – in the plantation sector, especially in Sabah, with little protection of their rights, is a cause for concern that reflects the fact that admission procedures and recruitment systems are not working as intended. The Government should take steps to address the situation in line with international norms and national legislation.
- It is very important to recognize organizations/associations of domestic workers as being among the stakeholders in the recruitment and employment process. Migrant workers should be given opportunities for voicing their issues and grievances through their own organizations, in addition to access through trade unions and NGOs. If there are legal barriers to the establishment of domestic worker organizations/associations, the Government should consider removing such barriers.
- The requirement of two medical tests – one in the origin country and one in Malaysia after arrival – raises migration costs for workers and also for recruitment agencies when they have to repatriate and replace workers who have failed tests. It is also unfair for workers to be deported immediately after arrival, given the heavy investments they have made in migration. Since a Malaysian private agency (Bestinet) coordinates a network of accredited medical test centres in Indonesia to streamline the medical check-up process, it is difficult to understand why the results do not always tally with tests carried out by FOMEMA in Malaysia. One option is for FOMEMA itself to accredit medical institutions and closely supervise the medical tests of workers in Indonesia, and make it the only test required.

### ► 10.2.3 Recommendations for the consideration of the Government of Indonesia

The following are a series of recommendations for consideration of the Government of Indonesia:

- The government of Indonesia should give utmost priority to promulgation of the rules or regulations for Law 18/2017 on Placement and Protection of Migrant Workers, as absence of these rules or regulations is creating a number of protection and governance gaps, especially regarding the role of private recruitment agencies.
- Given that some time will be needed for the proclamation of the regulations and their effective implementation, it is proposed that transitional measures be undertaken on an urgent basis regarding information delivery by village centres, the training of migrant workers, and defining the roles of local governments and private recruitment agencies.
- There is also a need for promoting credible one-stop centres to simplify various bureaucratic steps and documentation requirements. The decentralization process seems to have duplicated functions at different levels, and may confuse the average migrant worker. Workers in elementary occupations need simple and easy to follow procedures for migration so that they do not opt for risky irregular channels. The documentation processes currently in force need to be simplified.
- The Government of Indonesia should review factors underlying the high employer cost associated with the recruitment of domestic workers from Indonesia, and adopt measures to minimize these costs. The Government should also define clearly the applicable cost structure; clarify what zero placement cost means; and how other related costs can be minimized for migrant workers.
- The central Government and local governments may study the scope for upgrading the skills of domestic workers and for developing competency standards. Indonesia has already recognized different categories, such as domestic worker, caregiver, housekeeper, cook, and cleaning workers in their statistics. ILO assistance may be sought in this regard.
- It is suggested that the Government of Indonesia undertake stakeholder consultations on the signing of a new MOU with Malaysia on the hiring and protection of domestic workers.
- The Government should address the causes of undocumented migration to Malaysia, especially from poorer provinces and by poor households, and try to minimize such migration flows by targeted information and job creation campaigns, as well as regular dialogue with Malaysia.



## ► 10.2.4 Recommendations to the ILO and development partners

The following are a series of recommendations for the consideration of ILO and development partners:

- The ILO could provide advisory services, on request, to the governments of Indonesia and Malaysia on the requirements for ratification of international standards, particularly on the Domestic Workers Convention, 2011 (No. 189); the Private Employment Agencies Convention, 1997 (No. 181); and the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29).
- The ILO should continue to provide technical assistance to all concerned stakeholders in Indonesia and Malaysia on the ILO General Principles and Operational Guidelines on Fair Recruitment and Definition of Recruitment Fees and Related Costs. This is important given the increasing acceptance of zero migration costs for workers, and the different interpretations of what “zero recruitment costs” mean for workers, including domestic workers and plantation workers.
- The ILO and development partners should support the governments of Indonesia and Malaysia in their attempts to promote effective labour migration governance, ensure the protection of migrant workers, and promote the development benefits of migration. The newly established UN Network on Migration should support the capacities of both governments in achieving SDG goals and targets in relation to migration, and in meeting commitments made under the Global Compact for Safe, Orderly and Regular Migration.

