Policy chaos over migrant workers in Malaysia

11th January, 2011

Author: Evelyn Devadason, ANU

Malaysia has a total of 1.9 million registered migrant workers, constituting approximately 21 per cent of the workforce, making Malaysia the largest importer of labour in Asia.

Despite the large presence of migrant workers in the economy, the policies and laws regulating in-migration are chaotic. Policies built on the concept of a short-term remedy for labour shortage problems have exposed the failure on the part of policymakers to recognise the critical contribution of migrant workers over the longer term. The problem is compounded by the absence of a comprehensive policy on in-migration as an integral part of national strategies for economic growth.

The inflows of migrants in the various economic sectors have generally been governed informally, although the government has signed Memorandums of Understanding with several designated countries, including Indonesia, the Philippines, Bangladesh, China, Vietnam, Pakistan and Thailand. Following this, the private sector was permitted to set up employment agencies to officially recruit migrant workers from these countries. However, after failing to combat the increasing inflows of illegal migrants, the government, in 1995, put a stop to private sector recruitment agencies and replaced them with a Task Force on Foreign Labour. The frequent pre-1995 sanctions on the importation of migrant workers persisted into the post-1995 period, suggesting that the special Task Force had also failed to stem the employment of illegal workers. The Task Force was then disbanded in 1997, and in 2002, recruitment procedures were subject through G to G agreements.
Apart from the changes in the recruitment process, frequent bans have been imposed to cut back the intake of migrants. These measures are generally short-lived, lasting not more than a year. Retrenchments and deportations of legal workers following any economic downturn have been reversed soon after employers’ problems with labour shortage.

In the course of regulating the use of migrant workers across the various economic sectors, the government has also sought efforts to deter the recruitment and retention of legal migrants by instituting market-based measures, such as the levy system in 1991 (with subsequent upwards revisions made in 1995, 1998 and 2005), the mandatory contributions to the Employees Provident Fund (EPF) in 1998 and the reduction in the maximum limit of the work permit in 2001. However, these policies backfired as employers switched to hiring illegals and under-reporting migrant wages to reduce their contributions to the EPF. As a result, the levies were lowered in 1999, the mandatory contribution to EPF was revoked in 2001 and the limit of the work permit was revised to five years from three years.

Though the laws of Malaysia do not discriminate against migrant workers, in practice, the rights of migrant workers are not protected: workers suffer from non-payment of wages, wrongful deduction of wages to cover work permits, long working hours, sub-standard living conditions, no insurance coverage, travel documents withheld by employers and unfair dismissal.

There are also provisions in existing labour laws with inherent biases against migrant workers. The Workmen’s Compensation Act (which covers migrant workers) provides benefits that are by far inferior to that as provided by the SOCSO (Social Security Organisation) scheme to local workers. Apart from observed differences in the compensation for migrant vis-à-vis local workers, there is no assurance that the injured migrant worker is compensated for under the Act, as this requires the worker to be adequately insured by the employer.

A recent announcement by the Malaysian government requiring employers to buy health insurance coverage for migrant workers effective this month is positive. Yet, this mandate, though it ostensibly benefits migrant workers, is being implemented mainly because of the high amount of unsettled public hospital bills by employers, totaling RM18 million (US$5.8 million) as at November 2010. To date, the details of the health insurance, apart from the annual premium of RM120, have not been made known to the public.

There are three main policy contexts in which migrant inflows are affected through the ‘price’ (labour cost encompassing wages, non-wages and other intangible benefits) effect.

The provisions outlined in the specified Acts that are applicable to migrants need to be reviewed to ensure equal protection for the former with that of their local counterparts. Of importance are the compensations meted out under the Workmen’s Compensation Act 1952. The compensation packages, offered to foreigners in the event of workplace injuries, need to be revised upwards as the payment is too low in comparison with the SOCSO plan for local workers. Equal treatment of migrants with that of local workers will tax away any undesirable cost saving gains borne by employers.

The government is also studying a proposal to increase the levy for migrant workers, with
differing rates across skills and sectors. The current annual levy system suffers from several shortcomings. In the case of manufacturing, an annual levy of RM1200 and RM960 (based on the latest revision in August 2005) is imposed on migrant workers in Peninsular and East Malaysia respectively. A blanket levy for manufacturing is not feasible given that the dependence on migrant workers varies considerably across industries.

The final policy issue also under consideration is minimum wages. The Malaysian Trade Union Congress has been pressuring the government to introduce a minimum wage of RM900, plus cost of living allowance of RM300, to attract local workers and reduce the dependence on migrant workers. The key challenge is to identify the appropriate rate for minimum wages as the proposed rate matches up to a basic wage of a semi-skilled worker in Malaysia, lest displacement of jobs may post a greater problem as higher wages relative to neighbouring countries attract more migrant inflows. The argument that a minimum wage will reduce the dependency on migrant workers is debatable and can somewhat be counterproductive given that: first, migrant workers may increase instead of decrease unless transaction costs (such as work permits and levies) are increased sufficiently to render them unattractive; second, local workers may still not be willing to undertake 3-D (dirty, difficult and dangerous) jobs, and even if they do, workers’ productivity with minimum wages becomes another concern; third, the problem of non-compliance and abuse by the various stakeholders which has plagued in-migration in Malaysia to date may worsen as unscrupulous employers resort to illegal workers to undercut cost of competitors.

The core problem is a lack of a comprehensive migrant worker policy and weak governance structures. The Malaysian case is a classic case of the failure of decentralisation in the recruitment and placement of migrant workers, in addition to lack of enforcement of existing regulations by various stakeholders.

*Evelyn Devadason is Visiting Fellow at the Australian National University and Associate Professor at the University of Malaya.*

Article from the East Asia Forum: [http://www.eastasiaforum.org](http://www.eastasiaforum.org)

URL to article: