

Perceptions of the Rights and Welfare of Foreign Workers in Peninsular Malaysia

Muhammad Safwan Ibrahim^{1,3} and Rodziana Mohamed Razali^{2*}

¹*Faculty of Science and Technology, Universiti Sains Islam Malaysia, 71800 Nilai, Negeri Sembilan, Malaysia*

²*Faculty of Syariah and Law, Universiti Sains Islam Malaysia, 71800 Nilai, Negeri Sembilan, Malaysia*

³*Risk & Analytics Research Group, Faculty of Science and Technology, Universiti Sains Islam Malaysia, 71800 Nilai, Negeri Sembilan, Malaysia*

ABSTRACT

The Malaysian government has implemented numerous policies and laws to regulate and monitor the employment of foreign workers in the country. This study examines key issues related to relevant labour laws in Malaysia addressing the welfare and rights of foreign workers, primarily workers' wages and deductions, levy and repatriation costs, insurance and medical benefits, passport retention, discrimination by employers and access to complaint mechanisms. Secondly, this study draws on several survey findings that indicate the existence of forced labour indicators that may amplify the vulnerability of foreign workers to abuse and exploitation. A survey was conducted to obtain perspectives on the rights and welfare of foreign workers in Peninsular Malaysia using a convenience sampling approach to collect relevant data. The study was undertaken among foreign workers with Visitor's Pass (Temporary Employment) (Pas Lawatan Kerja Sementara, or PLKS) and employers of PLKS holders. The survey findings suggest that several aspects of foreign workers' rights and welfare are not effectively protected, with some indicating the presence of forced labour indicators. In addition, two other findings are highlighted to indicate further the areas in which there is a lack of protection for the rights and welfare of foreign workers. The study provides several recommendations and suggests further qualitative studies

to gather in-depth perspectives of foreign workers and employers. The findings can help develop effective policy and legal intervention strategies to improve the rights and welfare of foreign workers in Malaysia.

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E-mail addresses:

msafwan@usim.edu.my (Muhammad Safwan Ibrahim)

rodziana@usim.edu.my (Rodziana Mohamed Razali)

*Corresponding author

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INTRODUCTION

Issues concerning migrant workers impact developing and developed countries. Most migrant workers prefer to work in advanced and developing economies, such as the United States, Canada, Australia, Malaysia, and Saudi Arabia. Their preference is due to a few common factors, such as better job prospects, economic prosperity, political stability, and peace (Hamzah & Daud, 2016). Predictably, with the world's economy rapidly evolving, the demand for foreign workers in developing and developed countries continuously increases. Malaysia is one of East Asia's most populous migrant destinations. Since the early 1980s, Malaysia has relied on foreign workers as part of an economic advancement programme to shift the country's economic structure from agriculture towards manufacturing and services. Since then, Malaysia has seen persistent increases in the size of its low- and semi-skilled foreign workers. The expansion of foreign workers' size has triggered major debates around Malaysia's over-reliance on the low-skilled category of foreign workers in the labour force at the expense of the local workforce and the country's aspiration of becoming a developed nation based on a knowledge-based economy (Harkins, 2016; Kanapathy, 2006).

Employers applying for low-skilled foreign workers are required to apply for Visa With Reference (VDR) and PLKS in order for the workers to work in Peninsular Malaysia in several approved sectors. According to a statistical report from the Malaysian Immigration Department, the

number of legal foreign workers in Malaysia as of 31st January 2020 was 1,983,780 (Malaysian Immigration Department, 2020). The majority came from Indonesia (34.61%), followed by Bangladesh (28.41%) and Nepal (15.09%). The rest were from different countries: Myanmar, India, Pakistan, the Philippines, Thailand, Vietnam, Sri Lanka, Laos, and China. They were employed in six major sectors: manufacturing, construction, plantation, services, agriculture, and mining and quarrying. Approximately 35.04% of them were employed in the manufacturing sector, followed by services (22.35%), construction (21.81%), plantation (13.37%), agriculture (7.42%), and the lowest was mining and quarrying with less than 1%. Under the 11th Malaysia Plan, Malaysia reduced its dependence on foreign workers from 16.1% in 2013 to 12.0% in 2017 (Kok, 2018). Nevertheless, Malaysia remains Southeast Asia's largest importer of foreign workers (Wei et al., 2018). Under the 12th Malaysia Plan, the percentage of low-skilled labourers dropped from 13.8% in 2015 to 11.9% in 2020. It was partly a result of initiatives to expedite automation and reduce reliance on low-skilled foreign workers (Prime Minister's Department, 2021).

