

Deportation Turn in Malaysia: Expansion, Discourse and Practice

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Abstract

Malaysia's deportation practices highlight how the government is managing irregular immigration to achieve the target of "zero illegal immigrants." Since the 2010s, Malaysia has witnessed growth in the legal, human resource and physical infrastructure capacity of detention centers, as well as an increase in diplomatic resources. The practices taking place in Malaysia are in line with the global "deportation turn" (Gibney, 2008). Drawing on interviews with leading immigration agencies, as well as document review, this paper shows how the state has rapidly transformed its enforcement capacity since 2010 to increase deportation. It identifies three innovations: diplomatic collaboration, depot management and fiscal efficiency. Finally, it suggests two additional innovations: outsourcing certain immigration functions and including a readmission clause in Memoranda of Understanding (MOUs) signed with labor-sending states.

Keywords

Deportation turn; G2G collaboration; privatization; bilateral agreement; Malaysia

Introduction

This paper draws upon Gibney's (2008) theoretical conceptualization of a "deportation turn" based on policies enacted in the U.K. since 2000. The term "deportation turn," as it has been used in Western countries, involves increasing deportation capacity and the ability to expel migrants without violating liberal norms (Gibney, 2008). Large investments are required to accommodate the increased human and administrative resources needed for enforcing this policy, as it involves the daunting process of arresting, remanding and investigating irregular migrants; charging them in court; managing detention camps; coordinating activities between various enforcement forces; and negotiating with foreign embassies on the return and transportation of deported individuals. Similar developments are taking place globally. As argued by Anderson, Gibney and Paoletti (2011), "the recent turn to deportation is thus an international phenomenon" (p. 151).

Based on Gibney's (2008) discussion of the "deportation turn," a global deportation regime is expanding the state's capacity for deportation to support the growing number of deportees. Receiving countries have witnessed increased public and official discourse for deportation. Developments in "infrastructural capacity" and "legal powers to deport" are a growing phenomenon worldwide. New laws are formulated to expand the grounds for deportation and to speed the deportation process, while huge investments are made to increase immigration enforcement personnel, infrastructure and technology (Anderson, Gibney & Paoletti, 2011).

Deportation is a "global response" to "transnational (illegal) human mobility" (Peutz & de Genova, 2010, p. 2). Deportation, as "the enforced and authorized removal of non-citizens from state territory" (Paoletti, 2010, p. 5), presents the state with an expedient tool to remove

its unwanted elements. Forced removal or expulsion becomes “a matter of national sovereignty” (Peutz & de Genova, 2010, p. 10). Irregular migrants who have violated the nation’s boundaries are subject to deportation in attempt at “verifying” state sovereignty (Peutz & de Genova, 2010, p. 1-2). This global deportation regime is increasingly problematic and poses issues regarding freedom of movement, border control and the exclusion of undesirable foreigners (Peutz & de Genova, 2010). It is a “controversial” and “illiberal” practice (Anderson, Gibney & Paoletti, 2013, p. 1). Peutz and de Genova (2010) acknowledged “deportation is in most cases time-consuming and expensive, and sometimes politically controversial” (p. 13-14). Forced removal subjects many undocumented migrants to “everyday forms of surveillance and repression” (de Genova, 2002, p. 438).

This crisis of irregular migration has created a “state of exception,” a phrase coined by Agamben (2005) that justifies “exceptional” treatment toward non-citizens to protect national security and to control immigration. Aliens are subjected to forced removal for violating immigration laws (Gibney, 2013). Malaysia’s zero-tolerance deportation system allows the state to exercise its ultimate right in deporting unauthorized immigrants on the grounds of national security (World Bank, 2013). The number of irregular immigrants in Malaysia was estimated at 1.9 million in 2010 (Federation of Malaysia, 2010a); by 2014, it had risen to 2.5 million. The government responded to the crisis by initiating a new “zero illegal immigrants” policy. The Immigration Department of Malaysia has promised to make Malaysia free of irregular immigrants by 2020. Enforcement operations, including raids, arrests, detentions and deportations, would continue on a massive scale to achieve the target of zero illegal immigrants. Home Affairs Minister Zahid Hamidi stated that the government’s enforcement operation “is not a spur-of-the-moment action” and that Malaysia’s government would not compromise its pursuit to reverse irregular migration (“2,433 Held so Far in Crackdown,” 2013).

The continuous cycle of raids, arrests, detentions and deportations has controlled the security situation, though it remains an unfavorable solution. The deportation modus operandi places the state in a critical predicament, escalating human rights issues and wasting manpower – both in terms of administrative and security forces – while increasing the financial burden due to operating the depot camps and straining diplomatic relationships (Federation of Malaysia, 2008b). The high volume of irregular migrants has pushed the government to enhance its deportation practice, both on the operational and legal fronts.

This paper demonstrates how Malaysia deals with operational and enforcement challenges through innovation. It does so in three sections. The first section analyzes Malaysia’s deportation regime timeline, highlighting the changes and improvements made since the 1980s. The second section reviews the deportation turn in Malaysia, with a focus on diplomatic collaboration, depot management and fiscal efficiency. The paper concludes by offering two policy recommendations, namely the privatization of the deportation regime and the inclusion of a re-admission clause in the Memorandum of Understanding (MOU) governing labor recruitment.

Literature Review: The Eras of Malaysia's Deportation Regime

Malaysia's deportation regime may be classified into four post-independence periods: 1) pre-1992 (securitization of operations); 2) 1992-2002 (militarization of operations); 3) 2002-2010 (zero-tolerance policy); and 4) post-2010 (deportation turn). In the mid-1980s, irregular immigration, mostly from Indonesia, changed "from a steady stream to a flood" (Jones, 2000, p. 16). Deportation against Indonesian migrants and coastal surveillance to prevent illegal landings of Indonesians became highly visible. In the mid-1980s, irregular migration became a "high-level" domestic and foreign policy issue, though clandestine entry was not a new phenomenon (Jones, 2000). At the height of an economic recession, Malaysia responded by formulating foreign worker policies and signing Memoranda of Understanding (MOU) with Indonesia, the Philippines, Bangladesh and Thailand in the 1980s. The landmark 1984 Medan Agreement with Indonesia was the first bilateral initiative to resolve irregular immigration and regulate labor migration (Devadason & Chan, 2014; Jones, 2000; Kaur, 2014).

