

**ILO Asian Regional Programme on
Governance of Labour Migration**

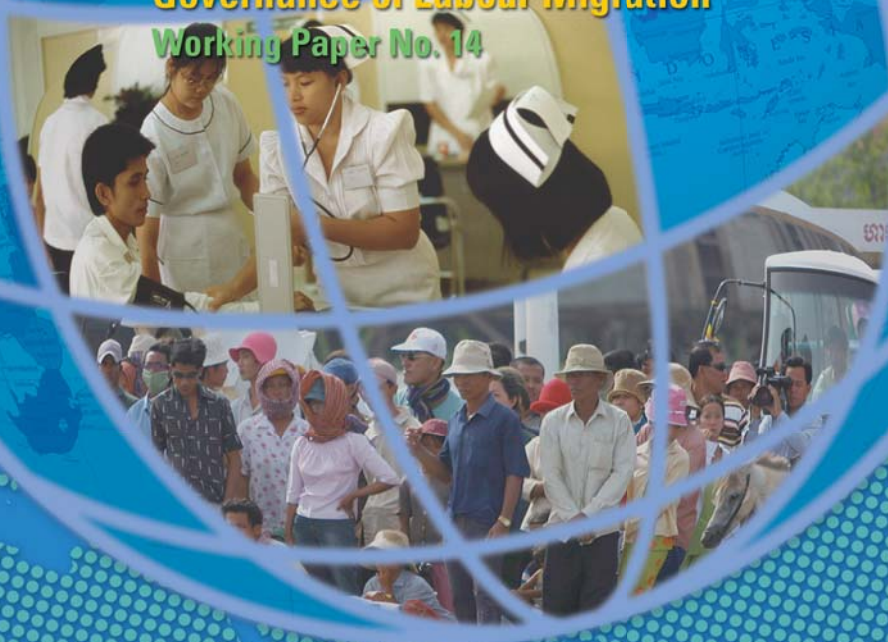
Working Paper No. 14



International
Labour
Organization



European Union



Controlling Irregular Migration: The Malaysian Experience

Vijayakumari Kanapathy

**Regional Office for Asia and the Pacific
July 2008**

ILO Asian Regional Programme on Governance of Labour Migration
Working Paper No.14

Controlling Irregular Migration: The Malaysian Experience

Vijayakumari Kanapathy

July 2008

Copyright © International Labour Organization 2008
First published 2008

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifro.org to find the reproduction rights organization in your country.

Kanapathy, Vijayakumari

Controlling irregular migration : the Malaysian experience / Vijayakumari Kanapathy; International Labour Office; ILO Regional Office for Asia and the Pacific, Asian Regional Programming on Governance of Labour Migration. - Bangkok: ILO, 2008
22 p. (Working paper ; no.14)

ISBN: 9789221213864; 9789221213871 (web pdf)

International Labour Office ; ILO Regional Office for Asia and the Pacific, Asian Regional Programming on Governance of Labour Migration

irregular migration / irregular migrant / migration policy / Malaysia

14.09.2

ILO Cataloguing in Publication Data

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and electronic products can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

Visit our website: www.ilo.org/publns

Printed in Thailand

Controlling Irregular Migration: The Malaysian Experience

Vijayakumari Kanapathy

Abstract

This paper examines Malaysia's experience in curbing irregular migration. It traces the country's shifting policies on irregular migration as it moved from relatively "soft" policies to tougher sanctions and controls. The paper proceeds to evaluate the effectiveness of these policies in terms of controlling irregular migration and sustainability. Finally, the paper speculates and makes recommendations on future policy directions.

About the author

Ms. Vijayakumari Kanapathy is an economist currently working as a project consultant for the World Intellectual Property Organization. Previously, she was Senior Analyst with the Institute of Strategic and International Studies (ISIS) Malaysia and a Lecturer at the Faculty of Economics, University of Malaysia. Her research interests include trade and industrial policy, labour market, and CGE Modeling.

The responsibility for opinions expressed in this working paper rests solely with the author or authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them, or of any products, processes or geographical designations mentioned.

Table of Contents

1. Introduction	1
2. Irregular Migration	2
<i>Who are the Irregular Migrants?</i>	3
<i>Rationale for Irregular Migration</i>	5
3. Policy Experiments in Combating Irregular Migration	6
<i>Phase One: 1950s to Early 1980s</i>	6
<i>Phase Two: Mid-1980s to 1997</i>	7
<i>Phase III: 1997 Onwards</i>	10
4. Directions for Future Policy	14
5. Concluding Remarks	16
References	17

List of Tables

Table 1. Estimates of Registered Migrant Workers	19
Table 2. Policies to Combat Irregular Migration	20
Table 3. Types of Diseases Found In Registered Foreign Workers	21
Table 4. Number of Crimes Committed by Foreigners	21
Table 5. Contribution of Factors of Production	22

Controlling Irregular Migration: The Malaysian Experience

Vijayakumari Kanapathy

1. Introduction

Malaysia had selectively practised ‘open borders’ even after gaining Independence in 1957¹, and irregular migration revealed itself as a “problem” only in the early eighties when the economy began to slow down. From the late 1950s to the 1960s, undocumented migrants, predominantly from Indonesia, were “silently welcomed” as they belonged to the same racial stock (*bangsa serumpun*) and could be easily assimilated and integrated into the Malay community. In an ethnically-based power-sharing political system, the new migrants contributed to the numerical strength and electoral power base of the Malays vis-à-vis the non-Malays (Liow, Joseph, 2003). This political motivation was later followed by economic imperatives. In the 1970s, rapid development under the New Economic Policy (NEP) allowed for the absorption of a new wave of migrants, and by 1984, there was an estimated half a million migrant population in the country, all of whom were undocumented (Ministry of Labour, n.d. p, 15). The unofficial estimates were much higher at around one million.