The government's efforts to reduce the number of foreign workers in Malaysia are commendable and represent a positive step for the country's development. However, the government should strongly emphasise the social protection of foreign workers. According to a report by the United States Department of State (2020), a significant

number of foreign workers in Malaysia are recruited fraudulently or exploitatively. Amnesty International (2010) also reported that ineffective rules to address agents, violations of labour laws and procedures, and practices that allow employers to hold their employees' passports resulted in evidence of forced labour as a form of human trafficking. Similar views were highlighted by Devadason and Chan (2013), who believed that ineffective policies and laws would expose these foreign workers to abuse and exploitation. From 2015 to 2020, Malaysia was placed on Tier 2 by the United States Government's Trafficking in Persons (TIP) Report on its efforts to prevent human trafficking. Malaysia's failure to handle corruption issues, the lack of investigation and prosecution, and a general lack of improvement in victim protection were among the reasons why the country remained in Tier 2 throughout that period. Malaysia was further demoted to Tier 3 in 2021 because it continues to fall short of the minimal standards for preventing human trafficking, even after accounting for the impact of the Covid-19 pandemic on its anti-trafficking capabilities (United States Department of State, 2021).

The Malaysian government needs to ensure that these and other challenges are forcefully addressed to counter the repercussions of the poor treatment of the rights and welfare of foreign workers. To that end, the government must consider the international and domestic commitments towards the rights and welfare of workers, including the Declaration on Fundamental

Principles and Rights at Work adopted in 1998 at the 86th International Labour Conference.

This study examines critical issues impacting Malaysia's foreign workers' rights and welfare, including issues that arise from relevant labour laws in Malaysia, particularly on the workers' fundamental rights (wages and deductions, levy and repatriation costs, insurance and medical benefits, leave entitlement, passport retention, treatment by employers and access to complaint mechanisms). Secondly, the study presents the survey findings that spotlight foreign workers' and employers' perspectives and insights on the state of foreign workers' rights and welfare in Peninsular Malaysia based on two surveys conducted with PLKS holders and employers of PLKS holders in Peninsular Malaysia. The findings focus on issues closely connected to indicators of forced labour, specifically fraud or deception, debt bondage, wage deductions and passport withholding, among the most prevalent issues affecting the rights and welfare of foreign workers in Malaysia.

Forced Labour and Foreign Workers' Rights and Welfare Issues in Malaysia

Activists and non-governmental organisations (NGOs) in Malaysia and overseas have raised concerns about the rights and welfare of foreign workers in Malaysia for many years. Oppression, exploitation, fraud, and discrimination are among the few commonly discussed topics frequently inextricably linked to forced labour. Malaysia is a party to the

Forced Labour Convention of 1930 and its Protocol of 2014 (International Labour Organization (ILO), 2022b). Article 2 of the Forced Labour Convention of 1930 (No. 29) defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Forced labour occurs when employers take advantage of the victims’ vulnerabilities. The ILO identified 11 indicators of forced labour, namely, abuse of vulnerability, fraud, restriction of movement, segregation, physical and sexual violence, intimidation and threats, retention of identification documents, wage withholding, debt bondage, abusive working and living conditions, and excessive working hours (ILO, 2012, 2018b).

Occasionally, a single indicator is sufficient to establish the existence of forced labour. Nevertheless, in most cases, different indicators are required to establish that forced labour has occurred. Several factors can contribute to forced labour practices in Malaysia, including a lack of awareness about forced labour among employers and employees, a lack of knowledge about laws and policies, fear of workers escaping, acceptance of forced labour as an industry norm, deliberate actions by irresponsible employers, being misguided by recruitment agents, isolated employment locations, a lack of enforcement, and a limited number of prosecutions and convictions (Tang, 2019). The lack of Malaysia’s significant efforts to eliminate trafficking in persons in 2020 has been attributed to the lack of

investigations into forced labour (United States Department of State, 2020) and its failure to publicly report investigations or prosecutions involving exploitations or methods that could amount to forced labour, particularly in the rubber manufacturing and palm oil sectors (United States Department of State, 2021).

Most foreign workers incur debt to work in Malaysia. They had to pay exorbitant fees due to significant reliance on labour brokers and intermediaries, which can impact the well-being of foreign workers (Low, 2021). Due to the high debt burden, foreign workers are willing to work overtime, even on holidays and weekends, receive lesser earnings than local workers, and are less concerned about workplace safety and conditions. Employers and agents have exploited this scenario to exploit this group of workers.

According to Tang (2019) and Low (2020), poor monitoring and enforcement by the Department of Labour are some of the reasons why the welfare of foreign workers is not adequately protected. Several employers abuse this advantage by being ignorant and irresponsible towards their foreign workers. Some employers discriminate the foreign workers by classifying them as second or third-class citizens and purposefully allow workers with expired work permits to continue working, although knowing that the action violates Malaysian law (Ahsan Ullah, 2013; Kaos Jr, 2021; Low, 2021). The protection and well-being of foreign workers are additionally undermined by corruption and monopolisation of services

in the recruitment processes, all of which contribute towards the commodification of foreign workers in Malaysia (Lee & Pereira, 2023; Low, 2021). Furthermore, employers' refusal to repatriate workers with expired work permits has increased the influx of foreign workers in Malaysia.

