



SURUHANJAYA HAK ASASI MANUSIA MALAYSIA

HUMAN RIGHTS COMMISSION OF MALAYSIA

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Date : 5 JULY 2021

AS PER CIRCULATION LIST ATTACHED

YBhg. Tan Sri/Datuk/Dato'/Datin/Prof/Dr/Sir/Madam/Mr/Ms,

KEY ISSUES RAISED - STAKEHOLDER CONSULTATION ON FORCED LABOUR ISSUES IN THE CONSTRUCTION INDUSTRY

With reference to the subject mentioned above:

2. I am pleased to inform that the Human Rights Commission of Malaysia (SUHAKAM) had conducted a consultation with stakeholders on Forced Labour Issues in the Construction Industry on 9 April 2021 at the InterContinental Hotel Kuala Lumpur. It was the second Stakeholder Consultation on the issue of forced labour, this time with a particular focus on the construction industry. The objective of the consultation was to discuss and obtain insights on forced labour issues in the construction industry in Malaysia and to offer a platform for companies to express concerns and challenges in addressing forced labour.
3. During the discussion, participants raised key issues (**see attachment**) such as sensitising public on migrant worker rights, protecting workers' health and safety, decent work and adequate accommodation for migrant workers, elimination of recruitment fees and accountability for supply chain forced labour. The consultation also examined policies related to migrant workers, work permits and the role of labour attachés in advocating for ethical recruitment, the role of embassies in advocating for government to government framework, legalising undocumented workers and refugees' right to work, and corruption in the recruitment chain.
4. SUHAKAM is concerned as forced labour remains a serious problem within this industry. In this regard, please find attached here an overview and compilation of key issues raised during the consultation. The document includes underlying factors that contribute to forced labour and worker exploitation in the construction industry, as well as providing substantial recommendations and considerations in moving forward. SUHAKAM strongly urges the Malaysian government and companies to take necessary action to safeguard workers' rights and eliminate forced labour practices in the industry.

5. For further information or clarification, please contact Ms Pareswari at paremes@suhakam.org.my or Miss Nurisha at nurisha@suhakam.org.my. We look forward to your response, and we thank you for your kind attention.

"HUMAN RIGHTS FOR ALL"

A handwritten signature in black ink, appearing to read 'Cheah', with a horizontal line underneath.

DR CHEAH SWEE NEO

Secretary

Human Rights Commission of Malaysia (SUHAK)

CIRCULATION LIST

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26. Master Builders Association Malaysia
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ATTACHMENT



Stakeholder Consultation on Forced Labour Issues in the Construction Industry

Key Issues Raised

June 2021

Introduction ---

1.1 On 9 April 2021, the Human Rights Commission of Malaysia (SUHAKAM) organised a stakeholder consultation on forced labour issues in the construction industry. This is the second stakeholder consultation organised by the Commission – this time with a particular focus on the construction industry.¹ The construction industry is the second-highest risk sector for forced labour.² Low wages and precarious working conditions characterise employment in the construction industry. The exploitation stretches deep into supply chains, and indicators of forced labour practices often remain undetected or ignored.

1.2 The objective of the consultation was to:

- To discuss and obtain views on forced labour issues in the construction industry in Malaysia;
- To provide a platform for businesses to share concerns and challenges in addressing forced labour issues in their activities;
- To examine the efficacy of existing laws, policies, and practices as well as other applicable mechanisms in addressing forced labour in Malaysia;
- To share good practices and recommendations to address forced labour issues; and
- To identify the role of businesses, government, and other stakeholders in tackling forced labour issues in the construction industry.

1.3 The discussion focused on the International Labour Organization (ILO)³ authoritative indicators of forced labour and the United Nations Guiding Principles on Business and Human Rights (UNGPs).⁴

¹ SUHAKAM conducted a Stakeholder Consultation on the Issues of Forced Labour in the Medical Supply Industry on 14 September 2020 in Kuala Lumpur.

² ILO Global Estimates of Modern Slavery: Forced Labour and Forced Marriage
https://www.ilo.org/global/publications/books/WCMS_575479/index.htm

³ ILO Indicators of Forced Labour: These indicators are intended to help “front-line” criminal law enforcement officials, labour inspectors, trade union officers, NGO workers and others to identify persons who are possibly trapped in a forced labour situation, and who may require urgent assistance. The indicators represent the most common signs or “clues” that point to the possible existence of a forced labour case.

⁴ The Guiding Principles were unanimously endorsed by the UN Human Rights Council in June 2011, supported by governments from all regions of the world. One of the major and widely recognised contributions of the Guiding Principles has been to clearly set out the duties of States and the responsibilities of companies to ensure that businesses operate with respect for human rights. Pillar 1 the State duty to protect human rights against abuse by third parties, including business, through appropriate policies, legislation, regulations and adjudication; Pillar 2 the corporate responsibility to respect human rights, meaning to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved; Pillar 3 the need for greater access to effective remedy, both judicial and non-judicial, for victims of business-related human rights abuse.

1.4 The consultation was conducted via hybrid mode. A total of 30 participants attended in-person, and 50 participants attended online. Participants of the consultation include representatives from construction companies, government agencies, local municipal councils, embassies, civil society organisations, housing developers association, the Royal Malaysia Police, and the Malaysian Bar Council.

Key Issues Raised ---

The following is a summary of the key issues raised during the discussion:

A. Ensuring the Health and Safety of Workers
Summary of Issues Raised
<ul style="list-style-type: none"> • Participants raised the issue of occupational health and safety practices in the construction industry. According to the statistics from the Department of Occupational Health and Safety (DOSH), the rate of mortality per 100,000 construction workers has increased at an alarming rate.⁵ • In 2014, the death rate was 7.26 for every 100,000 employees. It increased to 10.74 in 2015, rose to 12.78 in 2016 and shot up to 14.94 per 100,000 workers in 2017.⁶ Although considerable attention has been given to safety management in the last decade, fatal accident rates continue to rise in the construction industry compared to other sectors. • The high number of accidents implies that current safety practices are in serious need of reform. Employers, contractors, consultants, and developers were reminded that it is their obligation to protect the health and safety of all workers. • Migrant workers, in particular, are more likely to be injured at work, although less is known about occupational injury among migrants working in the construction industry. • Unregulated work sites double the risk for migrant workers, as many do not have health insurance. As a result, undocumented migrant workers continue to remain invisible to health and safety inspectors. • Before entering the worksite, construction workers should be fully aware of the potential safety hazards. Proper safety training is required, and employers should provide it as well as the Construction Industry Development Board (CIDB). • Employers are accountable for the health and safety of their workers. They play a critical role in ensuring that workers receive adequate health and safety training to

⁵ Construction related deaths and injuries alarming, The News Straits Times, February 15, 2020
<https://www.nst.com.my/news/nation/2020/02/565830/construction-related-deaths-and-injuries-alarming>

⁶ Darda'u Rafindadi, Aminu & Napiah, Madzlan & Othman, Idris & Mikic, Miljan & Alashmori, Yasser (2020) Rate of Occurrence of Fatal Accidents in Malaysian Construction Industry after BIM Implementation
<https://www.researchgate.net/publication>

reduce workplace accidents and promote workplace safety. Among the necessary steps that employers are required to take include hazard identification, risk assessment, and risk control.

- The primary objective of hazard identification is to highlight critical tasks that pose significant risks to the health and safety of workers. This includes, but is not limited to, workplace inspections as well as task safety and job hazard analysis.
- The Construction Industry Development Board (CIDB) announced that basic safety courses are available to all construction workers. Industrial Personnel Registration Cards, often known as "Green Cards," are required for construction site workers under the CIDB Malaysia Act 1994 to demonstrate their registration with CIDB.⁷ Safety personnel perform random checks on construction sites on a weekly basis.
- Before embarking on a project, companies must ensure that all construction workers have completed a safety induction course. Every week, contractors are tasked with conducting toolbox talks. Toolbox talks are mandatory informal group discussions that highlight safety issues and promote work safety culture among workers.
- The right to a safe workplace is a fundamental right for all workers. Under the ILO's Decent Work Agenda, workers should be provided with a safe and healthy workplace to obtain optimum productivity.⁸

B. Desensitisation of Migrant Worker Deaths

Summary of Issues Raised

- Participants emphasised that migrant worker deaths should not be reduced to mere statistics. Measures should be taken to address the desensitisation of migrant worker deaths at construction sites.
- The Government and employers must emulate a humanistic approach to work safety. The recent fatal construction accident involving three construction workers who died after a launcher crane at a highway construction site in Kuala Lumpur toppled over highlights the lack of enforcement toward irresponsible contractors.⁹
- Workers' safety should not be jeopardised. Participants contended that safety should be used to hold contractors and subcontractors accountable for forced labour practices.

⁷ Section 33(1) – Registration of Construction Personnel

A person shall not be involved or engaged or undertake to be involved or engaged as a construction personnel unless he is registered with the Lembaga and holds a valid certificate of registration issued by CIDB under this Act.