The 1985 recession and rising unemployment witnessed a turning point in public sentiments towards migrants, invoking state response to guard and control its borders. Following a decade or so of policy experimentation using relatively “soft” approaches, the state resorted to tough sanctions to control and downsize irregular migration. What is the rationale behind the drastic shifts in policy towards irregular migrants? How successful are these policies? Are they sustainable? These are the issues that will be addressed in this paper. Section 2 provides some background information on the phenomenon of irregular migration in Malaysia. Section 3 outlines and evaluates the policies and strategies for controlling irregular migration. Section 4 speculates on future policy directions and Section 5 draws some concluding remarks.

At the outset it is useful to emphasize that any meaningful analysis of irregular migration in Malaysia has to distinguish the phenomenon in mainland Peninsula from that

¹ Before Independence in 1957, immigrants from China and India came in large numbers under the British rule.

observed in the state of Sabah. The economic and political factors underlying the influx of migrants into Sabah differ drastically from that of the Peninsula. Also, the historical, cultural and geographical aspects tend to enhance Sabah's propensity to attract and absorb migrants. Given the complexities in cross-border migration in Sabah, its incidence of irregular migration is relatively high and almost intractable. On the other hand, migration in Sarawak is a relatively new phenomenon, and irregular migration is insignificant. In addition, immigration is a state matter, and mainland Peninsula, Sabah and Sarawak have control over their respective immigration policies. In practice, national policies on migrants are adapted to the situation in each of the states. The following will focus on the phenomenon of irregular migration in mainland Peninsula and the state of Sabah.

2. Irregular Migration

Estimating the size of the migrant population in the country is a rather slippery task as the number in irregular status varies drastically. Moreover, defining the term "irregular" or "unlawful" migration itself is fraught with difficulties, especially in the case of Sabah which has a unique migration experience. Official estimates of undocumented migrants in the Peninsula has sunk to as low as 400,000 immediately following an amnesty and subsequent crackdown by the authorities and has peaked to over a million when there is a lapse in enforcement. The current estimate of the number migrants in irregular status in the Peninsula is around 0.7 million (Malaysiakini, July 17, 2006). In the state of Sabah, the official estimate ranges from 150,000 to 200,000 million (The Star, May 9, 2000), while unofficially it is estimated to be as high as 500,000. The number of documented migrant workers in the country is 1.9 million (Table 1). In other words, the incidence of irregular migration in Malaysia is relatively high at around 35 to 39 percent compared to 5 to 20 percent of annual admissions in the OECD countries (ILO, 2004, p.119).

More than 70 percent of the undocumented workers are from Indonesia. In the initial years, illegal entry and employment was more common, especially among the Indonesians and the Filipinos entering Sabah. However, with the increase in border surveillance, irregular migrants are predominantly those who enter the country lawfully under different visa conditions but overstay. About half of the Indonesians who entered Sabah under a tourist visa between 1996 and February 2003 failed to return home upon the expiry of their visa (Azizah Kassim, 2004). Apart from the Indonesians, the incidence

of overstaying is relatively high amongst nationals from India and China. The cultural and linguistic similarities between the major races in Malaysia and nationals from these countries make it easy for them to remain undetected for a long period of time. Close to 250,000 Indian and Chinese nationals were estimated to have overstayed in 2003 (New Straits Times, February 20, 2004).

Irregular migrants are likely to work in the informal sectors of the economy or in the remote parts of the country. By virtue of their unlawful status, they are easily open to exploitation, and have little or no avenue for legal redress. They succumb to poverty easily and live in squalid housing conditions. They often resort to crime when unemployed. By bypassing the health screening system for migrant workers, they could be a source of highly contagious diseases.

Nonetheless, irregular migrants equally contribute to economic growth and development of the country. They help alleviate labour market imbalances, and especially enhance labour market flexibility by providing a reserve labour pool that can be easily tapped when needed (Kanapathy, 2007). The heavy reliance of the economy on this manpower reserve is clearly evident in policy reversals each time a crackdown on irregular migrants is implemented².

Who are the Irregular Migrants?

There are several categories of foreigners who are in irregular status, and not all of them are migrant workers. Generally, foreign nationals who fall under any of the following categories are classified as “irregular” or “undocumented migrants”.

- i. unauthorized entry and employment;
- ii. authorized entry but unauthorized employment;
- iii. authorized entry and employment but work permits invalidated;
- iv. refugees;
- v. children of undocumented migrants or refugees born in Malaysia but whose births were not registered with the relevant authorities.

² The harsh crackdown on irregular migrants following the 2004 amnesty severely affected key industries and had sparked fears it may exacerbate a slowdown in economic growth. In a desperate move to ease its labour crunch, the Malaysian authorities had to recruit workers from India, Pakistan, Sri Lanka, Nepal, Burma and Vietnam. Further, foreign workers were allowed to enter the country on tourist visas to seek employment, provided local authorities had a record of their fingerprints.

Foreigners who enter the country using entry points other than the authorised ports of entry are classified as undocumented migrants. They enter either on their own or facilitated by agents or human traffickers. The main motive of these irregular migrants is to seek employment or engage in petty trading, but there are instances of foreigners entering the country illegally to commit crimes such as theft and burglary or engage in prostitution³.

As noted above, irregular migration that falls under the second category has been on the rise in recent years and consists of those who enter the country using a tourist visa, the social visit pass or the student visa, but then overstay to seek employment or engage in light commercial trading. Since the visa-on-arrival (VOA) was introduced in September 2006 to boost tourism, 20,481 visitors or more than half of the 36,701 visa applicants have overstayed.