The second period (1992-2002) witnessed the militarization of deportation as Malaysia stepped up its preventive efforts against illegal entry and border infiltration. In 1992, massive nationwide military operations were implemented through Ops Nyah II (Operation Expunge II), which was implemented simultaneously with Ops Nyah 1 (Operation Expunge I). Ops Nyah II was initiated to weed out the existing irregular migrants, while Ops Nyah 1 aimed to stop illegal entrance at the borders. By the mid-1990s, raids on construction sites, plantations, markets, factories, squatter settlements, houses and other areas became an almost daily exercise (Kassim & Mat Zin, 2011a). The estimated number of irregular migrants arrested from 1992-2001 was more than two million, providing a clear indication of the campaign's scale (Hedman, 2008). Hedman (2008) described the Malaysian deportation mechanism as "high-profile," with the increasing involvement of the People's Volunteer Corps (RELA) and the involvement of various enforcement agencies.

The post-1992 era was also significant for witnessing the "criminalization of irregular migration," and infringements of Malaysia's Immigration Act were treated as criminal offenses. The immigration law enforcement subjected "illegal aliens" to criminalization and subsequent deportation (Kanapathy, 2008). Penalizing irregular migrants through the Immigration Act and deporting those who failed to legalize their status was intended to provide an "impression of control and therefore to bolster the image of the state as guarantor of the national borders" (Garcés-Mascareñas, 2012, p. 93). Penalties targeting irregular migrants, employers and smugglers of irregular migrant workers became much more severe. To prevent re-entry, deportees who returned to Malaysia were subjected to corporal punishment under the amendment to the Immigration Act of 1959/63, which went into effect on February 1, 1997. The amendment introduced caning as a form of punishment for smugglers and irregular migrants who returned after being deported (Jones, 2000). Re-entry of deportees after forced removal was prevalent, particularly at the two Indonesian centers for receiving deportees: Dumai in Riau and Nunukan in East Kalimantan. According to Jones (2000), these returned deportees, or "double-backers," suggested "the raids on illegal migrants are a pointless exercise..." (p. 89). Jones (2000) rightly argued that irregular migration could not be eliminated, as it had become a lucrative industry in which various stakeholders are "making money off migrants" (p. 89).

The third period (2002-2010) signified the state's "zero-tolerance" policy for irregular migration. In 2002, the "zero landings" policy was announced. Entry points along Malaysian

and Indonesian waters were heavily guarded. Those arrested were detained and “flushed out” in on-going operations to avoid overcrowding in detention centers. The Marine Police Chief declared, “our orders are for zero landings on our beaches by illegals” (Yeow, 2002). As irregulars can always find their own network to get into the country, it serves as a constant reminder that re-entry is not uncommon. Deportees rounded up during the operations were sent back to their home countries, only to find them attempting to re-enter Malaysia. Deportation – whether on a voluntary or involuntary basis – in the words of Garcés-Mascareñas (2012), “does not mean leaving the country for once and for all” (p. 99); thus, the Malaysian “border can always be re-crossed” (p. 101).

Beginning in 2005, all deported irregular immigrants were processed through the Foreigners’ Biometric System to prevent re-entry. Fingerprint detection prevents foreigners who are already blacklisted by the government from re-entering the country under a different identity; and it can be used as a reference if a foreigner is deported due to crime (Federation of Malaysia, 2008a). However, the biometric system has an inherent limitation. Commentators were quick to point out that “the system actually worked but it is not perfect” (Teoh, 2014). With the help of syndicated agents and immigration agents, it was possible for deportees to enter through a “third gate” without being subjected to fingerprint scans or passport stamps. The loophole in the biometric system meant that potential migrants could still enter using a different passport or another name (Teoh, 2014). The state’s growing intolerance for illegal entry is evident in the 2002 amendment to the Immigration Act, which introduced corporal punishment for entering the country illegally – even for the first time. Those found guilty of illegal entry into Malaysia are liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall be liable to whipping of not more than six strokes (Section 6(1)(3), Immigration Act 1959/63 (Amendment) 2002). The 2002 amendment expanded the scope of punishment to include those involved in trafficking, employing irregular migrants, in falsifying documents, and harboring irregular migrants (Sections 55A, 55B, 55D and 55E, Immigration Act 1959/63 (Amendment) 2002).

This legal development belatedly recognized that the deportation practices relied on penalizing and criminalizing irregulars without sufficient attention being paid to the state and industrial stakeholders involved in sustaining irregular migration. Nah (2012) pointed out that “Malaysia’s primary objects of surveillance and discipline are non-citizens” (p. 502). The 2002 amendment signified a shift in the enforcement focus from migrants to the institutions and actors involved, though Nah (2012) convincingly argued that Malaysia’s immigration control regime did not address recruitment agents, corrupt immigration officers, or those involved in smuggling networks.

The fourth period (post-2010) continues the zero-tolerance policy and witnesses cross-agency collaboration at the national level and cross-country collaboration at the regional level. At the national level, the National Blue Ocean Strategy (NBOS) was devised as a strategic collaboration between the Ministry of Defence and the Ministry of Home Affairs (Ministry of Defence, 2013). This joint military-police program maximizes national resources for protecting national security. The police handle internal raids and the arrests of irregular migrants through Ops Nyah II, while the army assumed surveillance of Malaysia’s land and coastal borders through Ops Nyah I and eliminate smuggling and illegal poaching through Ops Wawasan (Operation Vision) (Ministry of Defence, 2013). An integrated deportation operation – known as the “6P Integrated Ops” – was launched in 2013. This nationwide crackdown involves personnel from the Immigration Department, Royal Malaysia Police, Malaysian Armed Forces, People’s Volunteer Corps, Department of Civil Defence, National

Registration Department, Anti-Smuggling Unit, National Anti-Drugs Agency and the Malaysian Anti-Corruption Commission ("2,433 Held so Far in Crackdown," 2013; "Zahid Hamidi: Cost of Deporting," 2013).