⁸ ILO's Decent Work Agenda: During the UN General Assembly in September 2015, decent work and the four pillars of the Decent Work Agenda – employment creation, social protection, rights at work, and social dialogue became integral elements of the new 2030 Agenda for Sustainable Development.

⁹ SUKE: Three foreign workers killed, one road user injured following crane collapse, TheStar, March 20, 2021 <https://www.thestar.com.my/news/suke-three-foreign-workers-killed-one-road-user-injured>

C. Rights to Work for Refugees

Summary of Issues Raised

- Many Rohingya refugees have been reported to be working on construction projects for well-known public universities in Malaysia. According to UNHCR Malaysia, as of February 2018, the Rohingya ethnic group accounted for roughly 44% of the total refugee and asylum seeker population registered by UNHCR Malaysia, totalling over 69,000 individuals. According to the same research, the construction industry employs over half of the working Rohingya population (47 per cent).¹⁰
- Observations indicate that the Malaysian government deliberately excludes statistics on industrial accidents involving migrant workers. Target 8.7 of the 2030 Sustainable Development Goals (SDGs) was referenced. With the tagline "leave no one behind," the message is clear: all responsible actors must be inclusive of all migrant groups.
- A representative from the Royal Malaysia Police (RMP) raised the issue of refugees working at construction sites being extorted for money by law enforcement agencies. For instance, two factories in Malaysia were uncovered to be recruiting migrants to work as miners. Refugee miners were accommodated in temporary shelters following their rescue. Following a detailed investigation, it was discovered that the miner refugees were subjected to forced labour and had been exploited by their own relatives. Due to these mitigating circumstances, the RMP was unable to reconcile the victims with their families.
- When it comes to refugee policy, the Malaysian government must first and foremost demonstrate political will in order to recognise refugees as legal persons. Several nations have enacted legislation protecting refugees and asylum seekers.¹¹
- Malaysia is not a signatory to the 1951 Refugee Convention or its Protocol and lacks an asylum system that regulates the status and rights of refugees.¹² The absence of a legislative framework governing asylum concerns contributes significantly to the unpredictability of life for refugees in Malaysia.
- Due to the lack of legislation governing the protection of refugees and asylum seekers in Malaysia, the UNHCR is responsible for all refugee protection efforts, including the reception, registration, documentation, and determination of refugee status of asylum seekers and refugees.

¹⁰ Nungsari, M., Flanders, S. & Chuah, HY (2020) Poverty and precarious employment: the case of Rohingya refugee construction workers in Peninsular Malaysia

<https://doi.org/10.1057/s41599-020-00606-8>

¹¹ Nations that presently have a law or policy governing refugees include Australia, Brazil, Canada, China, Denmark, Egypt, European Union, Finland, France, Germany, Greece, Italy, Japan, Jordan, Lebanon, Russian Federation, Spain, Sweden, Switzerland, Turkey and United Kingdom.

<https://www.loc.gov/law/help/refugee-law/refugee-law-and-policy.pdf>

¹² Refugees are among the most vulnerable people in the world. The 1951 Refugee Convention and its 1967 Protocol help protect them. They clarify the rights of refugees and the obligations of the 148 States that are party to one or both of these instruments.

<https://www.unhcr.org/en-my/background/1951-convention-relating-status-refugees-its-1967-protocol.html>

- The Malaysian government is working alongside the UNCHR to register refugees and providing them with a UNHCR card. However, the UNHCR card is merely a document for identification purposes. It reduces the risk of arrest, allowing access to healthcare services, education, and other essential support services from the UNHCR.¹³
- Forced labour and other extreme forms of labour exploitation of migrant workers go hand in hand with human trafficking. Human trafficking is the process through which individuals are placed or maintained in an exploitative situation for economic gains, such as forced labour.¹⁴
- The Ministry of Home Affairs (MOHA) released the National Action Plan against Human Trafficking in Persons 2021-2025 (NAPTIP 3.0) in March 2021. According to the report, the majority of victims are adults who have been trafficked to Malaysia for labour and sexual exploitation. Men are most commonly trafficked for forced labour in labour-intensive sectors, especially 3D occupations (dangerous, dirty and difficult).¹⁵
- Up until 2015, Malaysia was ranked in Tier 3, the lowest rating in the Trafficking in Persons Report (TIP), and was granted a waiver under the Trafficking Victims Protection Act, allowing Malaysia to stay on the Tier 2 Watch List in 2020 for the third year in a row.¹⁶
- It was reported that the Malaysian government did not adequately screen asylum seekers and refugees for indicators of trafficking. Furthermore, identification of labour trafficking victims often relied on reports of abuse from embassies or from workers' complaints of non-payment of wages and other violations rather than proactive screening efforts.

