Institutions and Governance Regime:

Managing Foreign Workers in Malaysia
Objectives & Key Research Question

• Trace evolution of Malaysia’s foreign worker policy
• Examine policy objectives and implementation
• Analyze role of institutions in shaping the use of foreign labour in the country
• Identify strengths, weaknesses and problems in the implementation of policy
• Suggest ways to improve the policy and its strategies
Value Added of Paper

• Policy-oriented approach
• Examines issue in a comprehensive manner, as a single ‘big’ issue
  – Most prior studies take a sectoral or topic-specific approach
• Identifies key issues in the current environment and the latest policy developments
• Policy proposals
Methodology, Data Used & Issues

• Qualitative and Quantitative research
• Interviews and written correspondence with primary stakeholders
  – Government ministries and departments
  – Industry and employers associations
  – Labour and trade unions
  – NGOs
• Sabah Survey
  – 80 respondents from rural and urban areas
• Secondary sources
  – Previous studies, relevant laws and regulations, reports from various agencies, data from government agencies and NGOs
### Number of Foreign Workers in Malaysia, 1993-2009

<table>
<thead>
<tr>
<th>Year</th>
<th>Peninsula (%)</th>
<th>Sabah &amp; Labuan (%)</th>
<th>Sarawak (%)</th>
<th>Malaysia (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993</td>
<td>77.8</td>
<td>18.8</td>
<td>3.4</td>
<td>532,723 (100%)</td>
</tr>
<tr>
<td>1995</td>
<td>79.3</td>
<td>16.6</td>
<td>4.2</td>
<td>726,689 (100%)</td>
</tr>
<tr>
<td>1996</td>
<td>78.7</td>
<td>16.3</td>
<td>5.0</td>
<td>745,239 (100%)</td>
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<tr>
<td>1997</td>
<td>80.9</td>
<td>15.4</td>
<td>3.7</td>
<td>1,471,645 (100%)</td>
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<tr>
<td>1998</td>
<td>70.0</td>
<td>25.2</td>
<td>4.8</td>
<td>1,127,652 (100%)</td>
</tr>
<tr>
<td>1999</td>
<td>84.3</td>
<td>10.0</td>
<td>5.8</td>
<td>897,705 (100%)</td>
</tr>
<tr>
<td>2000</td>
<td>80.9</td>
<td>8.4</td>
<td>10.6</td>
<td>819,684 (100%)</td>
</tr>
<tr>
<td>2001</td>
<td>75.2</td>
<td>13.4</td>
<td>11.5</td>
<td>769,566 (100%)</td>
</tr>
<tr>
<td>2002</td>
<td>76.9</td>
<td>14.1</td>
<td>9.1</td>
<td>1,057,156 (100%)</td>
</tr>
<tr>
<td>2003</td>
<td>79.7</td>
<td>12.1</td>
<td>8.3</td>
<td>1,412,697 (100%)</td>
</tr>
<tr>
<td>2004</td>
<td>78.4</td>
<td>13.5</td>
<td>8.1</td>
<td>1,474,686 (100%)</td>
</tr>
<tr>
<td>2005</td>
<td>79.9</td>
<td>13.0</td>
<td>7.2</td>
<td>1,821,750 (100%)</td>
</tr>
<tr>
<td>2006</td>
<td>80.8</td>
<td>11.8</td>
<td>7.3</td>
<td>1,871,038 (100%)</td>
</tr>
<tr>
<td>2007</td>
<td>84.0</td>
<td>10.0</td>
<td>6.0</td>
<td>2,044,805 (100%)</td>
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<tr>
<td>2008</td>
<td>70.0</td>
<td>15.0</td>
<td>15.0</td>
<td>1,935,975 (100%)</td>
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<tr>
<td>2009 (June)</td>
<td>n.a</td>
<td>n.a</td>
<td>n.a</td>
<td>Approx. 1,570,000</td>
</tr>
</tbody>
</table>

Notes: *Based on issuance of work passes Pas Lawatan Kerja Sementara, PLKS.
Source: Department of Immigration, Putrajaya and Azizah Kassim, 2008.
Growth and Expansion of Foreign Workers in Malaysia

Number of Foreign Workers in Malaysia, 1993-2008
Present Status of Foreign Workers

Foreign Workers by Country of Origin, 2008 (%)

- Indonesia, 65.3%
- Nepal, 10.0%
- Myanmar, 7.2%
- Vietnam, 4.0%
- India, 6.5%
- Philippines, 1.8%
- Bangladesh, 1.8%
- Pakistan, 1.1%
- Cambodia, 0.6%
- Others, 2.1%