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## ► Appendix I. Figures and tables

► Table A1

Statistics of temporary work pass holders by nationality and sector – PLKS, June 2019<sup>1</sup>

No.	Nationality	Sector						Total
		Manufacturing	Construction	Plantation	Services	Agriculture	Domestic	
1	Indonesia	139 163	153 470	201 050	43 026	75 061	92 405	704 175
2	Bangladesh	207 394	216 880	30 938	93 651	19 951	115	568 929
3	Nepal	228 925	6 919	2 652	68 662	8 891	53	316 102
4	India	3 014	9 852	27 772	50 576	25 371	1 148	117 733
5	Myanmar	93 543	12 605	874	15 265	3 443	65	125 795
6	Pakistan	3 569	26 629	5 960	8 614	16 892	25	61 689
7	Philippines	4 399	2 653	3 111	6 275	3 695	32 277	52 410
8	Viet Nam	13 022	1 850	57	2 090	618	540	18 177
9	Thailand	170	689	394	11 215	1 913	310	14 691
10	China	1 163	6 322	7	4 906	20	233	12 651
11	Sri Lanka	4 051	279	164	1 279	150	566	6 489
12	Cambodia	1 009	116	100	583	326	1 411	3 545
13	Lao PDR	8	-	0	10	3	20	41
	<b>Total</b>	<b>699 430</b>	<b>438 264</b>	<b>273 079</b>	<b>306 152</b>	<b>156 334</b>	<b>129 168</b>	<b>2 002 427</b>

Note: - = nil; Lao PDR = Lao People's Democratic Republic.

<sup>1</sup> Cumulative figures as of 30 June 2019.

Source: Ministry of Home Affairs.

► Table A2a

## ILO Conventions ratified by Indonesia

Convention	Ratification date	Status
<b>Fundamental Conventions</b>		
Forced Labour Convention, 1930 (No. 29)	12 June 1950	In force
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	09 June 1998	In force
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	15 July 1957	In force
Equal Remuneration Convention, 1951 (No. 100)	11 Aug. 1958	In force
Abolition of Forced Labour Convention, 1957 (No. 105)	07 June 1999	In force
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	07 June 1999	In force
Minimum Age Convention, 1973 (No. 138) Minimum age specified: 15 years	07 June 1999	In force
Worst Forms of Child Labour Convention, 1999 (No. 182)	28 Mar. 2000	In force
<b>Governance (Priority) Conventions</b>		
Labour Inspection Convention, 1947 (No. 81)	29 Jan. 2004	In force
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	17 Oct. 1990	In force
<b>Technical Conventions</b>		
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	12 June 1950	In force
Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	12 June 1950	In force
Underground Work (Women) Convention, 1935 (No. 45)	12 June 1950	In force
Employment Service Convention, 1948 (No. 88)	08 Aug. 2002	In force
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	23 Aug. 1972	In force
Hygiene (Commerce and Offices) Convention, 1964 (No. 120)	13 June 1969	In force
Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185)	16 July 2008	In force
Maritime Labour Convention, 2006 (MLC, 2006)	12 Jun. 2017	In force
Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)	31 Aug. 2015	In force

Source: ILO.

► Table A2b

## ILO Conventions ratified by Malaysia\*

Convention	Ratification date	Status
<b>Fundamental Conventions</b>		
Forced Labour Convention, 1930 (No. 29)	11 Nov. 1957	In force
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	05 June 1961	In force
Equal Remuneration Convention, 1951 (No. 100)	09 Sep. 1997	In force
Abolition of Forced Labour Convention, 1957 (No. 105)	13 Oct. 1958	Not in force – denounced in 1990
Minimum Age Convention, 1973 (No. 138) Minimum age specified: 15 years	09 Sep. 1997	In force
Worst Forms of Child Labour Convention, 1999 (No. 182)	10 Nov. 2000	In force
<b>Governance (Priority)</b>		
Labour Inspection Convention, 1947 (No. 81)	01 July 1963	In force
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	14 June 2002	In force
<b>Technical Conventions</b>		
Employment Service Convention, 1948 (No. 88)	06 June 1974	In force
Protection of Wages Convention, 1949 (No. 95)	17 Nov. 1961	In force
Guarding of Machinery Convention, 1963 (No. 119)	06 June 1974	In force
Minimum Age (Underground Work) Convention, 1965 (No. 123) Minimum age specified: 16 years	06 June 1974	In force
Minimum Wage Fixing Convention, 1970 (No. 131)	07 June 2016	In force
Maritime Labour Convention, 2006 (MLC, 2006)	20 Aug. 2013	In force
Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)	07 June 2012	In force

\* - States of Peninsular Malaysia, Sabah, and Sarawak have also ratified a few Conventions separately. Sabah State ratified the ILO Migration for Employment (Revised) Convention, 1949 (No.97) in 1964 under British rule, and it is in force.

