



Malaysia 4th Cycle Universal Periodic Review

Migrant Worker Right to Redress Coalition

I. Introduction

1. In 2018, Malaysia underwent its third Universal Periodic Review in which the government received 268 recommendations. Out of the 268 recommendations, 148 were accepted.
2. This report discusses in details the development of migrant workers right in Malaysia for the period under review 2018-2023. Throughout this period, Malaysia went through four government changes, each with its own approach on democracy, governance and human rights. This report represents migrant worker focused Malaysian NGOs review on the recommendation's implementation progress.

II. Implementation of accepted recommendations

A. International Obligations

Accession to International Human Right Instruments

3. Malaysia has yet to ratify the International Convention on The Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Though in the 3rd cycle, the Malaysian government stated that the discussion on the ratification of ICRMW will be forwarded to the relevant ministries, no progress has been made on the matter of ratification. It is important for the Malaysian government to ratify this convention to ensure the rights of all migrants in Malaysia, regardless of their documentation status.

Recommendations:

4. Malaysia must take immediate action to ratify the International Convention on The Protection of The Rights of All Migrant Workers and Members of Their Families (ICRMW). In order to ratify the convention, consultative committees which comprises of government agencies, human right organisations and relevant statutory bodies should be conducted.

B. Recruitment of Migrant Workers

5. We applaud Malaysian government approach for a government-to-government (G2G) deal for the recruitment of migrant workers, eliminating the role of middlemen. This approach will bring more transparency during the recruitment process of migrant workers.
6. In 28th of June 2023, 1120 migrant workers from Bangladesh who were recruited under Migrant Worker Employment Relaxation Plan were left jobless¹. Migrant workers recruited to Malaysia often faced the risk of deception, encompassing the nature of the company in Malaysia and its job scope, recruitment cost, coercion to sign the employment contract or even worse documentation status. By the time the workers realised that they were tricked by the recruiting agent, the workers are already in Malaysia with limited or no access to justice mechanisms to address the issue. The involvement of multiple agencies across ministry on the subject matter has also resulted to a largely uncoordinated recruitment process.

7. In April 2022, a syndicate involving recruitment of migrant workers were busted for earning money fraudulently from government's migrant labour calibration programme². The syndicate charged illegal migrant workers for RM6,500 to RM8,000 to obtain Visit Pass (Temporary Employment) via government's migrant labour calibration programme and recorded to have earned RM8 million. This is just one of the examples whereby some recruitment agencies charged migrant workers more than the cost listed by the Malaysian government. As such, the workers are forced to sell their assets and borrow money to pay for the recruitment cost. This led to debt bondage as the workers then received a high salary cut to pay off their debt. In the end, the workers were not able to achieve their objective of working in Malaysia which is to get their family out of poverty.
8. This is worsened by the fact that some migrant workers were tricked by their employment agent via double employment contract; one in their home countries and another one in the country of employment. The agent may promise the migrant workers with verbal, or in written, an employment contract in their home countries. However, as the worker arrives in the country of employment, the agent gave them another employment contract which consists of terms and conditions that does not fit the terms and conditions that have been agreed upon in their home countries.
9. Currently, there are more than 1.2 to 3.5 million undocumented migrant workers in Malaysia³. These undocumented migrant workers work in various industries throughout Malaysia without access to any labour rights due to their documentation status. The fear of being detained by authorities has made the migrant workers vulnerable to labour exploitation, bullying and harassment by employers.

Recommendations:

10. It is hoped that G2G deal for the recruitment of migrant workers will be widened to include many more countries.
11. Ministry of Human Resources Malaysia should be the single entity to administer and govern recruitment of migrant workers in Malaysia. This will lessen the risk of coordination issues between agencies under different ministries and smoothen out the recruitment process of migrant workers in Malaysia.
12. Introduce a zero-recruitment fee policy for migrant workers within all six employment sectors as a starting point to address debt bondage. The Malaysian government should adopt International Labour Organisation's General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related cost.
13. Migrant workers must go through a mandatory post-arrival training to educate the workers on the employment contract, Malaysian labour laws, mechanism to access justice and cultural adaptation such as basic language training.
14. Malaysian government should prioritize the legalization of undocumented migrant workers in Malaysia rather than recruiting new migrant workers. The migrant recalibration programme needs to be revamped in terms of cost and services to ensure its accessibility to undocumented migrant workers in Malaysia.