Distribution of Foreign Workers by Sector (%), 2001-2008

- Domestic Maids
- Construction
- Manufacturing
- Services
- Plantations and Agriculture
## Illegal Immigrants

<table>
<thead>
<tr>
<th>Year</th>
<th>Ops Nyah 1</th>
<th>Ops Nyah 2 /Ops Tegas</th>
<th>Regularisation</th>
<th>Amnesty</th>
<th>Runaways</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td></td>
<td></td>
<td>483,784</td>
<td></td>
<td></td>
<td>483,784</td>
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<tr>
<td>1996</td>
<td></td>
<td></td>
<td>554,941</td>
<td></td>
<td></td>
<td>554,941</td>
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<tr>
<td>1997</td>
<td></td>
<td></td>
<td>413,812</td>
<td></td>
<td></td>
<td>413,812</td>
</tr>
<tr>
<td>1998</td>
<td></td>
<td></td>
<td></td>
<td>187,486</td>
<td></td>
<td>187,486</td>
</tr>
<tr>
<td>2000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>72,528</td>
<td>72,528</td>
</tr>
<tr>
<td>2002</td>
<td></td>
<td></td>
<td></td>
<td>439,727</td>
<td></td>
<td>439,727</td>
</tr>
<tr>
<td>Oct 2004- Feb 2005</td>
<td></td>
<td></td>
<td></td>
<td>398,758</td>
<td></td>
<td>398,758</td>
</tr>
<tr>
<td>2006</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,039,219</td>
</tr>
<tr>
<td>2007</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009*</td>
<td></td>
<td></td>
<td>161,747</td>
<td></td>
<td></td>
<td>161,747</td>
</tr>
<tr>
<td>Total</td>
<td>129,746</td>
<td>909,473</td>
<td>1,614,284</td>
<td>1,025,971</td>
<td>72,528</td>
<td>3,751,902</td>
</tr>
</tbody>
</table>

**Source:** Azizah Kassim, 2008 and data from Department of Immigration Sabah.

**Notes:**
1. Ops Nyah 1 is for border control measures including land and sea patrols; Ops Tegas is to root out irregular migrants who failed to participate in regularisation or amnesty exercises. 2. Figures for regularisation and amnesty include dependents of migrant workers (children, wives and elderly parents).

* For Sabah only.
Development of Policy on Foreign Workers in Malaysia

• 1970-1984: State neglect and unregulated inflow
• Regulation and a move to more restrictive policies
  – 1998-2004: Shift to restrictive measures
• 2005-2008: Reorganising of institutions and recruiting processes
• 2009-present: Coping with economic slowdown

• Short-term policy, 2 major objectives
  – Encourage recruitment of foreign workers
  – Reduce number of illegal migrants
Institutions

• Policy-making body
  – Cabinet Committee on Foreign Workers and Illegal Immigrants

• Implementing Agencies
  – Ministry of Home Affairs (MOHA)
    • Department of Immigration
      – Legal workers: Recruitment Division, FDW Management
      – Irregular workers: Enforcement Division,
    • RELA, Police/Military/MMEA/GOF/Border Control, etc.
  – Ministry of Human Resources (MOHR)
    • Department of Labour
    • (Legal workers only)
Instruments

• **Laws and regulations**
  – Legal workers
    • Employment Act, 1955
    • Workmen Compensation Act 1952
    • Workers Minimum Standard Housing And Amenities Act 1990 (Act 446)
    • MOUs
  – Irregular workers
    • Immigration Act 1959/63 & Passport Act 1966 (Act 150)
    • The Anti-Trafficking In Persons Act, 2007
    • Amnesty, regularisation, Ops Nyah I, Ops Tegas
    • Special courts for illegal immigrants
## Main Findings and Implications: Policy & Instruments

<table>
<thead>
<tr>
<th>Present Situation</th>
<th>Recommendations</th>
</tr>
</thead>
</table>
| **1. No clearly articulated policy on FWs**  
  • Inconsistent approach / stop-start policies on foreign workers  
  • Labour flexibility over economic cycles | **1. National Policy on Foreign Workers**  
  • Long-term approach  
  • Proactively detail development of sectors using foreign workers (tech & skills, quota)  
  • Address issues of both foreign and local workers |
| **2. Lack of coordination**  
  • Lack of coordination among institutions, as well as between policy and implementation  
  • Conflicting objectives among ministries/agencies  
  • Weak policy implementation | **2a. National Advisory Committee on Foreign Workers**  
  • Comprising stakeholders from public and private sectors, academia, trade unions, sectoral federations, NGOs, SUHAKAM,  
  **2b. Coordinate and clarify roles among main regulatory agencies**  
  • MOHR and MOHA  
  **2c. Increase efficiency of monitoring and enforcement** |
Main Findings and Implications: Recruitment Process