Source: ILO.

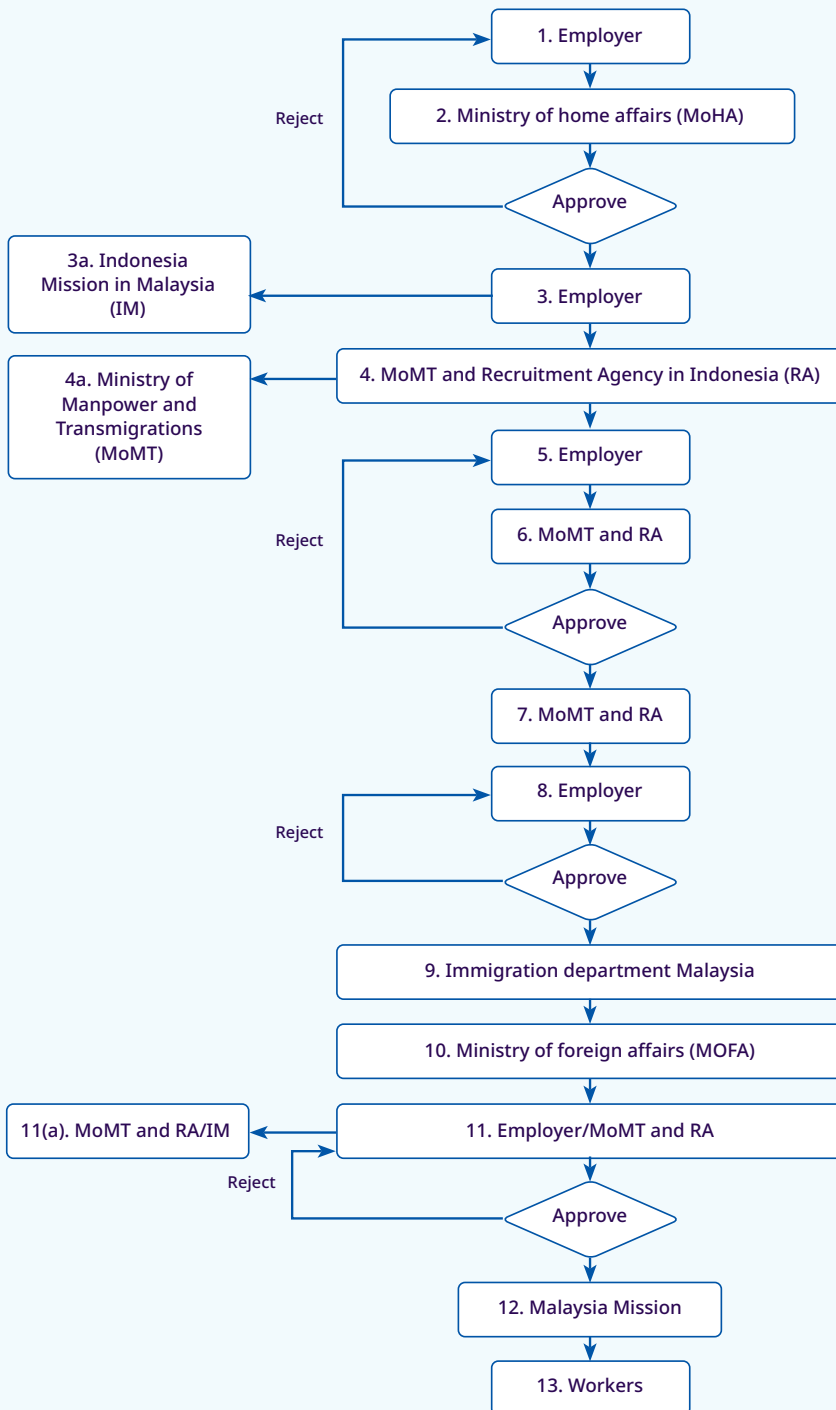


► Figure A1

Flowchart – Recruitment of Indonesian workers under the 2004 MOU

Flow chart of foreign workers recruitment procedure for employment in Peninsula Malaysia.