¹³ To ensure access to asylum, UNHCR will conduct refugee status determination in countries without national asylum procedures such as in India, Indonesia, Malaysia, and Thailand, and advocate for the adoption of national refugee legislation while supporting the responsible institutional structures

https://reporting.unhcr.org/sites/default/files/ga2020/pdf/Chapter_Asia.pdf

¹⁴ Linde Bryk , Claudia Müller-Hoff (2018), Accountability for forced labour in a globalized economy: Lessons and challenges in litigation, with examples from Qatar

<https://www.ecchr.eu/en/publication/accountability-for-forced-labor-in-a-globalized-economy>

¹⁵ MOHA launches National Action Plan on Anti-Trafficking in Persons 2021-2025, MalayMail, March 31, 2021

<https://www.malaymail.com/news/ministry-launches-national-action-plan-on-anti-trafficking-in-persons>

¹⁶ The Trafficking in Persons (TIP) Report is the U.S. Government's principal diplomatic tool to engage foreign governments on human trafficking. It is also the world's most comprehensive resource of governmental anti-trafficking efforts and reflects the U.S. Government's commitment to global leadership on this key human rights and law enforcement issue.

D. Decent Work For All and Elimination of Recruitment Fees

Summary of Issues Raised

- Participants emphasised the fundamental importance of decent work for all workers, particularly migrant workers, and urged companies and government authorities to be inclusive of all workers, including undocumented migrant workers.
- Goal 8 of the 2030 Sustainable Development Goals calls for promoting sustained, inclusive, sustainable economic growth, full and productive employment, and decent work for all.¹⁷
- The construction industry carries inherent forced labour risks. Forced labour could emerge from deceptive recruitment practices resulting in high recruitment fees and debt bondage. The long and multi-tiered supply chains within the construction industry show less visibility and control over the recruitment of workers, suppliers, and subcontractors.
- Participants acknowledged the importance of eliminating recruitment fees and discussed ILO's current practices for fair recruitment. The principle of zero recruitment fees for migrant workers indicates that no worker should pay for their recruitment costs.
- It was highlighted that the current practice to curb deceptive recruitment in Asia is based on regulation rather than prohibition. There needs to be a clear definition on what are recruitment fees and their associated costs.
- Employers should engage with licensed recruitment agencies and conduct thorough due diligence, such as inquiring on past violations and ensuring that contracts drawn up by the agencies do not entice debt bondage.
- For instance, Qatar's construction sector employs a large number of migrant workers who frequently pay significant recruiting costs and arrive deeply in debt. The Qatar government aims to end the cycle of abuse by setting up a complaints mechanism. Workers may file a report against recruitment agencies charging exorbitant recruitment fees, and companies must terminate their contracts with recruitment agencies that are found to violate labour laws.¹⁸

¹⁷ Goal 8 of the 2030 Sustainable Development Goals: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

¹⁸ Committed to overhaul its current labour system as part of an agreement with the International Labour Organization (ILO) in October 2017, it promised to enhance access to justice and remedy for migrant workers. Its main way of doing so was by reforming the system by which workers can make complaints, replacing the country's notoriously ineffective labour courts with new 'Committees for the Settlement of Labour Disputes' ('Committees') that began operations in March 2018
<https://www.justice.gov/eoir/page/file/1204211/download>

E. Accountability for Forced Labour in Supply Chains
Summary of Issues Raised
<ul style="list-style-type: none"> • Due to intersecting structural and contextual risk factors, the construction industry presents a higher risk of forced labour within its operations and supply chains. Companies must evaluate and address forced labour risks, especially those associated with their supply chains, subcontractors, and labour agencies. • A single supply chain for a major contractor often includes hundreds of subcontractors, labour agencies, and material suppliers, all of whom are intricately interdependent. The lack of effective enforcement perpetuates the risk of forced labour at construction sites. • In this regard, it is arguable that – in accordance with the state's obligation to protect and provide effective remedy – the government acknowledges that the UNGPs' human rights due diligence standards should be utilised to hold companies and contractors accountable for forced labour abuses.¹⁹ • It was recommended that the government impose a condition in contracts with contractors and suppliers requiring them to pay a fine or terminate the contract if found guilty of forced labour violations.