<table>
<thead>
<tr>
<th>Present Situation</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Recruitment process highly exploitative in some countries</strong></td>
<td>1a. Direct hiring by employers in source countries</td>
</tr>
<tr>
<td></td>
<td>1b. More G-to-G discussions to ensure better recruitment &amp; sending processes in source countries</td>
</tr>
<tr>
<td></td>
<td>1c. More consideration to source countries with a more structured system of recruitment and sending</td>
</tr>
<tr>
<td><strong>2. Contract of Employment</strong></td>
<td>2a. Mandatory minimum standards for employment contracts, consistent with Malaysian labour laws</td>
</tr>
<tr>
<td>• Not standardized</td>
<td>2b. Strengthen enforcement of laws and regulations</td>
</tr>
<tr>
<td>• Contravene local labour laws in some cases</td>
<td>2c. Public option to help set minimum market standards</td>
</tr>
<tr>
<td><strong>3. High cost of levies for some sectors</strong></td>
<td>3. Ensure that employers bear full cost of levy</td>
</tr>
<tr>
<td><strong>4. Skill retention / cost of training</strong></td>
<td>4a. Allow foreign workers to stay for up to 10 years without any break</td>
</tr>
<tr>
<td>• Cap of 5 years on length of stay</td>
<td>4b. Option for a 12 month (max.) extension</td>
</tr>
<tr>
<td></td>
<td>4c. Correspondingly reduce intake of new workers</td>
</tr>
</tbody>
</table>
Main Findings and Implications:
Income and Social Protection

<table>
<thead>
<tr>
<th>Present Situation</th>
<th>Recommendations</th>
</tr>
</thead>
</table>
| 1. Differentials in hiring and firing, limited access to social services, etc.   | 1. Improve terms of employment and level of benefits to foreign workers  
  • Non-wage costs; costs of hiring and firing; PA and health insurance benefits, overtime and public holiday, personal and medical leave. |
| 2. Lengthy legal redress                                                          | 2a. Strengthen resources and clout of Labour Court  
  2b. Amend Immigration Act to enable foreign workers involved in cases in Malaysian courts to stay in the country at no extra cost and to work until the case is disposed of |
| 3. High dependence of foreign workers on agents and employers                     | 3a. Allow FWs to retain passport, ensure acceptance of Foreign Worker Card by authorities  
  3b. Employers with a significant number of outstanding court cases to be blacklisted and barred from employing more foreign workers |
# Main Findings and Implications: Irregular Migrants

<table>
<thead>
<tr>
<th>Present Situation</th>
<th>Recommendations</th>
</tr>
</thead>
</table>
| **1. Harsh criminal penalties on illegal workers and employers found to be employing / harbouring them** | **1. Decriminalize such offenses**  
  - Adjust fines and/or penalties to appropriate deterrent level  
  - Increase monitoring and enforcement efforts |
| **2. Abuse of visa on arrival by some countries**                                | **2. Tighten up procedures for visas and entry**  
  - Widespread use of biometric system |
| **3. Ineffectiveness of amnesty and regularisation exercises to reduce number of irregular workers** | **3. Bar repeat offenders of amnesty exercise from re-entry for a specific period of time** |
| **4. High cost of apprehending and repatriation**                               | **4. Swift repatriation, employers/harbourers to bear cost of repatriation** |
| **5. Failure of employers to renew visas and work permits**                      | **5. Immigration Department to step up monitoring of employers to ensure that visas and work permits are renewed** |
| **6. Problem of unregistered children of irregular migrants**                    | **6. Register undocumented children to ascertain their nationality** |
Caveats

• Significant changes currently underway in Malaysia regarding the governance & policy structure to manage foreign workers.
  – New Prime Minister has shown an intent to stamp out abuses
  – Restructuring of main policy-making and coordinating body (Cabinet Committee on Foreign Workers and Illegal Workers)
  – Phasing out of outsourcing
  – Establishment of a Laboratory on Foreign Workers to examine issue and provide recommendations to the government
  – Ineffectiveness of Joint Border Committee
Future Work

• Address real costs & supply of employment of FW viz locals
  – Malaysia currently considering minimum wage, how will this tie in to that?

• Recruitment process
  – How to address the exploitative aspects of the recruitment industry, which in some cases result in FWs arriving in Malaysia with high levels of debt

• Examine the evolving structural mechanisms of labour market, given the rise of innovation & knowledge economy which do not conform to old foreign-domestic divisions of labour
THANK YOU

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