C. Protecting Rights at Work

15. Often, migrant workers in Malaysia were given employment contracts that were crafted in a language they did not comprehend. Sometimes, they were not given enough time to scrutinise the terms and conditions of the contract before signing it

- as the agents coerce them with the threat of missing an employment opportunity.
16. Many migrant workers were not given a copy of the employment contract or do not know the terms and conditions stated in their employment contract such as wage, wage deductions, leave entitlement and termination of contract. There are cases whereby the terms and conditions stated in their employment contract does not follow the standards stated in the Employment Act 1955 (Amendment 2022) such as annual leave.
 17. Moreover, Malaysia's Employment Act 1955 (Amendment 2022) allows the employer to make wage deduction on number of provisions such as accommodation, meals and services. The employer is allowed to make these deductions up to 50%⁴ of the employee wage which leave the migrant worker with even lesser money than the amount they were supposed to get.
 18. Some migrant workers have their passports or identification documents confiscated by their employer. While this practice is clearly illegal, weak enforcement has made this illegal practice to become common with the employers' excuses such as to prevent employees from running away or for safekeeping.
 19. Migrant workers have the right to join and lead a trade union. However, migrant workers in Malaysia faced threat by the employers to prevent them from joining trade union. Even if they joined a trade union, migrant workers can only lead a trade union on the approval of Ministry of Human Resources. This procedure limits the ability of migrant workers to organise and lead a trade union.
 20. In 2019 and 2021, 185 migrant workers sued Goodyear over non-compliance of collective agreement encompassing shift allowance, annual bonuses and pay increases⁵. This is just one of the examples whereby migrant workers were denied from benefits that should have been able to be received from collective agreement negotiated by the trade union. In order to access benefits from collective agreement, migrant workers were forced to go through the lengthy process via court and faced the threat of being deported back to their home countries since their visit pass (temporary employment) is tied to a single employer.
 21. It is also common for the migrant workers to be forced to work overtime during their rest day or more than the limit set by the government. If the migrant workers tried to refuse working overtime, then the employer will threaten the migrant workers. Migrant workers often were denied access to paid rest day and annual leave.

Recommendations:

22. All migrant workers must be given a written employment contract in their first language to ensure that the migrant workers are able to understand the terms and conditions stated in their contract.
23. Employers must provide employment contract that complies with Malaysian Labour Law in which the contract must be clear on the rights of migrant workers such as wages, overtime pay, annual leave, rest day, termination notice and so on.
24. Stronger enforcement of Employment Act 1955 to ensure that migrant workers right are protected especially in the matter of wage deduction, paid rest day and annual leave. Enforcement agencies must ensure that all deduction made by the employer is compliant with the existing labour law and exceed 50% of the salary.
25. Malaysian government must take proactive action on the illegal practices of retention of passports/identity documents by employer. Allegations of passport retention by migrant workers must be investigated followed by penalty if the claim

is proven.

26. Migrant workers should not be prevented from joining a trade union. This also means that any threat to prevent migrant workers from joining or establishing their own trade union must be prevented. This will allow migrant workers to negotiate for a collective agreement and obtain their rights.
27. Remove clause 12 (2) and (3) in the Trade Union Act 1959 that give the Director General of Trade Union the power to refuse registering a trade union.