Additionally, one of the significant issues concerning the welfare of foreign workers is the disparity in healthcare and workplace compensation schemes between foreign workers and local workers. According to Low (2021), foreign and local workers have been covered by separate schemes since 1993. Under the Employees' Social Security Act 1969 (Act 4), local workers are insured under the Social Security Organisation (SOCSO), whereas foreign workers are covered by the Workmen's Compensation Act 1952 insurance scheme. Significant discrepancies can be observed as the compensation structure under the Workmen's Compensation Act offers less coverage for permanent disability and death cases. For instance, the maximum payment for permanent disability is RM23,000 for foreign workers. Nevertheless, local workers can get periodic payments of up to RM425,000, according to a simulation study done by ILO from 2010 to 2014 (ILO, 2017, 2018a). The scheme is criticised as unjust to foreign workers because they are more susceptible to a hazardous work environment that might result in accidents and injuries. According to Del Carpio et al. (2013) and Loganathan et al. (2020), this differentiated treatment has resulted in more medical costs not being covered by employers due

to many foreign workers being uninsured or underinsured. Nevertheless, this situation has been improved since the government abolished the Workmen's Compensation Act 1952 in 2018 (Bernama, 2018). By 1st January 2019, this scheme was effectively replaced by the Employment Injury Scheme (*Skim Bencana Kerja* or SBK) under SOCSO.

Malaysian Labour Laws and Policies on the Welfare of Foreign Workers

The employment of foreign workers in specific sectors in Malaysia started during the British colonial era. Since then, shifts in labour market requirements, the promotion of technology-based labour, and the inflow of foreign workers, including irregular and undocumented workers, have led to short-term and ever-changing migration policies and laws (Ajis et al., 2014, 2018; Kassim, 2012). Effective implementation and enforcement of labour laws are still needed, particularly for improving foreign workers' social protection and rights. Malaysian law contains various provisions that can be used to safeguard the rights and welfare of foreign workers. The regularly cited relevant Act is the Employment Act 1955 (Act 265), which regulates employment terms and conditions for all foreign workers except those employed as domestic workers.

This Act makes no distinction between local and foreign workers, and all the provisions of the Act apply equally to both groups. Section 19 of Act 265 guarantees fundamental rights to foreign workers, such as the right to receive wages, whereas

Section 24 addresses lawful deductions from workers' wages. Employers must make payments within seven days of the next month using the payment method agreed upon by the employee. Section 60A of Act 265 also states that a foreign worker cannot work more than eight hours per day or more than 48 hours per week. Furthermore, companies are required by Sections 60E and 60F to provide annual leave and medical leave to foreign workers. The legislation is crucial for the workers' fundamental rights to be enforced, deterring and punishing exploitations and abuses by employers.

Malaysia also adopted a "no recruitment fee" policy based on its Fair Recruitment Initiative introduced in 2014 (Vinothaa, 2022). Employers have been made fully accountable for the annual levy and are no longer allowed to deduct their employees' salaries to pay the levy through the introduction of the Employer Mandatory Commitment, enforced in January 2018 (Devadason, 2020). The annual levy introduced by the government was initially payable to each foreign worker in 1992. However, it was transferred to employers in 2009 before being shifted back to workers in 2013, who paid the levy through salary deductions until 2018. In 2018, the government reversed its policy by again imposing the obligation on employers to pay the levy (Devadason, 2020).

Regarding the minimum wage, the Minister of Human Resources has the authority to issue a Minimum Wage Order per Section 23 of the National Wage Consultative Council Act (2011). The

Minimum Wage Order (Amendment) 2020 is the order that establishes the minimum wage rate for employees at RM1,200 per month, replacing the Minimum Wage Order (Amendment) 2019, which sets the minimum wage rate at RM1,100 per month. Despite this, the Malaysian government implemented yet another change in 2022, raising the minimum wage to RM1,500 per month through the Minimum Wage (Amendment) Order 2022, effective 1st May 2022, with exemptions for employers with less than 5 employees until 31st December 2022 (Ministry of Human Resource Malaysia, 2022b). Beginning 1st January 2023, the new minimum rate has been applied to all employers (Bernama, 2022; Ministry of Human Resource Malaysia, 2022b).