These integrated operations support the Malaysian Immigration Department's aim to achieve "zero illegal immigrants" by 2020, the year in which Malaysia expects to be a developed nation. Malaysia's Vision 2020 project was launched in 1991, aiming to turn Malaysia into a self-sufficient industrialized nation by 2020. Furthermore, the Immigration Department aims to achieve "zero tolerance towards graft" among immigration officers, who often take bribes from irregular foreign workers; however, the Department acknowledges "it is hard for us to achieve zero corruption" (Majib, 2017). In 2015, following the discovery of graves along the Malaysian-Thai border, Prime Minister Najib Razak declared a "zero tolerance" policy for human trafficking and migrant smuggling ("Malaysia Begins Exhuming Human Remains," 2015).

Deportation – the compulsory removal of aliens – has been a "routinized practice" (Peutz & de Genova, 2010, p. 6). Deportation has become an "everyday migration practice" in dealing with the illegal migrant crisis (Bloch & Schuster, 2005, p. 493). Malaysia's deportation regime has significantly transformed since the 1980s and this paper contributes to the existing literature by examining the evolving deportation turn in Malaysia. In the 2010s, deportation discourse and practices in Malaysia have undergone tremendous transformations, such as government-to-government (G2G) collaboration, cooperating with international NGOs and embracing biometric technologies and surveillance. Malaysia has also witnessed growth in the legal, human resource and physical infrastructure capacities of detention centers, as well as improved fiscal efficiency.

This "deportation turn" is not something new but has developed steadily with the characteristics of securitization, militarization, zero-irregularity and expansion. The state's innovative deportation capacity differentiates this period. In the following section, the paper examines the expansion of enforcement capacities by focusing on three aspects: diplomatic collaboration, depot management and fiscal efficiency.

Methods

This paper draws upon the analysis of in-depth interviews with government agencies, official publications, official statistics, online news media and secondary literature. Interviews were conducted with two government agencies in charge of managing irregular migrants: Depot Management and Expulsion Unit (Immigration Department) and Enforcement Division (Immigration Department). The interviews at the two agencies, which are enforcement agencies, revealed Malaysia's deportation policies and the current innovations. A total of three high-ranking officers were interviewed from these departments in March 2015. The interviews were conducted at the department's headquarters in Putrajaya. Through permission granted by the Enforcement Division, the team was allowed to conduct a further interview at the Depot Management and Expulsion Unit and to obtain unpublished statistics. The officers were sent permission letters through their respective department director generals. Each interview (which lasted from two to three hours) was analyzed using thematic analysis. The Human Research Ethnics Committee, Universiti Sains Malaysia granted ethical approval (study protocol code: USM/JEPeM/15060222). Document analysis is used to examine official publications included parliamentary debates or Hansard (from 2002 to 2014), legal texts and press statements. Online news media, such as *New Straits*

Times, *Malaysian Insider*, *Malaysia Kini* and *Star Online*, were reviewed to analyze the state's fluctuating policies and operations against irregular migration.

Innovations Contributing to the Deportation Turn in Malaysia

Expanding Bilateral Approach and International Collaboration

The recent deportation turn in Malaysia is significant. It witnesses the state's improved ability to deport its irregulars through diplomatic partnerships, and the involvement of international NGOs (such as the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and the International Organization for Migration (IOM)), thus overcoming the geopolitical stalemate. International collaboration is pertinent, as enforcement is often limited by "geopolitical difficulties," which refers to the states of origin being unwilling to accept their own returned nationals (Collyer, 2012). As Gibney (2008) pointed out, "The constraint of unreturnability emerges because deportation is inherently an international act. It requires the willingness of another state (the state in which the deported person claims citizenship) to accept the returnee. This willingness cannot be assumed" (p. 152).

Among the most significant shifts in Malaysia's deportation enforcement is the increased level of bilateral cooperation with countries of origin. Forced deportation is time-consuming due to difficulties in determining citizenship with the respective embassies and in obtaining valid documentation. The process of identifying the detainees' countries of origin dictates their detention period in a detention depot. The biggest challenge that enforcement officers face is obtaining a document from the embassy of the detainee's country of origin. To further complicate the issue, detainees may admit they are from a certain country only to have their government not acknowledge them (Interview, the Enforcement Division, 18 March 2015).

Some legislators have voiced their dissatisfaction with countries of origin regarding the influx of PATI in Malaysia (PATI is the Malay acronym for Pendatang Asing Tanpa Izin, referring to an irregular immigrant). Detaining the migrants required the state to allocate large amounts of money for food and lodgings; legislators felt that the countries of origin should shoulder the responsibility to expedite the repatriation of arrested migrants. Cooperation from other countries has involved the issuance of documents; however, the sharing of repatriation costs has not been discussed (Federation of Malaysia, 2008b: 18). The existence of the ASEAN regional organization has not impacted the deportation of irregular migrants. ASEAN countries have developed a regional perspective on irregular migration through the Manila Process, the Bangkok Declaration, the ARIAT Regional Action Plan and the Bali Process. According to Battistella (2002), all these initiatives were "ineffective in eliciting specific commitments from participating governments" due to "insufficient implementation" (p. 369).