F. Policy on Migrant Workers
Summary of Issues Raised
<ul style="list-style-type: none"> • All local governments are required to establish a One Stop Centre (OSC) Committee to distribute and coordinate the applications for planning permission, building plan approval, and land matters.²⁰ • The Committee brings together various agencies, including the Department of Occupational Health and Safety (DOSH), Fire and Rescue Department (BOMBA), the Department of Environment (DOE), Royal Malaysia Police (RMP), and CIDB. • On forced labour concerns, it was brought to light that no representative was able to provide input during OSC committee meetings on forced labour issues such as unpaid wages, passport retention, or poor living conditions. • It was suggested that a representative from the Ministry of Human Resources (MOHR) or the Labour Department (JTK) attend such meetings to address forced labour

¹⁹ The UN Guiding Principles on Business and Human Rights (UNGPs), Guiding Principle 17, states that: "In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."

<https://globalnaps.org/wp-content/uploads/2018/08/un-guiding-principles-on-business-and-human-rights.pdf>

²⁰ Marzukhi, Marlyana & Omar, Dasimah & Arshad, Ahmad & Ling, Oliver & Yusup, Mohammad & Jaafar, Azfarnizam. (2019). One stop centre (OSC): Lessons on best practices in planning system delivery https://www.researchgate.net/One_stop_centre_Lessons_on_best_practices_in_planning_system_delivery

concerns. Additionally, a complaint or whistleblower mechanism should be established to receive complaints concerning forced labour violations.

- Participants raised the issue pertaining to challenges encountered by migrant workers while attempting to file a complaint against their employer. Disputes brought before the Labour Court primarily concern wages and overtime payments that are not in compliance with the terms of the Employment Act 1946.²¹ Migrant workers are often unable to provide sufficient documentation to substantiate their claims as employers withhold information.
- Migrant workers can use existing legal mechanisms to safeguard their rights, such as filing a complaint with the Labour Department on violations of labour laws, filing a complaint through the Labour Court procedure as per Section 69(1) of the Employment Act 1955,²² or, in the situation of wrongful dismissal, filing for representation to the Director-General under Section 20 of the Industrial Relations Act.²³
- Participants agreed that the government should develop clear standards outlining processes for filing complaints based on coordination among various government departments. In addition to improving responsibility and accountability on recruitment firms and third-party agents, an effective mechanism for systematically recording, monitoring, and filing workers complaints should be implemented.
- The duty of diplomatic missions to monitor migrant workers' working conditions and liaise with trade unions and CSOs should be further strengthened. Embassies should also ensure that migrant workers are fully aware of their rights and how they could access the complaint mechanisms.

²¹ The Labour Court may inquire into and either confirm or set aside any decision made by the employer under section 14 of the Employment Act 1955, and only on non-payment of wages or other payments.

²² Section 69(1) – Director General's power to inquire into complaints

The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee

Section 69B – Power of the Labour Court to hear complaints from persons earning up to RM5,000.00 (excluding commission, subsistence allowance or overtime)

²³ Section 20 – Payment on normal termination of contract

An employee who feels that he has been unfairly dismissed without just cause or excuse by his employer, may lodge a representation to the Director General of Industrial Relations within 60 days from the date of his termination

G. Work Permits and the Role of Labour Attachés

Summary of Issues Raised

- Employers must first apply to the Immigration Department for a Visa with Reference (VDR) approval before hiring migrant workers. As a result, work permits for migrant workers are typically tied to a single employer.²⁴ Participants expressed concern about migrant workers switching from one employer to the next, rendering them undocumented.
- CIDB affirmed that work permits for migrant workers are fixed to one employer. However, migrant workers registered under the Construction Labour Exchange (CLAB), an organisation under CIDB, which serves to hire migrant workers from source countries for construction projects and redistribute migrant workers to construction companies that require them for their projects, are permitted to transfer from one employer to another.²⁵
- In response to the COVID-19 outbreak, the Malaysian government implemented a new clause allowing migrant workers to request a transfer to another company that is ready to recruit debt workers. Only companies operating in the manufacturing, construction, agriculture, plantation and services industries may be approved to hire migrant workers.²⁶ This application may be done through the Foreign Worker One-Stop Approval Centre.
- To hire migrant workers through this programme, employers must first register with CIDB. As of today, only three companies have registered. Employers who want to assign migrant workers to CIDB voluntarily must do so by June 2021.
- A question was put forward by a participant on why there are very few labour attachés in selected countries? What is their role in advocating for an ethical recruitment process? Can the role of labour attachés evolve?
- A representative from the Ministry of Human Resources (MOHR) responded to the question by stating that the role of labour attachés are accorded out of necessity, and their functions differ according to the country they are based in. Currently, there are four labour attachés based in Singapore, Jakarta, Chennai, and Geneva.
- The labour attaché in Singapore is responsible for the wellbeing of Malaysians working in Singapore. As for Jakarta and Chennai, the labour attachés are responsible for facilitating the recruitment process of potential migrant workers.
- To address the current shortage of labour attachés, the Ministry intends to expand and allocate additional resources to employing labour attachés in other countries. Particularly in nations that supply the majority of their migrant labour to Malaysia.