Employer contributions protect foreign workers, particularly during an accident on the way to or from work, while working, or during employer-provided breaks. Additionally, SOCSO covers illnesses caused by employment, medical benefits, injuries resulting in temporary or permanent disability, continuous attendance allowance, dependents' benefits and rehabilitation, and certain incidents involving death, including repatriation and burial. Employers who fail to register qualified employees under the Employees Social Security Act 1969 may be fined up to RM10,000 or imprisoned for up to two years, or both, if convicted under Section 5 of Act 4 and Regulation 12 (1) of the Employees' Social Security (General) Regulations 1971. Moreover, foreign workers are required to sign up

for the Foreign Workers Hospitalisation and Surgical Insurance Scheme (*Skim Perlindungan Insurans Kesihatan Pekerja Asing* or SPIKPA), which provides total health insurance coverage of RM10,000 per year with an insurance fee payment of RM120 per foreign worker (Loganathan et al., 2020; Ministry of Health Malaysia, 2011). The government implemented this scheme to help foreign hospitalised workers due to an accident or illness. Employers cannot renew the work permits of their foreign workers if there is no SPIKPA.

METHODOLOGY

Sample and Data Collection

A quantitative study using the survey method was designed to collect information and perceptions on the welfare of foreign workers in Peninsular Malaysia. This study was conducted from 6th October 2020 until 21st November 2020 as part of broader research to understand the public and human security implications of the presence of foreign workers in Peninsular Malaysia. Two key groups were surveyed: foreign workers and employers. The respondents among foreign workers had to meet the following inclusion criteria: (1) the foreign workers must be registered PLKS holders, (2) the foreign workers must work in either one of the six approved sectors of employment in Peninsular Malaysia and (3) the foreign workers must originate from one of the approved source countries. The inclusion criteria for respondents among employers were (1) the employers must be registered with the Companies Commission

of Malaysia (*Suruhanjaya Syarikat Malaysia* or SSM), (2) the employers must employ foreign workers holding PLKS in Peninsular Malaysia, and (3) their registered businesses must belong to either one of the six approved sectors for PLKS holders.

The suitable sample size for each group was determined using the methods described by Krejcie and Morgan (1970), Sekaran and Bougie (2016), and Cohen et al. (2017). According to the statistics issued by the Malaysian Immigration Department, the population of foreign workers actively working in the six main sectors is estimated to be 1,873,429 workers up to 31st January 2020 (Malaysian Immigration Department, 2020). For employers, there are believed to be 25,000 companies in Peninsular Malaysia that have employed PLKS foreign workers under their companies, based on the Institute of Labour Market Information and Analysis (ILMIA) report (2020). These numbers were used to estimate a suitable sample size for the foreign worker and employer respondents. Based on these numbers, the minimum sample size for foreign workers was 384, while the minimum sample size for employers was set at 379 people, giving a 95% confidence level and a 5% sampling error. Face-to-face sessions were used to collect data from foreign workers, while an online survey form was used to collect data from employers. Both techniques employed a non-probability sampling approach, which is convenience sampling. The convenience sampling technique was chosen as it was the most practical and feasible method to collect data from the target population within time and resource constraints.

The survey questionnaires for both groups were divided into two sections. The first section examined the respondent’s demographic characteristics, such as gender, nationality, sector, and ethnic background. The second section looked at welfare issues impacting foreign workers from the respondent’s standpoint. The respondents were asked to indicate their agreement or disagreement with each statement on a three-point scale: Yes, No, and Not Sure.

Several procedures were taken prior to conducting this survey. In the first step, the sampling method was identified through a survey instrument construction workshop and then validated by three experts in the field. After getting approval from these three experts, the questionnaire was submitted to the Research Ethics Committee of Universiti Sains Islam Malaysia (USIM) for ethical approval for this study. This questionnaire also underwent a pilot study before the actual study was conducted. The

actual study was conducted after making corrections based on the results of the pilot study. During the final stage, the results of the actual study were reviewed and validated by the questionnaire experts.

RESULTS AND DISCUSSION

Demographic Profile of Respondents

A total of 668 (100%) foreign workers holding PLKS answered the questionnaires. As shown in Table 1, male respondents were 386 (57.8%), while female respondents were 282 (42.2%), representing different nationalities and sectors. A total of 428 (100%) respondents comprising employers, who hired foreign workers, completed the questionnaires. According to the demographic profile in Table 2, 274 male respondents (64%) and 154 female respondents (36%), representing a diverse range of ethnicities and sectors, participated in the study.