As the country of origin's cooperation is critical for accepting its returned nationals, receiving states are seeking international cooperation to facilitate the process (Collyer, 2012). Malaysia is implementing G2G operations, particularly with Indonesia, the Philippines, Thailand (until 2011), and Myanmar. The Malaysian government finally secured Indonesia's cooperation in accepting its own nationals after years of diplomatic efforts (Interview, Depot Management and Expulsion Unit, 23 March 2015). Intergovernmental collaboration with Indonesia is an important milestone in Malaysia's immigration history, since Indonesians represent the largest number of migrants. Forced deportation had previously caused friction

in Indonesia-Malaysia diplomatic relations and led to serious overcrowding problems at Indonesian transit centers ("Taking a Deeper Look", 2005). In December 2014, 494 irregular Indonesian immigrants were deported in five Indonesian C-130 Hercules planes, with Indonesia bearing the cost for their new travel documents and their flight home. The diplomatic collaboration between Indonesian and Malaysian authorities was a win-win for both countries: Malaysia was able to reduce transportation costs and the numbers of depot inmates and all charges against those being deported were dropped ("10,000 to Take Part," 2014).

Malaysia reached another diplomatic milestone in 2016, when Philippine President Rodrigo Duterte and Malaysian Prime Minister, Najib Razak reached an accord on the questions of undocumented Filipinos. The bilateral deal was negotiated during the visit of President Duterte to Malaysia on November 9 and 10. Under the Najib-Duterte accord, Malaysia and the Philippines agreed to a "gradual deportation" of undocumented Filipinos in Sabah. President Duterte agreed to accept these undocumented immigrants and Najib agreed to use Malaysian naval ships to facilitate the return of the deportees. As of December 2016, more than 7,000 Filipinos were detained in deportation centers in Sabah ("7,000 Filipinos in Sabah to be Deported," 2017).

With regards to Thailand, the G2G collaboration has improved the deportation process, and Thailand now demands the swift release of detainees. However, the Malaysian government faces a lack of cooperation from undocumented Thai migrants, who do not willingly admit they are from Thailand. A Thai detainee's nationality may be unidentified if he speaks in the local Kelantan accent and does not provide an accurate history of his time in the country. This makes it difficult for the Embassy of Thailand to verify that the "subject" is a Thai citizen (Federation of Malaysia, 2002).

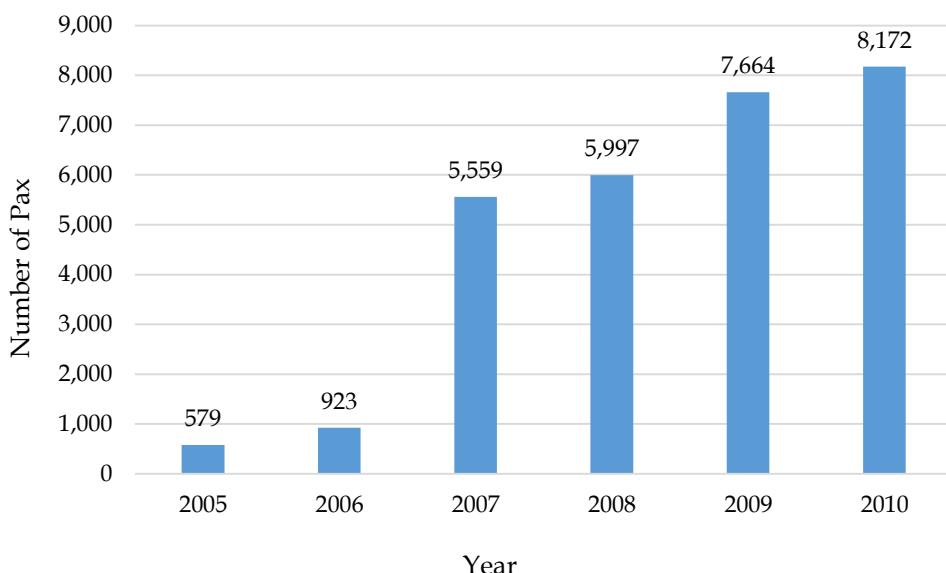
Among the detainees, Indian and African nationals are even more difficult to deport. Document analysis from the parliamentary debates revealed that the Embassy of India is uncooperative and that visa arrangements are difficult to confirm, as India does not want to admit that its own nationals are in detention depots. African nationals also pose a problem; they do not want to return to their country of origin and countries of transit in Europe do not allow them to disembark to a third destination (Federation of Malaysia, 2002).

Cooperation with the embassies and representatives of the involved PATIs is critical to improving the issuance of travel documentation. The Home Ministry and the Immigration Department have been conducting ongoing discussions with some countries' diplomatic representatives, namely Myanmar, Nepal and Bangladesh, to further strengthen the collaboration (Federation of Malaysia, 2014b). The Myanmar embassy in Kuala Lumpur agreed to issue travel documents and low-fare flight tickets for detainees identified as Myanmar citizens (Federation of Malaysia, 2009). For cases involving foreigners who fail to be repatriated due to the reluctance of the involved foreign countries to accept PATIs, there are other alternatives; if the immigration depot cooperates with the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC), PATIs (with refugee status) may be sent to third countries (Federation of Malaysia, 2014b).

The Malaysian government has also established agreements between immigration depots and non-governmental agencies, such as the UNHCR and the ICRC, for the transportation of foreign nationals to third countries (Federation of Malaysia, 2014a). Since 2005, the IOM has facilitated the resettlement of refugees and the voluntary return of stranded migrants and

trafficking victims from Malaysia. Under the Assisted Voluntary Return and Reintegration (AVRR) program, IOM and UNHCR Malaysia work on the identification and deportation of irregular migrants to Afghanistan, Iran, Nepal, Peru, the Philippines and Sri Lanka. Between 2005 and 2012, 20,600 refugees were resettled to 11 countries with the UNHCR's assistance. The number of IOM-assisted departures increased from 579 in 2005 to 8,172 in 2010 (Figure 1). IOM has supported the voluntary return of stranded migrants to over 20 countries and has helped human trafficking victims return to their countries of origin, mostly Cambodia, Indonesia, Mongolia, Myanmar and Thailand (International Organization for Migration (IOM) Malaysia, 2012).