²⁴ Recruitment Terms and Conditions for Foreign Workers

<https://www.imi.gov.my/portal2017/index.php/en/main-services/foreign-workers.html>

²⁵ Services offered by CLAB to bring in Foreign Labour In the Construction Industry

<https://www.clab.com.my/foreign-labour>

²⁶ The Foreign Worker One-Stop Approval Agency was established to handle applications for intake of foreign workers for sectors that have been approved following the employers failure to secure local workers

<https://www.moha.gov.my/index.php/en/maklumat-perkhidmatan/pengenalan-pa>

H. Legalising Undocumented Migrant Workers

Summary of Issues Raised

- The rising number of undocumented migrant workers in the construction industry has prompted concern among industry participants. It is evident that bureaucratic immigration policies make legalisation more challenging for undocumented migrants.
- Participants urged the government to legalise undocumented migrant workers and to take a more accommodative stance when conducting amnesty programmes. With the emergence of new technologies and big data, it is believed that the government should utilise innovative data sources to legalise undocumented migrants systematically and effectively.
- Undocumented migrant workers who do not have a valid work permit or a UNHCR card can be arrested and detained for up to 14 days. According to reports, two Pakistani migrant workers were arrested at the Kajang Prison for two weeks because they did not have a UNHCR card.
- The inability of migrant workers to communicate effectively owing to language barriers, as well as the absence of legal counsel, are two of the most significant problems that they encounter.
- Since the first lockdown in 2020, the Malaysian Trades Union Congress (MTUC) has recorded abuses of migrant workers' rights by their employers, including unjust termination, unpaid wages, and poor living conditions. Workers who were laid off by their companies would have lost their work permits, forcing them to become undocumented and risk being jailed.²⁷
- A representative from the Nepalese Embassy addressed the plight of Nepalese migrant workers currently employed in Malaysia, asserting that government policies directly result in forced labour circumstances. For instance, the Malaysian government announced in July 2020 that migrant workers would only be permitted to work in the agriculture, plantation, and construction industry. As a result of this policy, employers are hesitant to return workers to their home country or extend their work permits, rendering them undocumented.
- The issue of recalibrating undocumented migrant workers was raised during the discussion. To put it into context, MOHR has provided companies with the option to hire migrant workers who have been laid off by their former employers in August 2020.
- A concern was raised about how the present recalibration programme differs from the previous 6P amnesty programme, which prioritised tackling the issue of

²⁷ COVID-19: Impact on migrant workers and country response in Malaysia
https://www.ilo.org/wcmsp5/groups/public/bangkok/documents/briefingnote/wcms_741512.pdf

undocumented migrant workers and immigrants through registration, legalisation, amnesty, monitoring, enforcement, and deportation.²⁸

- According to CIDB, the present recalibration programme for undocumented workers and irregular migrants is different from prior amnesty programmes. The present recalibration programme is governed by a separate set of rules and regulations. For instance, it enables CLAB to hire undocumented migrant workers currently working in construction, agricultural, plantation, and manufacturing.²⁹
- CLAB will authorise and issue a temporary work permit allowing migrant workers to be transferred to other employers. Additionally, if a company completes a project and therefore no longer requires the services of migrant workers they originally hired, CLAB has the ability to transfer the workers to another employer through the recalibration programme.³⁰
- Home Minister Datuk Seri Hamzah Zainudin has said that from November 2020, 145,830 undocumented migrants had been registered under the Recalibration Programme. 72,324 migrant workers have registered to return to their home country, while the remaining 73,506 have registered to legally re-enter the workforce.³¹

I. The Role of Embassies and Advocating for a G2G framework

Summary of Issues Raised

- According to a representative of the Pakistan High Commission, around 42,000 migrant workers from Pakistan are currently employed in the construction industry, with an additional 10,000 undocumented migrants in Malaysia. Undocumented workers face a range of challenges, including deceptive recruitment and workplace abuses.
- It was discovered that employers refuse to pay undocumented migrant workers their full earnings. Furthermore, undocumented migrant workers in the construction

²⁸ HR Ministry: Employers allowed to rehire foreign workers, Malay Mail, August 13, 2020

<https://www.malaymail.com/news/malaysia/ministry-employers-allowed-to-rehire-foreign-workers/1893667>