Table 1
Demographic profile of foreign workers

Variable		Frequency	Percentage (%)
Gender	Male	386	57.8
	Female	282	42.2
Nationality	Indonesia	214	32.0
	Bangladesh	87	13.0
	Nepal	94	14.1
	Myanmar	28	4.2
	India	9	1.3
	Pakistan	24	3.6
	Philippines	10	1.5

Table 1 (Continue)

Variable	Frequency	Percentage (%)	
Nationality	Thailand	177	26.5
	Vietnam	10	1.5
	Sri Lanka	1	0.1
	Laos	1	0.1
	China	11	1.6
	Others	2	0.3
	Sector	Manufacturing	109
Plantation		66	9.9
Agriculture		19	2.8
Construction		101	15.1
Mining and quarrying		25	3.7
Services		337	50.4
Others		11	1.6

Table 2

Demographic profile of employers

Variable	Frequency	Percentage (%)	
Gender	Male	274	64.0
	Female	154	36.0
Ethnicity	Malay	175	40.9
	Chinese	186	43.5
	Indian	43	10.0
	Others	24	5.6
	Sector	Manufacturing	153
Plantation		35	8.2
Agriculture		27	6.3
Construction		54	12.6
Mining and quarrying		37	8.6
Services		83	19.4
Others		39	9.1

Perceptions on the Welfare of Foreign Workers in Peninsular Malaysia

Tables 3 and 4 present the perceptions of foreign workers and employers surveyed to achieve this goal. The findings indicated that several issues affecting the rights and welfare of foreign workers require the attention of policymakers and regulators. These issues were identified by examining the association between perceptions and potential indicators of forced labour developed by the ILO and

other issues of concern that may increase foreign workers' vulnerabilities to abuse and exploitation. We will focus firstly on several key findings that may subject the workers to the risk of forced labour to varying degrees, providing a detailed discussion and analysis of the results obtained. It will be followed by other findings relating to social security protection and access to justice, highlighting relevant factors that may heighten workers' insecurities and vulnerabilities.

Table 3

Distribution of respondents among foreign workers by frequency and percentage regarding the state of foreign workers' rights and welfare

No.	Aspect/Item	Frequency (%)		
		Yes	No	Not Sure
General Welfare				
1	The cost of recruitment that I must pay in my country to work in Malaysia is fair.	565 (84.6%)	28 (4.2%)	75 (11.2%)
2	I understand my rights and responsibilities as stipulated in my working contract signed by me.	627 (93.9%)	29 (4.3%)	12 (1.8%)
3	My current work is what has been promised exactly by the recruitment agency in my country.	599 (89.7%)	48 (7.2%)	21 (3.1%)
4	I/my family borrowed money to pay for the cost of working here.	385 (57.6%)	281 (42.1%)	2 (0.3%)
5	I was deceived/abused during the recruitment process.	66 (9.9%)	598 (89.5%)	4 (0.6%)
6	My travel and/or work documents are held (or used to be held) by my employer.	313 (46.9%)	342 (51.2%)	13 (1.9%)
7	The treatment given by my employer is satisfactory.	660 (98.8%)	4 (0.6%)	4 (0.6%)
Wage				
8	My employer informs me of my employment terms and conditions as a foreign worker.	647 (96.9%)	13 (1.9%)	8 (1.2%)

Table 3 (Continue)

No.	Aspect/Item	Frequency (%)		
		Yes	No	Not Sure
9	My employer remunerates me according to the Minimum Wages Order (minimum of RM1,200).	656 (98.2%)	7 (1%)	5 (0.7%)
10	I receive my salary according to the period specified in the employment contract.	650 (97.3%)	8 (1.2%)	10 (1.5%)
11	My employer pays my salary after deducting the cost of recruiting me as a foreign worker.	106 (15.9%)	517 (77.4%)	45 (6.7%)
12	My salary does not include medical benefits and/or overtime allowance.	270 (40.4%)	361 (54%)	37 (5.5%)
13	The salary given by my employer is enough for me to return to my home country for a holiday.	600 (89.8%)	58 (8.7%)	10 (1.5%)
14	I can obtain additional allowances if I possess skills related to technology/ machines.	462 (69.2%)	118 (17.7%)	88 (13.2%)
Insurance and Medical				
15	I am protected by the foreign worker insurance scheme as prescribed by the government of Malaysia.	547 (81.9%)	83 (12.4%)	38 (5.7%)
16	The medical and treatment costs that I must pay in Malaysia are reasonable.	527 (78.9%)	55 (8.2%)	86 (12.9%)
Levy and Repatriation Costs				
17	I am aware that the levy should be borne by the employer.	531 (79.5%)	65 (9.7%)	72 (10.8%)
18	I bear the cost of returning to my home country after my contract has ended or my services have been terminated.	418 (62.6%)	230 (34.4%)	20 (3%)
19	I am aware of the official channels to report abuse or violation of my rights.	545 (81.6%)	75 (11.2%)	48 (7.2%)

Table 4

Distribution of respondents among employers by frequency and percentage regarding the state of foreign workers' rights and welfare