Recruitment using licensed Recruitment Agency (RA)

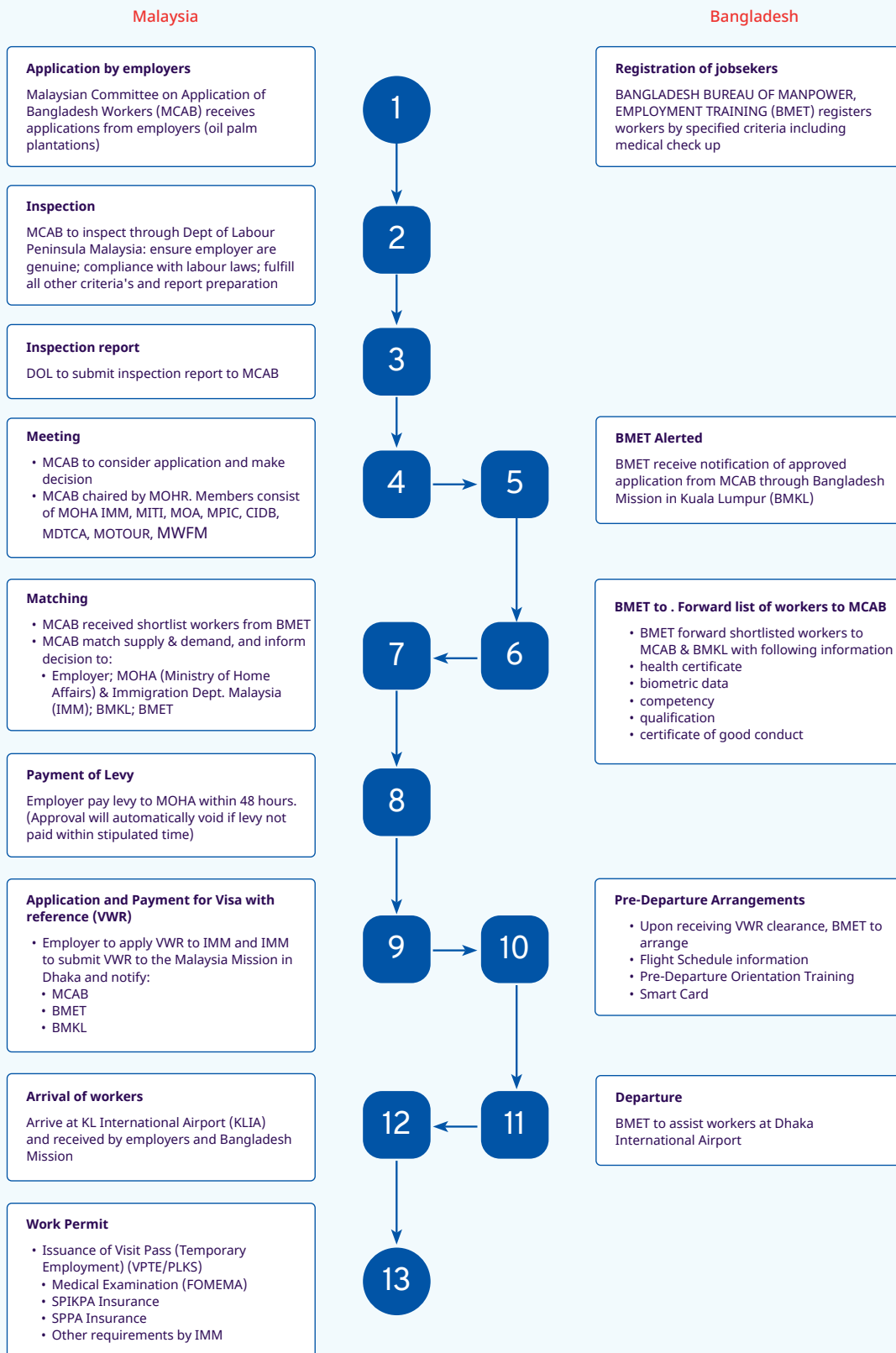


1. Employer submits the application to employ foreign workers to the MOHA (Ministry of Home Affairs)
2. MOHA processes application and issues approved letter to Employer
3. Employer submits letter of demand to Ministry of Manpower and Transmigration (MoMT) and Recruitment Agency (RA)
  - 3a. Employer informs the IM
4. MoMT and RA provide candidates to be interviewed/selected by the Employer
  - 4a. RA informs MoMT
5. Employer makes selection and prepares list of selected workers with MoMT and RA assistance
6. MoMT and RA arrange for worker's Medical Check
7. MoMT and RA prepare worker's Travelling Doc to the Employer
8. Employer submits visa application to IDM (Immigration Department Malaysia) together with the following payment
  - a. Deposit
  - b. Levy, and
  - c. Work permit charges
9. IDM sends visa approval letter addressed to MM (Malaysia Mission) in Indonesia through the Employer
10. Employer obtains endorsement of approval letter at Consular Office of the MoFA (Ministry of Foreign Affairs) of Malaysia
11. Employer sends endorsed visa approval letter to MM in Indonesia through MoMT and RA
12. RA informs IM (Indonesian Mission in Malaysia) and MoMT
13. MM in Indonesia issues the visa
14. Worker arrives in Malaysia and informs the IM

\* Attach a copy of MOHA approval letter, appointment letter, employment contract and company profile (not clear where this is linked)

► **Figure A2**

**Flowchart – Process and procedures for employment of Bangladeshi workers in the Malaysian plantation sector under the government-to-government system, 2012–15**



► Table A3

### Employment in Malaysian rubber estates

Year	Direct employment			Contract employment		Total