Migrants whose work permits have been revoked unlawfully by employers fall into irregular status. Such instances include disputes between the employer and the migrant worker whereby the employer may unilaterally terminate the latter's employment, and hence his visa and work permit. Should the migrant seek legal redress against his employer, he/she has to pay RM100 for a Special Monthly Pass to remain in the country. Migrant workers holding Special Passes are not allowed to work in the country, and with no income to support their cost of living and legal fees, it is virtually impossible to seek legal redress. Exemption from paying the fees is available for the very few who seek assistance from NGOs. Also included in this group are contract defaulters and pass abusers. Work permits issued to contract migrant workers are tied to the workplace and employer, and the work permit is invalidated the moment the worker terminates his employment or switches to another employer.

The estimated number of refugees in the Peninsula is about 50,000, with about 40,000 registered with UNHCR. About 20,000 are from Aceh, 10,000 are Muslim Rohingyas from Myanmar and the remaining 10,000 are ethnic minorities from Myanmar and elsewhere. In addition, around 68,000 Filipinos from the Mindanao region in Southern

³ Between 2004 and 2006, about 400 foreign women, mostly from China, the Philippines and Vietnam were rescued from vice dens.

Philippines sought refuge in Sabah in the early 1970s to escape civil war. They were allowed to stay on humanitarian grounds, and were later resettled in various parts of Sabah with financial assistance from UNHCR. These refugees are issued with IMM13 identification document that is renewed annually for a fee of RM90. The children below 12 years are included in the registration card of either one parent. These refugees are classified as illegal if they fail to renew the IMM13 card. Malaysia is not a signatory to the United Nations Convention on Refugee Status (1951) and the New York Protocol (1967), and therefore the position of the refugees in Malaysia remains unresolved.

Despite the humanitarian problems, the state has refused to officially recognize refugees fearing that the country would turn into a hub for political dissidents and undocumented migrants given its strategic location in the region. At best, it only provides assistance on a case-by-case basis.

Children of undocumented workers and refugees born in Malaysia are automatically classified as undocumented by virtue of the irregular status of their parents. According to the 2006 state census, there are more than 100,000 stateless Filipinos in Sabah. Many of them are family members of the refugees. They were born in Sabah but have not been granted permanent resident status.

Rationale for Irregular Migration

Despite their lawful means of entry and employment in Malaysia, irregular migrants take on high risks to be in irregular status for a variety of reasons. Unlike the employment of highly-skilled labour, legal recruitment of low-skilled labour involves several intermediaries in the sending and receiving countries, which raises their transactions costs of migration. In contrast, illegal employment is less time-consuming and cumbersome, and cheaper for both employers and migrants.

The recruitment policy for contract migrant labour using the work permit system ties the migrant worker to a particular employer and location. As a result, foreign workers who seek greater freedom and flexibility, and who see opportunities to maximize their incomes by reducing their transaction costs or by taking on multiple jobs resort to irregular migration.

The extensive migration networks, both social and commercial, developed over the last three decades, as well as malpractices in law enforcement and regular amnesties, have encouraged and facilitated their entry, employment, and evasion from apprehension. On the demand side, there is a ready secondary job market for irregular migrants. Despite severe sanctions against employers hiring migrants unlawfully, some continue to hire them since they are cheaper and can be hired for shorter periods than warranted by the work permit. In practice, employer sanctions have not been easy to implement due to lack of evidence, giving the impression that employers are immune to the tough laws⁴.

3. Policy Experiments in Combating Irregular Migration

From a relatively benign policy towards migrants till the early 1980s, the state had switched to a regulated regime in the mid-1980s and 1990s to control and manage the large inflow of contract migrant workers. But since 1997, it has resorted to very harsh and tough sanctions to stem irregular migration. The state response and policy outcomes in each of the three phases of policy experimentation on irregular migration will be analyzed, focusing on contemporary measures to combat irregular migration.

Phase One: 1950s to Early 1980s

In the initial phase, there was an unregulated cross-border inflow of migrants predominantly from neighbouring Indonesia, the Philippines, and to a lesser extent from Thailand throughout the 1950s to the early 1980s. Though the entry, residence, and employment of all migrants are governed by the Employment (Restriction) Act 1968 and the Immigration Act 1957, the two laws were only applied to the import of highly-skilled personnel, commonly termed “expatriates”. During this phase, the number of migrants in the country was limited and they were mostly employed in remote agricultural plantations. As their presence was not very “visible”, and they did not compete with the local population, there was little or no outcry from the public. Hence, despite their irregular status, the state turned a blind eye on them and many migrants eventually obtained permanent residence status and even citizenship.

⁴ Between August 2002 and July 2004, of the 112 employers caught for hiring illegal workers, only a handful have been convicted due to lack of evidence and constant postponement of trials.

Phase Two: Mid-1980s to 1997

The second phase began with the economic slowdown in the early to mid-1980s, when the state began introducing a number of policy instruments to encourage legal recruitment and stem unlawful migration (See Table 2). There was no explicit national policy on the reliance on contract migrant labour until 1995, but there was tacit recognition of the need to import foreign workers to meet sectoral labour market imbalances, so as not to jeopardize the growth and development of the economy. The early years with policy experimentation on managing labour imports was a clear failure for several reasons.

First, market pressures clearly overwhelmed attempts by the state to legally recruit migrant workers. A law was passed in 1980 that established labour recruiting agencies that authorized the import of labour and issued work permits. Bilateral labour accords were signed with major labour sending countries to legally recruit foreign labour, beginning with the Medan Agreement signed with Indonesia in 1984. But demand for low-skilled labour far exceeded supply, and market pressures compelled employers to bypass legal channels in recruitment. Employers who could not rely on labour recruiters resorted to hiring undocumented migrants who were readily available at little or no cost.

The unprecedented inflow of migrant workers was a relatively new phenomenon and the state had little or no experience in managing such a large-scale inflow of migrants. The policy and institutional infrastructure for legal recruitment and border enforcement was rudimentary and state resources were insufficient to address the problem of unlawful entry and employment. A related factor was the notion that this phenomenon was a “temporary” problem that would eventually recede. Though state officials were well aware of the illegal recruitment of migrants by employers, they often turned a blind eye on these practices in order not to disrupt productive activities. Hence, during the early years, the state adopted a “soft and ambiguous” approach towards regulating migratory flows. There was minimal policy intervention in recruitment and border and internal controls. Cross-border labour flows then were largely determined by the push and pull of market forces.

As the migrant population rose to unprecedented levels, some of the negative externalities on the economy became more apparent. This led to the introduction of a series of new initiatives to control and regulate the importation of migrant workers. These included the 1991 Comprehensive Policy on the Recruitment of Migrant Workers which detailed the terms and conditions of the employment of migrant labour, the introduction of the annual levy in the 1991/1992 national budget to offset social costs and discourage the use of foreign labour, the Regularization Programmes to legalize the entry and employment of undocumented workers without penalty, and the occasional imposition of the total ban on new recruitment since 1993. These formal recruitment procedures were complemented by security operations to curb illegal entry, code-named Ops Nyah I (Get Rid Operation I) and internal surveillance to arrest, detain and deport “undocumented” migrants not responding to the registration exercise, code-named Ops Nyah II. Those arrested were held at detention centers until deportation.

In 1995, an explicit policy on the import of migrant labour was announced when the manufacturing sector, which was then the main engine of growth, was also hit by labour shortage and had to hire contract migrant workers. In the 1995/96 annual national budget, the state sanctioned the import of migrant workers as an interim solution to meet excess demand for low-skilled labour while it pursued a longer-term strategy to increase productivity and expand the supply of skilled labour (Ministry of Finance, 1995, p.39). This was an open acknowledgment that migrant labour played a vital role in supporting the dynamism of key sectors in the country. Malaysia’s heavy reliance on foreign direct investment to drive export growth and to provide employment to local urban job-seekers meant that it could not risk an abrupt uprooting of footloose foreign firms until it could build up its domestic capabilities to drive growth. And during the economic upturn, foreign workers played a vital role in the macro-economic management of the economy. The short-term strategy of controlled import of foreign labour to expand manpower supply was to be complemented by medium and longer-term strategies to increase the demand and supply of skilled labour.

Malaysia’s foreign labour recruitment procedures have improved vastly over the years. It has become more transparent and more efficient. At present, the Immigration Department has been entrusted with the implementation of the foreign worker policy. It provides the guidelines for recruitment such as identifying sectors that can employ

migrant labour, the source countries, levy payment, length of stay, etc. These policy tools have varied from time to time depending on economic and political expediency.

Despite the development of a number of policy instruments to manage migrant labour recruitment and deter irregular migration, the policy experiment was at best partially successful. The number of migrants recruited through legal channels increased but it failed to reduce the incidence of irregular migration. The mixed success can be attributed to several factors.

The relatively small labour force of around 8 million was unable to sustain the decade long unabated high growth that began in 1987, and imported labour became a convenient means of sustaining the profitability and competitiveness of industries which were quickly losing their comparative advantage. Meanwhile, increasing state intervention to regularize the importation of workers raised the cost and difficulties in recruiting foreign labour, and encouraged foreign nationals and employers to bypass the formal recruiting channel. With weak enforcement of the wide range of rules and regulations, the foreign labour recruitment industry was open to abuse and corrupt practices.

The increased demand for migrant workers was matched by an increase in the sources of supply. A huge “immigration industry” and an extensive “social network” had developed over the years to facilitate the influx of documented and “undocumented” migrants. There is rampant forgery of work permits and identifications cards (ICs). Many undocumented migrants, especially in Sabah, are duped into purchasing fake ICs for fees ranging from RM400 to RM800 (The Star, May 9, 2007). Some even knowingly purchase these fake documents out of sheer desperation and the belief that such documents could indeed protect them, at least temporarily. Malpractice in law enforcement was also not uncommon. As explained earlier, the terms and conditions of the work permit issued to migrant workers is seriously flawed and encouraged irregular migration.

Despite institutionalizing a fairly elaborate policy and administrative framework to regulate the import of temporary migrant workers, its implementation was fraught with weaknesses. Policies to control irregular migration were not backed by adequate

institutional capacity to enforce them. By and large, there was glaring ambivalence in policy implementation. The Ministry of Home Affairs views migrant workers as a security issue, and calls for strict surveillance and reduction in their numbers. On the other hand, the Ministry of Human Resources and the respective ministries in charge of the different sectors that rely on foreign labour recognize the importance of foreign labour to the economy and call for a more gradual cutback on the reliance on them. The contradictory positions taken by the different Ministries on foreign labour management has been openly debated of late.

Phase III: 1997 Onwards

The 1997 financial crisis, which precipitated a steep recession in 1998, altered the state response towards irregular migration. Economic factors alone did not motivate the drastic switch in policy towards migrant labour. The “tough” sanctions were motivated by the perceived social and security threats posed by migrants, especially by the large number of irregular migrants.

Migrants, especially irregular migrants who avoid compulsory health screening, were a conduit for highly communicable diseases such as malaria, tuberculosis and leprosy. These were diseases that were either eradicated or under control until the arrival of migrant workers.