No.	Aspect/Item	Frequency (%)		
		Yes	No	Not sure
1	The employer keeps the travel and/or work documents of foreign workers.	288 (67.3%)	140 (32.7%)	0 (0%)
2	Employers must provide impartial treatment without discriminating between foreign and local workers.	405 (94.6%)	23 (5.4%)	0 (0%)
3	My company/enterprise ensures that the employees understand their rights as stated in the employment contracts that they signed.	419 (97.9%)	9 (2.1%)	0 (0%)
4	My company/enterprise implements the Minimum Wages Order 2020.	415 (97.0%)	13 (3.0%)	0 (0%)
5	My company/enterprise pays the salary of workers according to the period specified in the employment contract.	423 (98.8%)	4 (0.9)	1 (2.0%)
6	The salary accorded to foreign workers in my company/enterprise does not include medical benefits.	306 (71.5%)	122 (28.5%)	0 (0%)
7	The salary accorded to foreign workers in my company/enterprise does not include overtime allowances.	242 (56.5%)	186 (43.5%)	0 (0%)
8	My company/enterprise abides by the regulations related to the provisions of leave to foreign workers.	407 (95.1%)	20 (4.7%)	1 (2.0%)
9	My company/enterprise contributes to the Employment Injury Scheme for Foreign Workers (SBK) for every employed foreign worker.	367 (85.7%)	61 (14.3%)	0 (0%)
10	My company/enterprise bears the costs of returning foreign worker(s) whose employment contract has ended or whose services have been terminated.	353 (82.5%)	75 (17.5%)	0 (0%)
11	My company/enterprise bears the medical costs of employed foreign workers outside of those covered by SBK.	342 (79.9%)	83 (19.4%)	3 (0.7%)
12	My company/enterprise provides a special unit/channel for foreign workers to communicate their grievances related to employee welfare.	334 (78.0%)	93 (21.7%)	1 (2.0%)

Indebtedness Could Give Rise to Debt Bondage. More than half of the workers surveyed (57.6%) confessed to being in debt to be employed in Malaysia. This finding is concerning as indebtedness can induce foreign workers to work overtime to generate more money than the income offered to pay off their debts, which can be exploited by employers who want to profit from the workers' extra labour. Indebtedness among workers is a situation that often begins in their origin countries hence sustained and effective engagement with the governments of the source countries to address this issue is crucial (ILO, 2018b). More room for exploitation and abuse is known through multiple chains of intermediaries in the recruitment process charging various recruitment and other related fees to foreign workers in Malaysia (Kanapathy, 2006). Even after the amendment to abolish outsourcing companies through the Private Employment Agency Act (Amendment) 2017, migrant workers continue to fall victim to debt bondage and be at "the mercy of their employers" (Human Rights Commission of Malaysia (SUHAKAM), 2018, pp. 128–129). ILO (2022a) further found that complex or centralised recruitment processes in capital cities or online incentivise reliance on intermediaries, which may comprise informal subagents outside the regulatory framework. This complex and centralised system relies on informal subagents not tied to recruiters' protection obligations and ethical recruitment practices to anchor formal processes and employment requirements (Mohamed Razali, 2022).

Additionally, the findings on wage deductions, knowledge of who bears the costs of levy and returning foreign workers to their home countries suggest how foreign workers may be vulnerable to indebtedness leading to debt bondage. Wage deductions experienced among the 15.9% of workers surveyed may compound their indebtedness when such deductions occur without the workers' consent. The literature has shown how recruiting foreign workers has evolved into a profit-making business, as viewed from the imposition of exorbitant placement and recruitment fees deducted from workers' salaries (Devadason, 2020; Low, 2020).

Effective 1st February 2017, employers have been required to sign a pledge known as the Employers' Undertaking, containing 11 mandatory commitments, including to pay the workers' levy under The Fees Act 1951 (Act 209), and to provide salaries, allowances, leave and other benefits recognised by the Employment Act 1955 (Ministry of Human Resource Malaysia, 2022a). A transparent and responsible recruitment system will require that such commitments be made clear to employers and workers and legally enforceable.

However, from the survey results, 20.5% of the workers were unaware that the employer was responsible for the cost of the levy. In comparison, 62.6% believed that they were responsible for the cost of returning to the countries of origin once the contract had expired. The strict liability principle imposed through the mandatory commitments on employers might not be effective if the workers were

not aware of their rights not to be imposed illegal deductions in terms of the types, mechanisms and amounts allowed under Act 265. The illegal deductions from wages for the payment of the levy and other arising costs, such as the costs of quarantine of workers and of returning to their home countries, are not spelt out comprehensively and clearly in Act 265 and other related Acts or regulations such as Act 209. This can create gaps in enforcing the liability of employers. Furthermore, the absence of legislation to enforce the 'zero recruitment cost' policy creates a loophole that could risk Malaysia being placed on Tier 3 in the coming TIP report (Vinothaa, 2022).