Figure 1: Number of IOM assisted departures from Malaysia, 2005-2010



Source: International Organization for Migration (IOM) Malaysia (2012). Retrieved from <https://www.iom.int/countries/malaysia>

However, the existence of irregular immigrants is more problematic, particularly when it involves stateless Rohingyas. The Ministry of Home Affairs cited deportation restrictions as a challenge in dealing with migrants from Myanmar. In 2013, there were more than 4,000 Myanmar detainees in custody who were to be deported to Myanmar with no specific documents, as the Myanmar government is relatively slow and selective in issuing documents to its detained citizens (Federation of Malaysia, 2013a). Since the Rohingyas are undocumented migrants, they are still labelled as PATIs. Under section 6 (1) (c) of the Immigration Act 1959/63, they have no legal documentation or permits. The Rohingyas arrive with their families—including often seven or more children—and are resettled under the IOM and the UNHCR. The government does have a humanitarian policy for stateless people like the Rohingyas, who have neither nation nor nationality and who are not accepted nor acknowledged by their country of origin. An interview with an informant from the Enforcement Division revealed how these situations are handled:

That is the cycle: we catch them, let them go, detain them and set them free. We do have a government policy which is based on humanitarian grounds. We let them stay here and work conditionally – this is an unwritten policy. If they were caught they will be let go – even if they are in depots, they will be let go based on humanitarian grounds. If we don't let them work, how are they to survive? So, they work at carwashes, scrapyards and others

(Interview, the Enforcement Division, 18 March 2015)

To reduce overcrowding at depots and prisons, the embassy and Immigration Department must cooperate with the courts to expedite the immigrants' trial and deportation. The government considered a transfer program that would allow foreign prisoners to serve their prison sentence in their home country (Federation of Malaysia, 2009). In 2006, a special Immigration Court (Mahkamah PATI) was established to expedite deportation cases and solve overcrowding. Special courts operated at the immigration detention depots to accelerate the process (Federation of Malaysia, 2007).

Clearly, official discourses and practices have moved toward improving G2G partnerships. Malaysia has called for greater engagement with migrants' home countries to overcome the geopolitical difficulties. Our research shows that the existing MOU with labor-sending countries does not deal with their exit and only addresses the recruitment issue of foreign workers. Since the 1980s, MOUs regulating workers' migrations were signed with 15 source countries (World Bank, 2013). The new MOU (2004) with Indonesia, for example, regulated Indonesian labor migration to Malaysia "without addressing the once touchy issues of deportation and repatriation of migrants" (Garcés-Mascareñas, 2012, p. 98). Going forward, bilateral agreements must include a return and re-integration clause. A good practice criteria for bilateral agreements and MOUs on labor migration should consider the complete migration cycle, ranging from pre-departure, working, return and re-integration. Return provisions are particularly important to provide support to returning migrant workers and to discourage overstaying (Wickramasekara, 2015). A broader institutional framework governing readmission of deportees at the ASEAN level is yet to be developed. As Battistella (2012) argued, "Unauthorized migration can be properly addressed only when a regional framework for migration based on human rights and common objectives exists" (p. 366).

Depot Management and Expansion of Infrastructural Capacity

Following riots in Semenyih (1998), Lenggeng (1998), Ajil (2010) and other depots due to insufficient space,¹ legislators became concerned with the management of immigration detention depots nationwide. The Home Ministry was queried regarding how the MYR 100 million (USD 28.5 million) that had been approved in 2009 for immigration management was being distributed to the detention depots (Federation of Malaysia, 2010b). Riots and overcrowding at detention camps have brought the issue of depot management to the forefront of political debates; popular opinion is that the 12 existing immigration detention camps and three temporary detention centers in East Malaysia are insufficient. Several new detention camps (or depots) are planned for construction in East Malaysia. The PATI riots that occurred in the Lenggeng Detention Depot could affect national security and undermine the state's ability to manage irregular migrants. The depot congestion requires additional living spaces, water, electricity and clinics (Federation of Malaysia, 2013b).

As of March 2015, there were 14 depots and three temporary detention centers throughout Malaysia, with the capacity to accommodate approximately 18,350 inmates (Table 1). According Immigration Department statistics, there were 17,600 detainees in all depots – 13,317 in Peninsular Malaysia and 4,283 in East Malaysia – as of March 2015. Between

¹ The riot at the Semenyih camp in 1998 took the lives of eight detainees from Aceh and one policeman when thousands of irregular Indonesian migrants rebelled prior to their deportation. The riot in Lenggeng resulted in the escape of more than 140 detainees. In 2010, 200 inmates from Vietnam and Myanmar set the Ajil Detention camp on fire.

Table 1: Immigration Depots and the Number of Detainees in Malaysia as of 23 March 2015

No.	Depot	Capacity		Total Capacity		Current Number of Detainees				Category of Detainees		Surplus
		M	F	M	F	C(M)	C(F)	Total	Foreign Prisoners	Detainees arrested under Ops Bersepadu		
1	Putrajaya	150	50	200	135	18	0	0	153	0	153	47
2	Ajil	750	150	900	749	101	200	41	1,091	624	467	-191
3	Berkenu	450	150	600	110	8	0	0	118	0	118	482
4	Bukit Jalil	900	300	1,200	1,255	164	18	9	1,446	919	527	-246
5	Juru	350	150	500	324	71	108	34	537	348	189	-37
6	KLIA	800	300	1,100	738	167	21	29	955	793	162	145
7	Langkap	1,200	300	1,500	1,412	169	12	13	1,606	1,099	507	-106
8	Lenggeng	1,250	250	1,500	1,213	140	60	17	1,430	1,038	392	70
9	Machap Umboo	1,000	250	1,250	1,032	124	178	20	1,354	993	361	-104
10	Pekan Nenas	1,000	500	1,500	816	95	70	6	987	480	507	513
11	Semenyih	1,000	250	1,250	1,022	162	71	9	1,264	893	371	-14
12	Semuja	500	200	700	155	14	0	0	169	0	169	531
13	Tanah Merah	400	150	550	361	36	89	1	487	487	0	63
14	Belantik	600	350	950	1,328	111	246	35	1,720	1,720	0	-770
15	PTS TAWAU	1,500	500	2,000	860	104	78	0	1,042	1,042	0	958
16	PTS PAPAR	1,000	650	1,650	1,337	401	216	0	1,954	1,954	0	-304
17	PTS SANDAKAN	600	400	1,000	794	413	40	40	1,287	1,287	0	-287
Total		13,300	4,850	18,350	13,641	2,298	1,407	254	17,600	13,677	3,923	750
												17,600