	Admin. Staff	Estate Workers	Factory Workers	Estate Worker	Factory Workers	
2010	1 168	6 994	48	2 597	-	<b>10 807</b>
2011	1 138	7 323	45	2 379	-	<b>10 885</b>
2012	1 273	8 444	43	2 696	-	<b>12 456</b>
2013	1 439	8 304	45	2 258	-	<b>12 046</b>
2014	1 492	8 593	44	2 231	-	<b>12 360</b>
2015	1 521	7 512	42	2 561	-	<b>11 636</b>
2016	1 485	6 751	53	1 975	-	<b>10 264</b>
2017	1 491	6 851	45	1 908	-	<b>10 295</b>
2018	1 904	7 506	30	2 041	-	<b>11 481</b>

- = nil.

Source: Department of Statistics Malaysia and Malaysian Rubber Board.

► Table A4

### Number of migrant workers in the Malaysian plantation sector by country of origin

Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Indonesia	186 236	212 142	274 788	324 035	352 339	383 184	316 832	290 484	399 569	260 232
Bangladesh	9 959	6 931	5 228	3 431	2 592	2 235	1 195	14 207	19 234	32 064
India	168	140	3 859	11 131	16 536	27 759	25 504	22 451	18 515	16 690
Pakistan	215	177	346	171	134	289	451	971	1 258	1 236
Philippines	3 236	883	9 524	5 611	5 341	6 835	5 590	4 662	7 302	3 672
Nepal	228	2 113	3 683	4 341	5 159	4 736	2 913	1 484	1 870	2 000
Myanmar	2	56	546	1 226	1 143	1 347	1 290	2 584	-	1 919
Thailand	261	262	231	286	285	280	62	53	71	63
Sri Lanka	147	99	74	42	21	7	44	99	139	128
Cambodia	16	79	42	73	69	157	123	207	157	173
Viet Nam	-	-	-	-	834	581	120	221	54	30
China	6	4	4	4	12	4	-	79	52	42
Lao PDR	-	-	-	-	8	1	-	1	1	1
Others	-	-	-	-	-	-	-	-	23	-
<b>Total</b>	<b>200 474</b>	<b>222 886</b>	<b>298 325</b>	<b>350 351</b>	<b>384 473</b>	<b>427 415</b>	<b>354 124</b>	<b>337 503</b>	<b>448 245</b>	<b>318 250</b>

- = nil; Lao PDR = Lao People's Democratic Republic.

Source: Department of Immigration, Malaysia; Ministry of Primary Industries.