D. Access to Justice

28. Immigration regulations does not allow migrant worker to change employer or jobs without approval from Ministry of Home Affairs⁶. This practice curtails a migrant worker's labour market mobility, tying migrants to a single employer and sector of work and often compelling migrant workers to remain in exploitative and violent conditions at work. Meanwhile, those who do choose to leave such conditions will be at risk of losing their regular immigration status, arrest, immigration detention and deportation as employers can choose to unilaterally terminate work permits.
29. Migrant workers who made a complaint to the Labour or Industrial Relations office faced the risk of being send back to their home countries before the cases are concluded. This impacted migrant workers access to justice as they were not able to attend court proceedings.
30. Migrant workers face challenges in using existing mechanisms to seek remediation due to language barriers and the lack of knowledge or understanding of Malaysia's legal systems. Services such as foreign language interpreters are not available as a matter or process, often skewing legal processes in favour of employers, recruiters or other actors who hold more power than migrant workers.
31. Migrant workers are ineligible for free legal aid. The financial costs of engaging legal experts to initiate and navigate complex judicial or administrative processes can be prohibitive, especially for low waged workers and/or those who work informally.
32. Court proceedings are usually lengthy. Immigration regulations for Visit Pass (Temporary Employment) usually held by migrant workers does not allow them to remain in Malaysia beyond the validity of the work permit. As such, in such cases whereby the migrant worker is pursuing complaint with Department of Labour and/or Department of Industrial Relations, immigration department will issue them with a Special Pass which does not give them the right to be formally employed⁷. As a result, pursuing remedy for rights violations can lead to loss of income for migrant workers.
33. Malaysia's justice infrastructure is ill-equipped to meet the unique needs of migrant workers. Some judicial proceedings require that migrant workers provide identification documents to file a complaint. But, the retention of a migrant worker's identity documents by an employment agent or employer deters them from filing a complaint.
34. Discriminatory attitudes of public officials may reduce the opportunity for a fair outcome, especially for workers with irregular status. It was only recently that the Court of Appeal⁸ affirmed the right of an undocumented worker to file a claim for unpaid wages at the Department of Labour.

Recommendations:

35. Remove restrictions of Visit Pass (Temporary Employment) that disallow migrant workers from changing work or employers. This will lessen the power held by the employer in discriminating or exploiting their migrant workers.
36. Provide online platform for migrant workers to attend court proceedings, especially for migrant workers who were sent back to their home countries before the court achieve its decision.
37. Provide legal resources in language conversed or used by migrant workers. It is recommended that the responsible government agency that administer migrant workers employment in Malaysia to have foreign language interpreters that help migrant workers accessing legal process for their right.
38. Provide free or subsidise legal aid for migrant workers seeking legal remedies for their rights in Malaysia. This will create an accessible legal remedy for migrant workers in Malaysia. Another way of improving the accessibility of legal remedies for migrant workers is to set up a dispute resolution mechanism that does not require any identity documents from the migrant workers.
39. Malaysia should allow extension of Visit Pass (Temporary Employment) or allow holder of Special Pass to pursue legal employment in the situation whereby the migrant worker is pursuing a labour complaint at the Labour or Industrial Relations office.
40. Increase the capacity of labour inspectors and officers to investigate and enforce national labour laws via capacity building. Malaysia must take proactive steps to ensure all labour inspectors and officers upheld the rule of law and are up-to-date with any revision or court proceedings related to national labour laws.

E. Gender Inequality and Violence Against Women Migrant Workers

41. Migrant workers who enter using the Visit Pass (Temporary Employment) will need to go through a medical screening to determine the suitability of the migrant worker to be employed in Malaysia. Unfortunately, the result of this medical screening was not informed to the workers. Malaysia immigration department did not have a written document defining the suitability criteria stated for the employment of workers under the Visit Pass (Temporary Employment) scheme. As such, often migrant workers were only informed that they failed the medical screening without even knowing what sorts of medical condition, diseases or symptoms they were diagnosed with.
42. For women migrant workers, pregnancy is one of the physical conditions that deem them to be unsuitable for employment in Malaysia⁹. As such, if any women migrant workers were found to be pregnant, they would not be able to renew their visit pass. There are cases whereby women migrant workers misdiagnosed as pregnant¹⁰ and were returned to their home countries without any ways to challenge the diagnosis.
43. Moreover, sexual and reproductive health services for women migrant workers in Malaysia is inaccessible. In 2014, a Nepalese women migrant worker who came to Malaysia with her husband went for abortion in fear of losing her job. She was then detained and charged by Penang Section Court under Section 315 of the Penal Code (Updated 2018). Though she was then acquitted by the Penang High Court, this case increases public awareness on the existence of a law that prohibits abortion for women, even if the medical professional follows through standard operating procedure stated by Malaysia Ministry of Health. The irony is that the section used on Nirmala has not been enforced for more than 20 years, and yet was suddenly