Notes:

1. PTS = Pusat Tahanan Sementara (Temporary Detention Centre); Ops Bersepadu (a code name of the nation-wide Get Rid Operation, which started since September 2013)
2. All the depots are state-run
3. There are two categories of detainees. First, foreign prisoners, who have served their prison sentence, are sent to the depots while awaiting repatriation as the prison authorities hold no jurisdiction in the deportation of immigrants. Second, irregular migrants, who are arrested under the nation-wide crackdown operations known as Ops Bersepadu (Integrated Ops).

Source: Unpublished statistical data from the Enforcement Division, Immigration Department of Malaysia

January 1 and March 23, 2015, the Enforcement Division recorded 21,302 inputs for detainees across Malaysian immigration depots, including 4,577 female detainees and 496 children.² This suggests, on average, approximately 256 irregular immigrants being arrested daily. The irregular immigrants' countries of origin included Indonesia, Myanmar, Bangladesh, Vietnam, Pakistan, India, Nepal, Thailand, Cambodia, the Philippines and China (Table 2).

Table 2: Collective input of detainees at the depots from 1 January to 23 March 2015

Nationality	Adults		Children (Both sexes)	Total
	Male	Female		
Indonesia	4,879	2,279	91	7,249
Myanmar	3,676	305	232	4,213
Bangladesh	3,325	14	12	3,351
Vietnam	685	886	21	1,572
Pakistan	777	30	1	808
India	729	74	2	805
Nepal	733	13	0	746
Thailand	339	327	7	673
Cambodia	304	175	28	507
Philippines	145	119	5	269
China	70	175	0	245
Nigeria	180	14	0	194
Sri Lanka	149	27	0	176
Ghana	25	3	0	28
Others	213	156	97	466
Total	16,229	4,577	496	21,302

Source: Unpublished statistical data from the Enforcement Division, Immigration Department of Malaysia

Indonesians constitute the largest number of deportable migrant workers in Malaysia, followed by Myanmar and Bangladesh. Indonesians can easily attempt clandestine entry into Malaysia across the Straits of Malacca via unauthorized entry ports, or have legal entry with valid travel documents (such as tourist visas) or with false documents, only to overstay their welcome (Kassim, 1997; Jones, 2000). Myanmar refugees flooded to Malaysia to escape persecution from their home country and to register with the UNHCR for resettlement to a third country. As Malaysia does not recognize refugees, the Rohingyas were arrested and detained whether or not they had UNHCR documents (Lugar, 2009). Bangladesh has become the major source country for labor in the plantation sector and the construction industry. Following a bilateral agreement, Bangladeshis flowed into Malaysia in the early 1990s and many have entered the state via Thailand (Sarker, 2016).

Between January 1 and March 23, 2015, Immigration Department statistics indicate that 17,504 individuals were deported (Table 3).

² In depots, there are child detainees who are caught with their mother during the operations. However the immigration authorities do not take enforcement action against those who are under the age of 18 for immigration offenses. This is an unwritten policy. An issue arises for male child detainees, who cannot be kept in the women's section once they reach the age of 13 (or sometimes even earlier). In this case, they are kept separately from their mothers in the male detainee block.

Table 3: Collective deportation of detainees at the depots from 1 January to 23 March 2015

Nationality	Adults		Children (Both sexes)	Total
	Male	Female		
Indonesia	3,445	1,559	84	5,088
Bangladesh	2,121	47	3	2,171
Vietnam	690	699	20	1,409
Myanmar	1,085	98	6	1,189
India	640	55	2	697
Pakistan	613	5	1	619
Nepal	560	10	0	570
Thailand	251	241	8	500
Cambodia	224	117	23	364
Philippines	167	97	6	270
Sri Lanka	176	28	0	204
China	72	124	0	196
Nigeria	190	3	0	193
Taiwan	32	2	0	34
Others	121	94	41	256
Total	10,387	3,179	105	13,760

Source: Unpublished statistical data from the Enforcement Division, Immigration Department of Malaysia

In 2013, MYR 253 million (USD 80.4 million), with an extra budget of MYR 11 million (USD 3.5 million), was allocated to immigration management (Federation of Malaysia, 2013c). This budget excluded the construction of additional depots. In terms of infrastructure improvement, immigration depots have been renovated to expand their capacity. The existing plan is not to build more new depots but to upgrade existing depots for the comfort of detainees. According to the 10th Malaysia Plan, MYR 100 million (USD 31 million) was allocated in 2010 to upgrade the depots (Federation of Malaysia, 2010b). Bukit Tinggi has requested an additional depot, given the state's size and PATI activity; however, the number of depot occupants has also been reduced with the utilization of prisons. In most cases, captured Indonesians will be quickly repatriated via Pasir Gudang in Johor. Under the budget of the 10th Malaysia Plan, all the buildings have been renovated, except for the Juru and Tanah Merah depots (Interview, Depot Management and Expulsion Unit, 23 March 2015).

Forced deportation places human resource constraints on the host country. According to the Enforcement Division, there is a daily input of irregulars since enforcement operations are conducted daily. However, the current workforce is insufficient to handle the increasing workload, considering the number of existing tourists who overstay, foreign students who misuse their visas and foreign workers who enter the country illegally. In 2005, 600 enforcement officers performed a variety of tasks in the Department of Immigration under the Ministry of Home Affairs. In 2006, the enforcement division approved a total of 1,000 new positions (Federation of Malaysia, 2007). In 2015, 4,000 enforcement officers worked for the Enforcement Division, including those stationed at depots. This study's elite informant compared the ratios for immigration officers and the ratios for prisoners:

In the Semenyih depot, for example, only 100 officers oversaw 1,311 detainees in 2015, giving a ratio of 1:13. This is far from the norm; the Prison Act sets a police to prisoner ratio of 1:5. To escort prisoners to a hospital, the ratio is 1:2. If the Immigration Department were to follow these guidelines, it would cost the government a fortune due to the depot population of more than 13,000 detainees.