Passport Retention. The high degree of responses admitting the practice of withholding workers' passports both on the part of workers (46.9%) and employers (67.3%) flags a violation of Section 12(1) (f) of the Passport Act of 1966 (Act 150), pointing to the common indicator of forced labour set by the ILO and past findings by non-profit organisations such as Amnesty International (2010), Verité (2014) and Fair Labor Association (2018). According to Earthworm Foundation (2019), passport retention by employers has become a normalised practice, especially among small-medium players in the context of the palm oil sector. Many employers are unaware of or do not think the said practice is legally prohibited. Where passports are held for safekeeping by palm oil workers, access to such documents often is subject to consent and/or red tape on the part of the

employers and/or agents (Wahab & Razak, 2022).

The current sanctions for illegal passport retention or confiscation contravening Section 12(1)(f) of Act 150, carrying a fine of not exceeding RM 10,000 or imprisonment not exceeding 5 years or both, appear ineffective in containing this illegal practice. Poor enforcement contributes to the long-standing non-compliance by employers, which is evidenced by the country's minimal records of prosecutions of offences related to illegal passport confiscation. In 2016, non was convicted compared to 17 convictions the following year despite this widespread practice (United States Department of State, 2016, 2017).

Deception in the Recruitment Process. Close to 10% of the surveyed foreign workers indicated being victims of fraud when the jobs offered differed from those promised. This is not an outlier as low levels of transparency into working conditions, lack of legal protections and unethical behaviour on the part of intermediaries and employers are part of complex supply chains that intensify workers' vulnerabilities with or without deliberate intent to exploit workers (Mohamed Razali, 2022; Verité, 2014). There have been recorded cases of individuals paying high recruitment fees who were left stranded in Kuala Lumpur without employment, forced to work in harsh conditions, or repatriated to their home countries. (Palma, 2015; Wickramasekara, 2015). Workers' limited language ability and lack of means and capacity to comprehend

and enforce their contracts make them easy targets for fraud, abuse and exploitation (Wei & Yazdanifard, 2015). It may also explain why 62.6% of workers believed they were responsible for returning to their countries of origin after the contract expired.

Insurance and Medical Contributions.

SOCSCO has implemented SBK under Act 4 to replace SPPA. From January 2019, the government has agreed to place matters related to foreign employees' social security protection under SOCSCO, subject to Act 4 (SOCSCO, 2020). Employers who legally hire foreign workers must register the workers with SOCSCO and contribute to the Occupational Disaster Scheme under the same Act. Among the employers surveyed, 14.3% did not contribute or were unsure if they provided their contributions to SBK. In comparison, a higher percentage of 20.1% of the employers did not pay for or were unsure if they bore their workers' medical costs beyond the scheme's coverage.

The initial findings suggest that foreign workers may still face great financial constraints in receiving outpatient treatments and those uncovered under SBK despite the inclusive move that extended SBK to foreign workers. It is especially so with the increased medical costs to foreigners beginning in January 2016 following the phasing out of subsidised healthcare for non-citizens under the Fees (Medical) (Cost of Services) Order 2014. Furthermore, SPIKPA, which offers financial protection for foreign workers concerning healthcare expenditure for inpatient care or surgery at

public hospitals, is said to be inadequate and excludes outpatient treatment (Loganathan et al., 2020).

Access to Complaint Mechanisms and Justice.

From the survey, 18.4% of the respondents among foreign workers either did not know or were unsure where to lodge a formal complaint if the employer breached the employee's rights. Information from the desk review revealed that foreign workers could file complaints with the Department of Labour, NGOs, their respective nations' embassies, and local police stations (Harkins & Åhlberg, 2017; Taylor-Nicholson et al., 2019). Although labour claims, labour inspections and industrial claims such as for unpaid wages and cases of unfair dismissal can be filed by foreign workers in the civil courts, several institutional, legal and social reasons prevent them from coming forward to enforce their rights. These include fear of losing jobs and legal status, threats of arrest due to the withholding of passports by employers, denial of liability by employers when their workers are registered with outsourcing agents, and lack of financial and social support (Taylor-Nicholson et al., 2019).

The Malaysian government has launched a judicial platform for complaints through a new Working for Workers (WFW) application to help workers, including foreign workers, lodge labour-related complaints against their employers (Bernama, 2021). However, the survey with the foreign workers did not gauge further the specific complaint channels they were aware

of, preventing more accurate responses on their knowledge about these specific avenues and whether they are accessible by foreign workers.

Implications of Findings

The outcomes of this study are significant in at least two contexts. Forced labour allegations are highly connected to recruiting and employing foreign workers in Malaysia. A background study conducted between 2018-19 pointed to scant data and evidence on forced labour in Malaysia, acknowledging further that those accessible to the public are mostly derived from investigative journalism based on specific sectors (Lee & Pereira, 2023). Thus, this study brought to the fore the integral role of empirical evidence from both key actors, foreign workers and employers, in identifying and measuring the occurrence of forced labour and related areas in which foreign workers are vulnerable to abuse and exploitation. Next, the findings pave the way for targeted and responsive policy, legal and operational intervention opportunities by various local and international stakeholders to address forced labour and other issues affecting the rights and welfare of foreign workers in Malaysia and empowerment of foreign workers by civil society actors. These intervention efforts enabled by the study findings speak strongly to Malaysia's existing and renewed commitment to tackling forced labour in all its forms, which is reflected in its ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 and enactment of the country's

National Action Plan on Trafficking in Persons for the period 2021-2025. These normative obligations emphasise awareness, enforcement, labour migration, and access to remedies and support for the victims (ILO, 2022b) in order to eliminate forced labour by 2030.