Based on FOMEMA's database, the number of foreign workers infected with tuberculosis had increased alarmingly and amounted to 1,278 persons in 2002 compared to only 21 persons in 1997, while those with Hepatitis B numbered 4,505 persons in 2002 from 124 persons in 1997 (Table 3). The situation in Sabah is far more serious where migrants accounted for 24.5 percent of total patients infected with tuberculosis, 49.3 percent of those with cholera, and 35.4 percent of those with malaria in 2001 (Sabah Health Department). Those who failed their medical tests were deported and their work permits revoked. It must be noted that these figures only refer to all those who enter the country legally. There is no information on the incidence of infectious diseases amongst the irregular migrants who account for more than a third of the migrant population.

The influx of foreign workers was also perceived to impinge on public safety and security, as some migrant workers, particularly irregular migrants, engaged in criminal activities. Cross-border terrorism activities in the region have also raised concerns about employing large numbers of migrants from countries associated with terrorist activities. The number of crimes committed by migrants has increased three-fold from 1,333 in 1992 to 3113 in 2002 (Table 4). Nonetheless, the proportion of crimes committed by foreigners merely hovers around 2.0 percent of the total crimes in the country. There is therefore still no strong evidence that foreigners are primarily responsible for the rising crime rate in Malaysia.

To address some of the negative externalities, harsh and tough measures were incorporated into the Immigration Act in 1998 and 2000 to plug loopholes in the law and to increase penalties to deter irregular migration. The 1997 amendments increased the penalty on undocumented immigrants and employers hiring them. The fine for hiring foreign workers without permits was raised from RM5,000 to a maximum of RM10,000 and imprisonment from one to five years upon conviction. The Act was revised in August 2002 as it failed to curb irregular migration. Under the revised Act, illegal entry into Malaysia carried a maximum fine of RM10,000, or a jail term not exceeding five years, or both, and mandatory caning, not exceeding six strokes. Females were exempted from caning. Previously, the law only provided for caning for repeat offenders, and it was found that irregular migrants who were deported re-entered the country assuming new identities to escape the heavier penalty. Further, those found guilty of harbouring or employing illegal immigrants were liable to fines of between RM10,000 and RM50,000 per employee and a jail term not exceeding one year, while those who hire more than five irregular migrants would be liable for mandatory caning and jail terms of up to a maximum of five years.

Owners or tenants of buildings guilty of such offences in the first instance would be liable to fines of between RM5,000 and RM30,000 and/or a jail term not exceeding a year for each irregular migrant found on their premises. For second and subsequent similar offences, the fine goes up to between RM10,000 and RM60,000 and/or a jail term not exceeding two years for each illegal immigrant. Project owners will also be held responsible if irregular migrants were to be found on their premises.

Prior to the enforcement of the tough laws, irregular migrants were granted amnesty to allow them to return to their countries without being prosecuted. However, the regularization and amnesty exercises were perceived as weakness on the part of the government to control irregular migration, and only encouraged foreigners to overstay and seek employment. This has prompted officials to declare that amnesty will no longer be granted.

The effectiveness of the registration and amnesty programmes depended on several factors that include:

- i. backing up amnesty programmes with adequate legal and administrative mechanisms to enforce the registration exercise;
- ii. ensuring that the administrative procedures are simple, transparent and not cost prohibitive; and
- iii. full cooperation from the sending countries.

Following the last amnesty programme, the state launched an aggressive nationwide surveillance policy to apprehend undocumented migrants still in the country. The state mobilised the 500,000 strong RELA⁵ or citizen volunteer corps to assist the police and the immigration authorities in their crackdown on irregular migrants. The vigilante policy remains highly controversial for reported violence and extortion against foreigners. It has also been guilty of illegal detention in numerous occasions. Despite calls by NGOs and other interest groups for the withdrawal of RELA from immigration surveillance, the state has continued to rely on their services, saying that it requires massive manpower to combat irregular migration.

The tough sanctions were paralleled by polices to improve recruitment practices and equip prospective migrants with knowledge of their rights and responsibilities.

After more than a decade of policy experiments, it has become apparent that unilateral efforts to address irregular migration were difficult, costly, strained diplomatic ties with sending countries, and was no longer viable. There was thus a shift from a unilateral to a bilateral approach to labour imports. There was also greater inclination on the part of labour sending countries to strike labour accords with the receiving countries. The G to

⁵ RELA was set up in 1972 under the Home Affairs industry to help maintain public order.

G agreement was reintroduced in February 2002 to ensure that the process of recruitment was more systematic, transparent, and beneficial to all parties. Sending countries were also more willing to engage in bilateral agreements following Malaysia's tough legislation and other repressive preventive measures to combat irregular migration. The wide publicity in sending countries on the harsh treatment of irregular migrants has brought immense public pressure on their governments to play a more active role to protect their workers overseas. The main shortcomings of earlier bilateral agreements have been addressed by allowing private labour agencies to process the recruitment, depending on the memorandum of understanding signed with the labour exporting country. The bilateral agreements included several clauses dealing with the responsibilities of the signing parties, the employers, and the migrant workers on conditions of residence and employment.

A compulsory Induction Course was also introduced to familiarize prospective migrants on Malaysian labour laws, customs and language. A Biometric Identification system was introduced to ensure migrants who broke the laws did not re-enter the country under a different identity.

A new anti-human trafficking bill - Anti-Trafficking in Persons Bill 2007 - was tabled in Parliament in April 2007 that punished offenders and granted immunity to trafficked victims⁶. Traffickers can be jailed for up to 20 years, while the victims will not be prosecuted for illegal entry or charged with entering the country with fraudulent documents provided by traffickers⁷. Instead, they will be placed in "friendly" half-way shelter homes for three months to two years to heal and help authorities collect evidence to prosecute offenders. The Bill also calls for the setting up of an enforcement council, with NGOs as members to enforce all provisions of the laws, and the creation of a national action plan to combat human trafficking. Nonetheless, the success of the policy depends on its effective enforcement.