(Interview, the Enforcement Division, 18 March 2015)

Financial and management responsibilities have taken a toll on the host government. Based on the 2006 budget, the cost of deportation was approximately MYR 2.5 million (USD 0.7 million), while the cost of enforcement was MYR 1.9 million (USD 0.5 million). In 2007, the cost of repatriation of irregular immigrants rose dramatically to MYR 11.9 million (USD 3.5 million), while the cost of enforcement increased to MYR 7 million (USD 2 million) (Federation of Malaysia, 2008a). Parliament has debated the depot management crisis and its associated cost to taxpayers. In 2008, a parliamentary member lamented these expenses:

If we look at the statistics shown by the respected deputy minister, 55,000 PATI were deported in 2008 and 32,000 PATI were being processed for deportation. This process amounted to MYR 10 million (USD 3 million) worth of expenses to be covered. That is a lot of money. If that much money is given to Padang Terap [constituency], there is much that can be done. (Nasir bin Zakaria quoted in Federation of Malaysia, 2008b, p. 17-18).

The member then queried whether the government intended to consult with the countries of origin to accept part of the repatriation cost: "Millions of public funds have been used by the government. Does the government intend to discuss with the employer...shouldering part of the cost?" (Federation of Malaysia, 2008b, p. 17-18). Food costs doubled from MYR 6.63 million (USD 2.1 million) in 2012 to MYR 14.59 million (USD 4.6 million) in 2013 and MYR 23.12 million (USD 7.1 million) in 2014 (Table 4). The cost of transportation cost the state MYR 2.74 million (USD 0.9 million) in 2012, MYR 4.68 million (USD 1.5 million) in 2013 and MYR 6.05 million in 2014 (USD 1.8 million) (Table 5).

Table 4: Division of Costs related to Irregular Immigrants shouldered by the Government in 2013 and 2014

Month	Cost of Food		Financed Fare (MYR)				Total		
			By Air		By Sea (Indonesia)		2013	2014	
	2013	2014	2013	2014	2013	2014			
January	804,732	1,936,784	15,401	-	222,800	474,000	1,042,933	2,410,784	
February	904,431	1,817,446	54,037	-	207,000	459,400	1,165,468	2,276,846	
March	1,131,149	2,030,495	85,411	-	317,800	447,400	1,534,360	2,477,895	
April	1,202,169	2,057,343	177,870	-	249,800	426,000	1,629,839	2,483,343	
May	1,146,558	2,162,859	-	-	278,400	372,800	1,424,958	2,535,659	
June	1,153,839	2,069,361	26,349	-	279,200	301,200	1,459,388	2,370,561	
July	1,091,333	1,951,104	-	-	319,600	400,800	1,410,933	2,351,904	
August	971,497	1,782,824	-	-	328,400	373,800	1,299,897	2,156,624	
September	1,287,734	1,825,827	-	-	265,400	422,800	1,553,134	2,248,627	
October	1,547,324	1,866,148	-	-	559,600	369,600	2,106,924	2,235,748	
November	1,614,603	1,748,575	-	-	394,400	236,400	2,009,003	1,984,975	
December	1,742,111	1,870,934	-	-	316,400	178,200	2,058,511	2,049,134	
Total	14,597,480	23,119,700	359,068	-	3,738,800	4,462,400	18,695,348	27,582,100	
	Grand Total				46,277,448				

Source: Unpublished statistical data from the Enforcement Division, Immigration Department of Malaysia

Table 5: Total Transportation Expenditure for Deportation from 2012 to 2014

Year	By Air (MYR)	By Sea (MYR)	Bus Rent Cost (MYR)	Total (MYR)
2012	959,458	1,344,600	439,525	2,743,583
2013	359,068	3,738,800	585,648	4,683,516
2014	-	4,462,400	1,592,427	6,054,827
Total	1,318,526	9,545,800	2,617,600	13,481,926

Source: Unpublished statistical data from the Enforcement Division, Immigration Department of Malaysia

Improving Fiscal Efficiency and the Geopolitical Stalemate

Pressure to improve the deportation program's fiscal efficiency has prompted the state to transfer some of the cost of deporting irregular immigrants to outsourcing companies hiring irregular migrants. These outsourcing companies would pay the expenses, which vary depending upon the countries to which the migrants are deported ("Zahid Hamidi: Cost of Deporting," 2013). This new practice could be linked to the concept of privatizing the deportation regime. Major immigration nations have been outsourcing certain migration control functions to the private sector since the mid-1980s without compromising state sovereignty. Menz (2011) demonstrated how the privatization of migration management is implemented in the UK, Australia, the USA, Germany and the Netherlands with varying degrees of private company involvement. Outsourcing migration control to transportation companies is the earliest and most common type of privatization. This involves obligating transportation companies to return inadmissible migrants to their country of origin, imposing carrier sanctions on airlines that bring in inadmissible aliens and legislating new responsibilities for carriers (Menz, 2011). Among the state's motives for privatization include economic benefits, prison-overcrowding problems, burden-sharing and avoiding responsibility for the treatment of irregular migrants (Flynn & Cannon, 2009).

Beginning in September 2013, the government stopped sponsoring the transportation cost of deportation to reduce its operational and managerial burden, as the previous practice of paying the costs of repatriating irregular migrants was open to abuse. According to the Malaysian government, irregular migrants are likely to take advantage of the system when they know the government will pay for their expenditures to return home. The official view was that the detainees could afford the expenses after working for three to five years (Interview, Depot Management and Expulsion Unit, 23 March 2015).