CONCLUSION

The perceptions of foreign workers based on the survey findings reveal essential aspects of workers' rights and welfare that are not adequately protected. Crucial concerns must be addressed, although most foreign workers surveyed are satisfied with their employers' treatment. These concerns include gaps and practices leading to debt bondage, possible fraud in the recruitment system, employer-held passports, employers' failure to cover employees under SBK and lack of access to established grievance or complaint mechanisms for the workers. The findings suggest the continual presence of certain indicators of forced labour by the ILO regarding some of these findings. Finally, several recommendations are proposed to improve the protection and welfare of foreign workers, as part of the study objectives and outcomes.

Recommendation

Based on the government's commitment to decent work and the urgency to address forced labour, the government should strictly act on, monitor and enforce the applicable standards under the ILO Forced Labour Convention 1930, ratified by Malaysia in 1957 and its Protocol of

2014 ratified by Malaysia in 2022. The accompanying Recommendation (No. 203) prescribes zero recruitment fees, transparent and written contracts in the language workers can understand, and adequate and accessible complaint mechanisms. Despite the government's increasingly responsive national policies and legislative initiatives at curbing problems affecting the rights and welfare of its foreign workers, gaps in policy, legal and operational measures that still place workers at risk of exploitation and without adequate protections must be mapped out and addressed. These, among others, call for the following:

(1) Ensuring the compliance of standard contracts with international norms by prescribing specific provisions on working hours, annual leave, overtime payment, and allowable deductions. A copy of the contract in the language understood by and explained to the workers must be provided so that they can seek support and redress when their rights are breached (ILO, 2022b).

(2) Simplifying and decentralising recruitment processes based on a recruitment and licensing framework with proper and robust oversight and accountability of all recruiters and ensuring the involvement of auditors and labour inspectors who are well-equipped with knowledge and skills to detect and report on elements of forced labour across the labour supply chains.

(3) Increasing and broadening the coverage for financial risk protection to migrant workers under SPIKPA including

for outpatient treatment, which is not covered by SBK so as to meet the increased medical costs affecting foreign workers. The provision of SPIKPA should also be regulated and enforced to ensure compliance on the part of employers (Loganathan et al., 2020).

(4) Alongside stricter and frequent enforcement actions and awareness-raising campaigns among employers and their agents to address the practice of passport retention, relevant sanctions should be increased to deter such action that could amount to forced labour. The heavier penalty of \$10,000 or imprisonment of 10 years or both in Singapore for similar offences (Section 47(5) of the Passports Act of Singapore) is a good example that can be considered. These efforts must be complemented by public reporting of the initiatives to achieve greater transparency and accountability.

(5) Reviewing and amending the necessary legislation to enforce the 'zero recruitment cost' policy comprehensively with effective sanction mechanisms.

(6) Publishing and disseminating information about access to complaint mechanisms and justice among foreign workers effectively through their embassies, representatives and employers as well as legislating retaliation by employers against workers who lodge complaints through the judicial and non-judicial platforms (Taylor-Nicholson et al., 2019).

Limitations and Future Research

The sample size of this study may not be sufficient to draw definitive conclusions about the issues on the rights and welfare of foreign workers in Peninsular Malaysia. Due to time and resource constraints caused by the Movement Control Order (MCO) and COVID-19, the sampling had to be limited to 668 responses from foreign workers and 428 responses from employers. Therefore, the findings do not fully represent the state of foreign workers' surveyed rights and welfare in Peninsular Malaysia. The word limit may have also constrained the depth of analysis that could be conducted.

Mindful of the limits of the quantitative survey method conducted and the limited scope to delve deeply into each recommendation, this paper suggests a further study focusing on the proposed recommendations covering compliance with international standards, oversight mechanisms, stricter sanctions and awareness-raising. Other qualitative studies are additionally recommended to uncover in-depth narratives and empirical evidence that underlie the perspectives of foreign workers and employers on these issues for effective responses and future reforms by policymakers.

Future studies could aim to collect a larger sample size to ensure a more diverse representation to better understand the rights and welfare of foreign workers based on the perspectives of foreign workers and employers in Malaysia. The study can also be extended to explore alternative data sources, such as government reports

or industry publications, to provide a more comprehensive understanding of the situation of foreign workers in Malaysia. To this end, researchers could work to advocate for greater transparency and access to data from the authorities.

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