⁶ This follows Malaysia's ratification of the UN Convention Against Transnational Organised Crime in September 2004.

⁷ Prior to the new ruling, apprehended victims were handed over to immigration authorities who would incarcerate them in detention camps before being deported. At times, due to lack of evidence, the victims were charged for illegal entry and employment for working in the vice trade.

4. Directions for Future Policy

In order to combat irregular migration, the state has to address its underlying causes. However, the current approach towards managing international labour migration is heavily skewed towards seeking solutions to the symptoms. In other words, instead of downsizing irregular migration through policies to speed up productivity-based growth, Malaysia has moved towards a strategy of attrition through tough enforcement. The persistent enforcement of the policy has reduced the incidence of irregular migration, but it is a cost-prohibitive solution that is unsustainable.

The recent transfer of the responsibilities to manage migrant labour from the Ministry of Human Resources to the Ministry of Home Affairs is a clear testimony of an expansionary immigration policy to address irregular migration. The management of migrant labour is seen more as a security issue rather than a labour market issue.

The principal objective of Malaysia's migrant labour policy is to gradually phase out the use of contract migrant labour, and to allow sufficient time for skills deepening to foster productivity-based growth. However, there has been a yawning gap in policy intent and policy implementation. In practice, the two-prong strategy to reduce the reliance on migrant labour has been heavily skewed towards regulating the supply of migrant workers. Measures to increase the supply and demand for skilled labour have been heavily compromised by the pervasive ethnic-based affirmative policies. Increasing competition for trade and investment has narrowed the scope for the deeply entrenched affirmative action programme, but there is little political will to replace this highly distortionary race-based policy with a more efficient needs-based policy.

The dual strategy over the last three decades to reduce reliance on low-skilled migrant labour has only brought about incremental changes to productivity as shown in Table 5. The total factor productivity contribution to GDP growth has increased marginally from 1.1 between 1996-2000 to 1.3 between 2001 and 2005. At the same time, the contribution from capital has declined from 2.2 to 1.7 over the same period. Owing to the failure of policies to upgrade the economy, there is continued reliance on migrant labour to sustain the profitability and competitiveness of low value added industries. The large presence of relatively low-skilled labour has failed to send the right price signals to shift the economy away from labour-intensive growth.

In order to cutback its foreign labour workforce, Malaysia needs to re-examine its strategy to increase investment in low value added agricultural activities. Instead, it should provide incentives for Malaysian investors to relocate its low value added activities overseas.

There are also inherent flaws in the foreign labour recruitment policies. Unlike Singapore, which imposes a lower levy on higher-skilled workers, Malaysia imposes a higher levy on higher skilled workers, which appears to contradict the national policy to encourage skill-intensive industries. The rationale in the Malaysian case is to impose a lower levy on sectors perceived to face critical labour shortages, while a higher levy is imposed on sectors where the problem of excess labour demand has been perceived to be less serious. In other words, the short-term goals to meet labour shortages override the longer-term goals of economic restructuring.

Given its small population base, and the fact that it is surrounded by countries with differing labour productivities, Malaysia will continue to import low-skilled migrant labour in the foreseeable future. The experience of advanced industrial countries also shows that it is difficult to do away entirely with low-skilled imported labour since even capital intensive industries require them for simple tasks such as packing and moving. Moreover, as the level of education in the country rises, the reservation wage increases and the natives tend to shy away from these low-paid jobs.

Malaysia's two decades of policy experiments on controlling irregular migration reveal that policy efficacy requires the close collaboration of both sending and receiving countries. Though recruitment procedures can be dealt with at the bilateral level, regional mechanisms to search for viable longer-term solutions to reduce cross-border labour flows through increased trade and investment is necessary. But in the interim phase, a much wider regional framework is warranted to ensure a more orderly movement of people and better protection for migrants.

5. Concluding Remarks

After more than two decades of policy experiments in regulating the inflow of contract migrant workers, Malaysia has established a fairly elaborate administrative system to import foreign labour. However, immense market pressure has deterred the system from functioning properly and has contributed to the development of an informal recruitment industry that often tends to exploit the migrants. Incidence of malpractices in law enforcement, forgery, and human trafficking has contributed to the ballooning of undocumented migrants in the country, which has led the government to adopt a tough approach to combat irregular migration.

The nationwide surveillance programme to apprehend irregular migrants and tight border as well as internal controls have combined to curb the incidence of irregular migration, but at high cost to the state as well as to the migrants. This policy approach fails to address the root causes of migration, and therefore requires a persistent programme of enforcement that is unsustainable. Curbing irregular migration will remain an uphill battle for as long as the gains outweigh the costs and risks to the prospective migrant.

There is also a wide gap between policy intent and policy implementation with respect to Malaysia's foreign worker policy. The policy is heavily skewed towards controlling the supply of migrant labour, while efforts to enhance the supply and demand for labour have been compromised by the pervasive ethnic-based affirmative policies.

References

Azizah Kassim. 1995. From Neglect to Legalisation: The Changing State Response to the Inflow of Illegal Labour into Malaysia, paper presented at the Malaysian Social Science Association Conference on "Globalisation: Local Challenges and Responses, Universiti Science Malaysia, Penang, 19-21 January.

Azizah Kassim, 2004, National Policy and Labour Migration in the Asia Pacific: Security and Social Implications, paper presented at the 18th *Asia Pacific Roundtable* organised by the Institute of Strategic and International Studies, Malaysia, Kuala Lumpur, 30th May – 2nd June.