► Table A4 continued

Country	2010	2011	2012	2013	2014	2015	2016	2017	2018
Indonesia	188 594	251 569	265 786	260 253	253 646	234 764	213 366	202 890	205 177
Bangladesh	407	12 208	12 928	21 299	17 948	21 253	18 220	20 636	34 657
India	14 784	17 749	18 341	26 534	20 077	22 952	19 838	21 500	28 603
Pakistan	3 297	5 251	6 157	14 051	7 978	8 032	6 155	5 861	5 764
Philippines	3 357	5 784	3 489	7 567	5 800	4 490	4 372	4 013	3 445
Nepal	1 793	2 478	4 496	13 117	7 234	5 902	3 810	3 092	3 045
Myanmar	2 948	3 202	2 356	5 847	2 991	2 296	1 607	1 136	906
Thailand	64	55	34	2 782	588	469	460	907	547
Sri Lanka	172	483	397	373	355	249	389	226	186
Cambodia	258	260	163	313	315	238	181	113	101
Viet Nam	55	138	125	494	123	87	56	39	51
China	38	38	55	54	46	37	23	15	12
Lao PDR	1	2	2	2	2	1	1	1	-
Others	-	-	-	395	307	-	-	-	-
<b>Total</b>	<b>215 768</b>	<b>299 217</b>	<b>314 329</b>	<b>353 081</b>	<b>317 410</b>	<b>300 770</b>	<b>268 478</b>	<b>260 429</b>	<b>282 494</b>

- = nil; Lao PDR = Lao People's Democratic Republic.

Source: Department of Immigration, Malaysia; Ministry of Primary Industries.

► Table A5

**Roundtable on Sustainable Palm Oil (RSPO) Principle 6: Respect workers’ rights and conditions – Protect workers’ rights and ensure safe and decent working conditions.**

Criteria	Indicators (only indicators relevant to fair and ethical recruitment listed below)
6.1 Any form of discrimination is prohibited.	6.1.3 The unit of certification demonstrates that recruitment selection, hiring, access to training and promotion are based on skills, capabilities, qualities and medical fitness necessary for the jobs available
6.2 Pay and conditions for staff and workers and for contract workers always meet at least legal or industry minimum standards and are sufficient to provide decent living wages (DLW)	<p>6.2.2 (C) Employment contracts and related documents detailing payments and conditions of employment (e.g., regular working hours, deductions, overtime, sick leave, holiday entitlement, maternity leave, reasons for dismissal, period of notice, etc. in compliance with national legal requirements) and payroll documents give accurate information on compensation for all work performed. This includes a form of record for work done by family members.</p> <p>6.2.3 (C) There is evidence of legal compliance for regular working hours, deductions, overtime, sickness, holiday entitlement, maternity leave, reasons for dismissal, period of notice and other legal labour requirements.</p> <p>6.2.6 A “DLW” (Decent Living Wage) is paid to all workers, including those on piece rate/quotas, for whom the calculation is based on achievable quotas during regular work hours.</p> <p>6.2.7 Permanent, full-time employment including contractors’ workers and contracted workers is used for all core work performed by the unit of certification. Casual, temporary and day labour is limited to jobs that are temporary or seasonal.</p>
6.3 The unit of certification respects the rights of all personnel to form and join trade unions of their choice and to bargain collectively. Where the right to freedom of association and collective bargaining are restricted under law, the employer facilitates parallel means of independent and free association and bargaining for all such personnel.	
6.4 Children are not employed or exploited.	
6.5 There is no harassment or abuse in the workplace, and reproductive rights are protected.	
6.6 No forms of forced labour or trafficked labour are used.	<p>The following are prohibited:</p> <ul style="list-style-type: none"> <li>• retention of identity documents or passports (except for administration purposes, including legalization and renewal processes);</li> <li>• charging the workers for recruitment fees;</li> <li>• contract substitution;</li> <li>• involuntary overtime;</li> <li>• lack of freedom of workers to resign;</li> <li>• penalty to the workers for termination of employment;</li> <li>• debt bondage;</li> <li>• withholding of wages.</li> </ul>
6.7 The unit of certification ensures that the working environment under its control is safe and without undue risk to health.	

Source: Extracted from RSPO and MYNI-WG, 2019.