used to penalise and charged Nirmala for seeking abortion. Malaysia has yet to revise this section which exposes all women, regardless of their documentation status, to be penalised for seeking abortion¹¹.

44. Migrant domestic workers are not protected under the Domestic Violence Act 1994 nor are they given basic labour rights under Employment Act 1955 (Amendment 2022). As such, women migrant domestic workers are often not given paid leave, and in the situation of facing harassment and abuse by their employers, they did not receive adequate protection. The most recent examples would be the incident whereby an Indonesian domestic worker was found chained around her waist and leg and locked in a bathroom¹². The employers were asked by the police to pay RM1,500 to the Indonesian domestic worker with no further action¹³. Cases of violence by employers on migrant domestic workers were often punished using Penal Code instead of Domestic Violence (Amendment) Act 2017 which could have offered a better protection to victim of violence. Instead, migrant domestic workers depended on the protection offered by their embassy or non-governmental organisation for cases of violence.
45. Employment Act 1955 (Amendment 2022) did contain clauses on sexual harassment in the workplace. Last year, a new Anti-Sexual Harassment Act (2022) was tabled in Parliament and enforced in stages from 28th of March 2023. However, protection for victims of sexual harassment act provided by these newly amended or formed bills is not enough. For example, Employment Act 1955 section 81 (B)(2) and (3) allows the employer the right to refuse an inquiry on a complaint of sexual harassment made by an employee.

Recommendations:

46. Immigration Department and Ministry of Home Affairs should be transparent on the determination of suitability criteria of migrant workers. The result of health screening conducted must be communicated in detail with the migrant workers.
47. Migrant workers must be allowed to challenge the result of the diagnoses, in the cases of wrong diagnosis by medical professionals. As such, migrant workers must be allowed to stay in Malaysia during this timeframe and repeat the health screening to ensure correct diagnosis has been made.
48. Remove Section 315 of Act 578 Penal Code that criminalise the act of abortion.
49. Amend Domestic Violence (Amendment) Act 2017 to include workers working in households to improve protection for migrant domestic workers who often lives together with their employers.
50. Amend Schedule 1 of Employment Act 1955 that excludes domestic workers from basic labour right such as paid leave, maternity leave and working hours.
51. Remove section 81 (B) clause (3)(b) that enable an employer to not inquire a complaint if the employer believes that the complaint is frivolous, vexatious or not made in good faith.

F. Access to Health and Social Protection

52. The cost of healthcare for migrant workers in Malaysia is very expensive as government healthcare facility categorises migrant workers as foreigners. This has limited migrant workers access to affordable and quality healthcare.
53. While there is a social protection scheme provided for migrant workers in Malaysia such as Social Security Organisation (SOCSSO) and Migrant worker Hospitalisation and

Surgical Scheme (SPIKPA), current scheme from SOCSO only covers injuries or illness related to employment. As such, any injuries or illness not related to employment will not be covered. On top of that, any injuries or illness that outlast migrant workers stay in Malaysia will also not be covered.

54. Migrant workers are also excluded from enjoying full range of benefits provided by Social Security Organisation (SOCSO) to nationals such as the Invalidity Scheme and Employment Insurance System. These two schemes provide benefits and reemployment placement programmes in the event of loss of employment. In the event whereby migrant workers experienced permanent injury or illness, they will not be covered by SOCSO.
55. As both the SOCSO and SPIKPA Schemes are dependent on a migrant's legal and employment status, many non-nationals including undocumented workers, refugees and non-citizen spouses of Malaysians, and those outside the formal labour market are excluded from the coverage.