Bilson Kurus 1998. "Migrant Labour: The Sabah Experience" in *Asia-Pacific Migration Journal*, Volume 7, Number 2-3, Philippines.

Cornelius, Wayne A. *Controlling Unwanted Migration: Lessons from the United States, 1993-2004*, Centre for Immigration Studies, University of California, San Diego, Working Paper 92, December 2004.

ILO, 2004, *Towards a Fair Deal for Migrant Workers in the Global Economy*, International Labour Conference, 92nd Session, 2004, International Labour Office, Geneva.

Kanapathy, Vijayakumari. 1997. "Labour Market Issues and Skills Training: Recent Developments in Malaysia", paper presented at the Sixth Human Resource Development Task Force Meeting in Montreal, 30-31 May.

Kanapathy, Vijayakumari. 2001. International Migration and Labour Market Adjustments in Malaysia: The Role of Foreign Labour Policies in *Asia-Pacific Migration Journal*, Volume 10, No. 3-4. Philippines.

Kanapathy, Vijayakumari. 2007 *High-Skilled versus Low-Skilled Migration: Managing a Complex Agenda in Malaysia*, paper presented at the International Conference and Panel Discussion on East Asian Labour Migration, Manila, 9 March (forthcoming publication by ISEAS Singapore).

Liow, Joseph, 2003. Malaysia's Illegal Indonesian Migrant Labour Problem: In Search of Solutions, *Contemporary Southeast Asia*, Volume 25, Number 1, April.
Asian Development Bank. 2006. *Workers' Remittance Flows in Southeast Asia*, Manila, Philippines.

Sidney Jones. 2000, *"Making Money Off Migrants: The Indonesian Exodus to Malaysia"*, Asia 2000 Limited and Centre for Asia Pacific Transformation Studies, University of Wollongong, Australia.

Wickramasekara, Piyasiri, 2002, *Asian Labour Migration: Issues and Challenges in an Era of Globalization*, International Migration Papers, No.58, ILO, Geneva.

Wickramasekara, Piyasiri, 2004, *Rights of Migrant Workers in Asia: Any Light at the End of the Tunnel?* International Immigration Papers, No. 75, ILO, Geneva.

Table 1
Estimates of Registered Migrant Workers
(Skilled and Semi-skilled)

Year	<i>Malaysia</i>	<i>Peninsula</i>	<i>Sabah</i>	<i>Sarawak</i>
1985		3,484		
1986		5,529		
1987		7,697		
1988		5,972		
1989		8,738		
1990		24,152		
1993	532,723	414,336	100,000	18,387
1994	642,057	515,984	100,000	26,074
1995	726,689	576,441	120,719	29,529
1996	745,239	586,796	121,144	37,299
1997	1,471,562	1,190,437	226,565	54,643
1998	1,127,652	789,684	283,968	54,000
1999	897,705	680,845	162,269	54,590
2000	799,685	632,720	75,232	91,733
2001	807,984	618,946	147,447	88,120
2002	1,091,512	847,015	148,677	95,820
2003	1,398,495	1,125,844	165,903	106,748
2004	1,359,500	-	-	-
2005	1,944,646	-	-	-
2006	1,869,208	-	-	-

Sources: Department of Immigration; Vijayakumari Kanapathy (2001); Azizah Kassim (2002 & 2004). Immigration Office, Sabah; Department of Immigration, Sarawak.

Table 2
Policies to Combat Irregular Migration

Policy Experimentation	Policy Instruments	Policy Outcome
Phase I: 1950s to Early 1980s <i>Benign Migrant Policy</i>	<ul style="list-style-type: none"> ▪ Selective policy of “open borders” 	<ul style="list-style-type: none"> ▪ All migrants are undocumented and many obtained PR and even citizenship
Phase II: Early 1980s to 1997 <i>“Soft and Ambiguous” State Response</i>	<ul style="list-style-type: none"> ▪ Establishment of Recruitment Agency ▪ Bilateral Accord ▪ Regularization Programme/Amnesty ▪ Comprehensive Policy on the Recruitment of Migrant Workers ▪ Introduction of a Levy ▪ Border & Internal Surveillance ▪ Ban on new recruitment ▪ Explicit National Policy on Migrant Labour 	<ul style="list-style-type: none"> ▪ Increase in documented migrants ▪ Severe market pressures and high cost of legal recruitment led to increasing incidence of irregular migration ▪ Growth and development of an immigration industry ▪ Forgery, trafficking and malpractices in enforcement ▪ Negative externalities ▪ Ambivalence and ambiguity in policy implementation.
Phase III: 1997 Onwards <i>“Tough” Sanctions</i>	<ul style="list-style-type: none"> ▪ Comprehensive Policy on the Recruitment of Migrant Workers ▪ Introduction of a Levy ▪ Amnesty ▪ Border & Internal Surveillance ▪ Internal Surveillance by RELA or Vigilante Corps ▪ Bilateral agreements ▪ Induction Course ▪ Biometric Identification Card 	<ul style="list-style-type: none"> ▪ More efficient recruitment mechanism ▪ Reduced incidence of irregular migration ▪ Higher incidence of overstaying ▪ High cost of policy implementation to state and the migrant

Table 3
Types of Diseases Found In Registered Foreign Workers, 1997-2002

Type of Infection	1997	1998	1999	2000	2001	2002
HIV	4	173	69	76	91	122
TB	21	1,467	853	1,063	1,477	1,278
Hepatitis B	124	12,030	3,907	2,445	4,093	4,505
Others	51	4,484	2,447	3,330	3,623	2,922
Total	200	18,154	7,276	6,914	9,284	8,827