## ► Appendix II. Lists of persons and institutions met during the field missions in Malaysia and Indonesia

Institution	Representative(s)
<b>Malaysia</b>	
Association of Employment Agencies Malaysia (PAPA)	Mr Foo Yong Hooi, President
National Union of Plantation Workers	Mr Navamukundan, Executive Secretary
Serantau (Indonesian Domestic Workers Group)	Ms Nasikah Sarah, Coordinator
International Domestic Workers Federation	Ms Lindu Livan, Coordinator; Ms Bariyah Anyar, Coordinator/Field Organizer
Malaysian Employers Federation	Datuk Haji Shamsuddin Bardan, Executive Director; Ms Lee Yoke Wan, Sr Manager – Research & Information
Ministry of Human Resources (MOHR)	Ms Noor Haryantie Noor Sidin, Principal Assistant Secretary; International Division Mr. Satish Srinivasan, Assistant Secretary, Labour Policy Unit; Ms Kala Thangarajoo, Senior Assistant Director of Labour, Foreign Workers Division
Migrant Care (Indonesian Association)	Alex Ong, Country Representative
Felda Global Ventures (Plantation Company)	Mr Zarif Zainal, Head Corporate Affairs & Communications; and other staff
Embassy of the Republic of Indonesia, Kuala Lumpur	Mr Iqbal Dinardi Supardi, Labour Department; Mr Budhi Hidayat Laksana, Labour Attaché
World Bank Group, Malaysia	Dr Achim Schmillen, Senior Economist, Social Protection and Jobs
Malaysian Trades Union Congress (MTUC)	Mr Solomon Mr Karupiah Somasundram Mr Aiman Rosdi
Researcher	Ms Liva Sreedharan
Tenaganita (Women's Force)	Ms Prema Arasan, Program Manager; Mr Joseph Maliamauv, Director/Consultant
ILO Project Office for Malyia, Kuala Lumpur	Mr Josh Man Fatt Hong, National Project Coordinator, The Improved Migration Governance (IMG) Project; Ms Yen Ne Foo, National Project Coordinator, Safe and Fair Project; Ms Florida Sandanasamy, National Project Coordinator, Protecting the rights of Migrant Workers Through Empowerment and Advocacy (MWEA)
<b>Indonesia</b>	
Department of Overseas Workers' Placement, Ministry of Manpower	
The National Board for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI)	
ASPATAKI and APJATI (recruitment agencies' association)	Mr Filius; Mr Yhonny
Focus group discussion with CSOs and trade unions on migrant workers, ILO Office, Jakarta	Ms Anis Hidayah, Migrant Care; Ms Badriyah, Migrant Care; Ms Savitri Wisnuwardhani, Migrant Workers Network (JBM); Ms Maizidah Salas, Indonesian Migrant Workers Union (SBMI); Mr Anis Mansur, Confederation of Indonesian Moslem Trade Union (SARBUMUSI); Mr Bobby Alwi, Indonesian Migrant Workers Union (SBMI); Ms Yatini Sulistyowati, Confederation of Indonesian Prosperity Trade Union (KSBSI); Mr Martinus Gabriel, PADMA
Human Rights Working Group	Mr Rafendi Djamin, Senior Adviser
Center for Southeast Asian Studies (CSEAS)	Dr Arisman, Executive Director
ILO Country Office for Indonesia and Timor-Leste	Mr Irham Ali Saifuddin, Programme Officer; Ms Synthia Dewi H, National Project Coordinator, Safe and Fair Project Indonesia

# Malaysia: Review of admission and recruitment practices of Indonesian workers in the plantation and domestic work sectors and related recommendations

Indonesian workers have provided the bulk of the workforce for the plantation and the domestic work sectors in Malaysia, thereby making a significant contribution to the Malaysian economy over the years. This study on the admission and recruitment procedures and practices for Indonesian workers in the two sectors notes that there have been positive legal and regulatory developments on labour migration in Malaysia and Indonesia. At the same time, the study highlights continuing challenges for migration governance and worker protection including cumbersome formal admission procedures, high recruitment costs, particularly of domestic workers, recruitment malpractices in both countries, ineffective regulation of private recruitment agencies, poor working conditions, limited access to justice for workers, and high incidence of undocumented workers. The lack of reliable information on the working and living conditions of both groups of workers is also a cause for concern. The study notes several promising practices by both governments, social partners and civil society for migrant protection.

The study makes several recommendations to governments of both Malaysia and Indonesia: simplification of admission procedures, exploring wider recruitment options, signing of a new MOU for hiring of domestic workers on an urgent basis, extension of Malaysian labour law to domestic workers, issue of regulations to accompany the 2017 Migrant Worker Protection Act of Indonesia and more effective regulation of recruitment agencies.

The study has been undertaken within the framework of the ILO technical cooperation project “Improving Migration Governance (IMG): Protecting the rights of migrant domestic workers and plantation workers through improved labour migration governance” funded by the United States Department of State, Bureau of Democracy Human Rights and Labor.

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