²⁹ The 6P programme, implemented in August 2011 by the Cabinet Committee on Foreign Workers, aimed to reduce the number of illegal immigrants entering the country or those overstaying their work permits. Immigration Deputy Director-General (Operations) Datuk Sakib Kusmi said those with temporary work visit passes under the temporary Registration, Legalisation, Amnesty, Supervision, Enforcement and Deportation programme (abbreviated to 6P) must honour the understanding agreed in 2011. Under the 6P programme, undocumented foreigners in the services sector were issued temporary work visiting passes lasting two years, while those working in manufacturing, construction, and plantations received three years. If the undocumented foreigners do not leave by January 2015, they will be considered as having overstayed and could be arrested under Section 15(1)C of the Immigration Act

³⁰ Recalibration Programme (Program Rekalibrasi) is provided to legalise illegal foreign workers in the country starting from 16 November 2020 until 30 June 2021

<https://www.clab.com.my/recalibrationprogramme>

³¹ Almost 146,000 migrants without papers take up offer to go home or work legally, TheStar, April 19, 2021

<https://www.thestar.com.my/news/nation/2021/04/19/almost-146000-migrants-without-papers-take-up-offer-to-go-home-or-work-legally>

industry are more likely to be involved in occupational accidents that result in temporary injury, as well as death or permanent impairment.

- Employers do not reimburse undocumented workers who sustain workplace injuries and refuse to disclose accidents involving undocumented workers. When this occurs, undocumented workers are unable to submit a complaint or a police report.
- Even if the embassy reported the errant employer on behalf of the undocumented worker, employers lacked accountability.
- A representative of the Nepalese Embassy confirms that the embassy receives reports on forced labour from migrant workers in the construction industry. Employers have reportedly withheld wages for up to five months.
- Participants raised the issue of institutional abuse of migrant workers. Employers and profiteering labour agencies continuously exploit migrant workers, while government policies frequently overlook migrant workers. A reference was made to the recent MOU between Indonesia and Malaysia on domestic workers. It was noted that little if any, progress had been made on the MOU's current state.
- Embassies play a vital role in the protection of migrant workers. The consular department is frequently the initial point of contact for migrant workers, especially those who are in distress and require assistance, as well as those who have grievances or disputes and need assistance with the repatriation process.
- It was raised during the discussion that there is a lack of effort on the part of embassies in calling for a Government to Government (G2G) Framework to address the issue of migrant worker exploitation. The involvement of embassies in monitoring migrant workers' working conditions and cooperating with trade unions and civil society organisations should be further strengthened.
- Embassies should ensure that migrant workers are fully informed of their rights and the channels available to file a complaint. In practice, the absence of mutual legal assistance treaties such as the G2G greatly hampers the ability of prosecutors in home states, states of origin and destination states to seek justice and accountability for migrant workers.
- A representative of the Indonesian Embassy emphasised the critical role of embassies in migrant worker protection. The Indonesian embassy looks forward to working with the Malaysian government to improve and safeguard the rights of Indonesian citizens working in Malaysia and to provide a mechanism for workers to file complaints.

J. Corruption in the Recruitment Chain

Summary of Issues Raised

- Several underlying factors contribute to the exploitation of migrant workers in Malaysia. However, the recruitment process continues to be the root cause of forced labour. Recruitment of migrant workers is frequently outsourced to a network of recruitment agencies, which may comprise local manpower firms, recruiters located in the countries of origin, and local subagents.
- Government authorities in both the origin and destination countries may be ineffective in regulating, monitoring, and enforcing labour and recruiting standards. In essence, the problem of forced labour is caused by several actors, and contractors are not always in control of the situation. The longer the outsourcing chain, the greater the likelihood of forced labour exploitation.
- Corruption is prevalent across the chain of migrant worker recruitment, from companies to government agencies and recruitment agents, all the way down to the village level at source countries. Corruption increases the financial burden on workers and undermines accountability and access to justice.
- For example, Nepal and Malaysia renegotiated the terms of the labour MOU in 2019 after it was revealed that 600,000 workers had paid over 450 million USD in excessive fees.³² Similar allegations have been made related to Malaysia's labour agreement with Bangladesh, with high levels of bribery and the channelling of lucrative contracts to well-connected individuals.
- An investigation revealed that the migrant workers paid RM20,000 each to their local agents, who then paid half of the sum to the syndicate to facilitate work permit approvals and flight tickets to Malaysia.³³
- Recruitment-related corruption plays a key role in the susceptibility of migrant workers to debt bondage, human trafficking, and forced labour. While legalising undocumented workers in Malaysia is crucial; the government must demonstrate a greater commitment to combating corruption. Evidently, it will be challenging to safeguard the rights of migrant workers without eliminating corruption.