Source: FOMEMA

Table 4
Number of Crimes Committed by Foreigners, 1992-2002

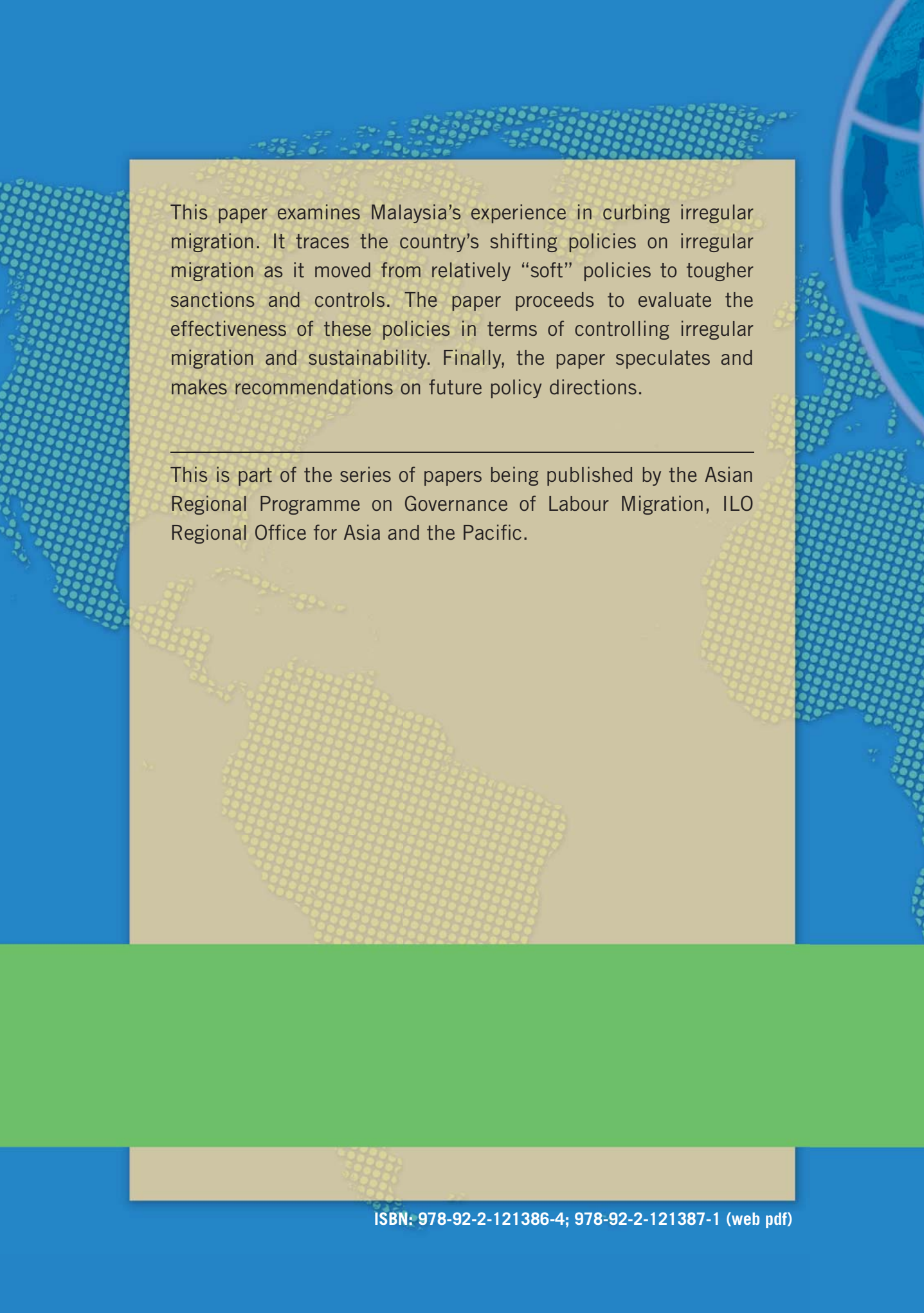
	Indonesians	Filipinos	Bangladeshis	Others	Total	% of Crimes Committed by Foreigners
1992	710	618	-	5	1,333	1.8
1993	848	875	-	23	1,746	2.2
1994	472	274	-	11	757	1.0
1995	932	1,165	28	46	2,171	2.7
1996	1,066	922	8	23	2,019	2.3
1997	752	802	32	13	1,599	1.3
1998	1,326	897	139	23	2,385	1.5
1999	2,378	1,354	155	83	3,970	2.3
2000	2,219	1,011	142	116	3,488	2.1
2001	2,169	814	178	203	3,364	2.1
2002	2,066	686	147	214	3,113	2.1

Source: The Royal Policy Department, Malaysia

Table 5
Contribution of Factors of Production, 1996-2005

Factor	1996-2000		2001-2005	
	% of Contribution to GDP	% of GDP	% of Contribution to GDP	% of GDP
GDP	4.8	100.0	4.5	100.0
Labour	1.5	30.8	1.5	33.2
Capital	2.2	45.2	1.7	37.8
TFP	1.1	24.0	1.3	29.0

Source, Malaysia (2006), p.46



This paper examines Malaysia's experience in curbing irregular migration. It traces the country's shifting policies on irregular migration as it moved from relatively "soft" policies to tougher sanctions and controls. The paper proceeds to evaluate the effectiveness of these policies in terms of controlling irregular migration and sustainability. Finally, the paper speculates and makes recommendations on future policy directions.

This is part of the series of papers being published by the Asian Regional Programme on Governance of Labour Migration, ILO Regional Office for Asia and the Pacific.