Recommendations:

56. Lower costs of public health services to increase access to the right to the enjoyment of the highest attainable standard of physical and mental health for everyone, including for nonnationals. This can be done through subsidise or discounted rate for foreign nationals using income generated from levy for migrant workers recruitment.
57. Expand the coverage of SOCSO to injuries and diseases that are not related to employment.
58. Migrant workers are dependent on employers to contribute to the SOCSO Employment Injury Scheme. Effort should be made to increase awareness among employers and workers of the Employment Injury Scheme and a formal and safe complaint mechanism should be made available to workers to report on non-compliance of employers.
59. Implement a 'firewall' between public bodies which provide essential services and law enforcement agencies. This delinks protection of rights from immigration law enforcement, allowing everyone to access health care services without fear of arrest, immigration detention and deportation.

G. Right To Decent Living Conditions

60. Housing provided to workers should meet the minimum requirements contained in the Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446). During the early spread of COVID-19, the then Ministry of Human Resources Datuk Seri M. Saravanan exposed that more than 90% of the employers in Malaysia does not comply with the provision in the Workers' Minimum Standard of Housing and Amenities Act 1990¹⁴. In 2021, Ministry of Human Resources postponed the enforcement of Act 446 to give more time to the employers to comply to the law¹⁵.
61. The lack of proactive enforcement of labour laws and labour inspection of workplaces and living spaces of migrant workers often mean that substandard working and living conditions go undetected and errant employers are left unpunished. Often, existing dispute resolution mechanisms rely on migrant workers to self-report violations and to seek remedies through available mechanisms.

Recommendations:

62. Enforce existing provisions and guidelines stipulated in Act 446. There should not be any more excuses for any employers not following the standards stated in Act 446.
63. Create an accessible avenue for migrant workers to make complaints about poor living conditions and exorbitant deductions pertaining to rental and utilities.

¹ [1,120 migrant workers brought into Malaysia but left jobless, says home minister | MalaysiaNow](#)

² [Syndicate involved in migrant worker employment fraud busted | Free Malaysia Today \(FMT\)](#)

³ International Organization for Migration (IOM) – Malaysia, Infosheet, March 2022, [Infosheet 2021 \(Edited\) \(iom.int\)](#)

⁴ Malaysia Employment Act 1955 Clause No 24 (8).

⁵ [US tyre maker Goodyear faces allegations of labour abuse in Malaysia, documents show | Malay Mail](#)

⁶ [Visitor's Pass \(Temporary Employment\) – Malaysian Immigration Department \(imi.gov.my\)](#)

⁷ [Migrant Workers Access to Justice Report \(28Nov2019\).pdf \(malaysianbar.org.my\)](#)

⁸ Fice Fransina Nenobais vs Lee Hee Chooi (2020). High Court Malaya, Shah Alam. Current Law Journal, [CLJ Bulletin #34/2020 \(13 August 2020\) \(cljlaw.com\)](#)

⁹ Migrant worker Medical Status: Unsuitable Criteria by FOMEMA, [FOMEMA Unsuitable Criteria \(fomema2u.com.my\)](#)

¹⁰ Civil Society Organisation

¹¹ [Penal Code 18 Dis 2018.pdf \(agc.gov.my\)](#)

¹² [Cops rescue Indonesian maid chained in flat bathroom \(nst.com.my\)](#)

¹³ [Indonesian envoy shocked 'chained maid' case settled with RM1,500 payment \(msn.com\)](#)

¹⁴ [HR minister says accommodation for more than 90pc of foreign employees not in compliance with workers' housing Act | Malay Mail](#)

¹⁵ [Govt goes easy on enforcement of workers' housing law, for now | Free Malaysia Today \(FMT\)](#)