³² Nepal and Malaysia rewrite rules for migrant labour, Nepal Times, September 15, 2019
<https://www.nepalitimes.com/here-now/nepal-and-malaysia-rewrite-rules-for-migrant-labour/>

³³ Bangladeshi Worker Recruitment: 'Monopoly' Was Mostly KL's Doing, TheStar, November 1, 2018
<https://www.thestar.com.my/news/nation/2018/11/01/recruitment-in-malaysia-monopoly>

K. Accommodation for Migrant Workers

Summary of Issues Raised

- Migrant workers currently live in overcrowded dormitories with substandard living conditions. Industry participants affirmed that construction companies are working with the Ministry of Housing and Local Government (KPKT) to ensure compliance with the Workers' Minimum Standards of Housing and Amenities (Amendment) Act 2019 and the Emergency (Employees' Minimum Standards of Housing, Accommodations, and Amenities) (Amendment) Ordinance 2021, which took effect on 26 February 2021.³⁴
- The Amended Act applies to all employment sectors that provide housing and accommodation for their workers, including centralised accommodation providers, which refers to any person who provides and manages a centralised accommodation. Employers must obtain a Certificate for Accommodation from the Director-General of the Labour Department Peninsular Malaysia (JTKSM) to accommodate workers on the premises.
- Industry participants face difficulties in complying with the new regulations. JTKSM requires employers to acquire approval from municipal authorities before establishing temporary labour quarters for construction workers. Local governments, on the other hand, have yet to develop standard operating procedures for the process. Additionally, no specific timeframe has been established to help employers obtain the required approvals or endorsements prior to applying for the Labour Department's Certificate of Accommodation.³⁵
- According to industry participants, JTKSM is committed to providing companies with a 10-day approval period for the establishment of temporary labour quarters. However, this might not be the case for some local authorities as the approval periods may differ. Participants stressed the importance of improved coordination between local governments and JTKSM since delays in providing the Certificate of Accommodation put companies in a difficult situation and risk getting penalised.
- Employers in the construction industry were advised to provide adequate accommodation for female migrant workers. Malaysia's construction industry employs about 14,000-15,000 female Indonesian construction workers. However, women migrant workers face additional challenges. The different attitudes and perceptions around women migrant workers as women and as migrants manifest in multiple and intersecting forms of discrimination.

³⁴ The Emergency (Employees' Minimum Standards of Housing, Accommodations and Amenities) (Amendment) Ordinance 2021 came into operation on 26 February, 2021.

³⁵ Companies plead for more time to comply with Act 446, New Straits Times, December 1, 2020
<https://www.nst.com.my/news/nation/workers-housing-companies-plead-more-time-comply-act-446>

Conclusion and Way Forward

Meeting the business responsibility to respect human rights under the UNGPs also means considering the human rights of all workers. Workers in the construction industry are entitled to enjoy just and favourable conditions, freedom of association, freedom from discrimination, right to health physical and mental, right to safety, right to decent work, freedom from slavery and slave-like conditions. The exploitation of migrant workers can manifest in various forms. A central tenant to the exploitation of migrant workers is the lack of enforcement. Allegations of migrant workers being subject to multiple forms of exploitation such as being deceived about the legality of their contracts or their work conditions, withholding wages, and illegal deductions by employers to pay for exorbitant recruitment fees should be addressed.

This requires adequate resourcing of necessary institutional infrastructure to enforce laws governing industry conduct. An example would be increasing the efforts of labour inspectors to conduct ongoing monitoring, investigation, and responding to worker complaints. Enforcement agencies must also be capable of ensuring the accountability of all actors, whether it is third-party labour agents, employers, or individuals responsible for forced labour. The governance of migrant worker recruitment is complex because it demands oversight of hundreds of recruitment agencies operating formally and informally across the border. Systemic misconduct within the recruitment industry creates forced labour conditions, and migrant worker protection continues to be significantly undermined.

Tackling the issue of corruption in migrant worker recruitment requires the effort of all actors. The recruitment of migrant workers in Malaysia is heavily reliant on third-party agents and labour agencies. Government agencies and institutions responsible for the recruitment and protection of migrant workers should take a more coordinated and transparent approach. Moving forward, efforts must be undertaken to ensure meaningful progress in safeguarding the human rights of workers in the construction industry. A robust approach to addressing forced labour requires scrutinising existing mechanisms and better engagement with migrant workers in policy decisions. Such participation would enable the relevant actors to better reflect on the treatment of migrant workers in practice. It is important to prioritise the protection of human rights of migrant workers.