In addition, illegal employment costs the state millions of ringgits in levies since irregular migrant workers do not pay annual levies to the government. In the state of Sarawak, it is estimated that the Immigration Department lost between MYR 7.9 million (USD 2.6 million) and MYR 32.0 million (USD 10.5 million) in levies based on the 22,220 irregular workers who took part in biometric registration under the 6P program, which ended on December 31, 2011. The annual levy rate varies by sector, ranging from MYR 360 (USD 118.8) in agriculture to MYR 1,440 (USD 471) for service positions. Based on the revised rate of MYR 590 per year (USD 193) (beginning September 1, 2011) in the plantation sector, Sarawak was expected to lose MYR 59 million (USD 19.3 million) in levies annually ("Illegal Foreign Workers Continue to Cost Malaysia Millions," 2012). In practical terms, these irregular foreign workers owe the government the levies that had accumulated until their arrest and detainment:

The government believed that the migrant must support the transportation costs: they worked illegally and did not pay the government levies. For the service sector, the levy payment is about MYR 1,800 (USD 463.4) per year. If an irregular works for three years before he is caught, he owes almost MYR 6,000 (USD 1544.8) worth of levy payments and previously the government had to fund the plane ticket to send him home. That is why we leave it to them to find their sponsor for travel costs to get home.

(Interview, the Enforcement Division, 18 March 2015)

One of the results of the budget cuts is changes in covering deportees' expenses. As per the current policy, costs associated with the repatriation of irregular immigrants, such as the transportation fare, are either paid by the PATIs, their employers, representatives of the involved foreign countries, or the PATIs' relatives (Federation of Malaysia, 2014b). The process of obtaining deportation expenses typically goes as follows. If the detainee has no money, the officer will ask if he has friends or relatives in Malaysia or his home country who are able to pay the ticket cost. If the funds cannot be secured, the detainee's embassy or ex-employer would then be asked to find a suitable solution (Interview, Depot Management and Expulsion Unit, 23 March 2015). However, documentation is the biggest hurdle for a speedy deportation, whereas the expenses are of secondary importance: "There is always a way to find someone who is willing to sponsor them. Worse comes to worst, the embassy will be the means of assistance" (Interview, the Enforcement Division, 18 March 2015).

Voluntary repatriation is an alternative for improving the "geopolitical stalemate" and fiscal efficiency. Since the government does not have a conclusive number of PATIs in the country and legal immigrants can easily become PATIs through breaching immigration laws, amnesties offer a more promising solution (Interview, the Enforcement Division, 18 March 2015). Forced deportation, which involves the arrest, detention and deportation of irregular migrants, is a daunting task; however, voluntary repatriation programs allow the state to expedite deportation cases without going through the process of detention and court hearings for offenders charged with immigration violations. Amnesties, according to the official view, have been instrumental in reducing the number of irregular migrants ("Immigration Department Promises", 2014).

Since the 1980s, forced deportation practices have been supplemented with periodic amnesty programs to encourage voluntary deportation (Devadason & Chan, 2014; Kassim & Mat Zin, 2011a; Kaur, 2014). In 2004, the government allowed undocumented workers to return on official permits to alleviate labor shortages (Devadason & Chan, 2014). Amnesty was initiated to encourage irregular migrant workers to go home legally without charge, and they can return to Malaysia as regular migrant workers upon obtaining the proper documentation from their home countries (Garcés-Mascareñas, 2012). The state recorded 187,486 irregular migrants who surrendered themselves for voluntary repatriation in 1998, 439,727 in 2002, 398,758 in 2004-2005, 175,282 in 2007, 161,747 in 2008 and 161,747 in 2009 (Kassim & Mat Zin, 2011b).

In July 2014, the Immigration Department initiated the "3+1" voluntary repatriation program. Under the so-called "surrender and be deported without a trial" program, migrants were subjected to fines of MYR 300 (USD 91.7) and an additional MYR 100 (USD 30.6) for a special pass to be sent home without being charged in the court. In four months of the operation, around 63,000 irregular migrants surrendered to the program. The total number of voluntary deportees was expected to reach 100,000 by December 31, 2014. Voluntary expatriation reduces costs, expedites deportation and alleviates backlogs in

detention centers, particularly when the Immigration Department of Malaysia carries out a large-scale operation (Federation of Malaysia, 2014c).

In the same year, 70,000-80,000 PATIs were deported through forced removal. Thus, there are two approaches in deportation: the hard approach through enforcement operations and the soft approach that involves migrants surrendering. Through this voluntary repatriation, two offenses are pardoned: Section 6(1)(c), entering the country without legal documents and Section 15(1)(c), illegal overstaying. Between January and March 2015, around 4,000 PATIs surrendered and were deported without being charged in court. The government has not incurred costs through this program but has instead garnered a source of revenue through fines. The Director of the Enforcement Division explained:

Rather than us carrying out 'Ops' and in the effort climbing mountains, spending government funding, with the increased risk on our officers, this method is cost and effort efficient. In 2014, the government spent about MYR 23 million (USD 7 million) on food alone at the depots before considering hidden costs, such as the overtime duty of immigration officers. In the depot, the average cost of the food – served four times a day – is MYR 6 (USD 1.8). Thanks to the 3+1 program, the incoming profits generated were MYR 45 million (USD 13.8 million).

(Interview, the Enforcement Division, 18 March 2015)

The Malaysian authorities issued stern warnings to irregular migrants to exit voluntarily under the 3+1 voluntary repatriation program. Failure to respond to the government's amnesty program would subject the migrants to the full brunt of enforcement measures. Irregular immigrants who are caught are subject to being charged in court, facing both a jail sentence and a fine (Cheng, 2014). Nevertheless, voluntary repatriation in Malaysia is politically controversial. Critics argue that these measures have created an opposite effect. For some who would like to see tougher enforcement, the soft approaches have damaged the state's image and failed to deter illegality. The irregular migrants are "convinced" they would be "pardoned" in the future with a secured passage back home; thus, soft approaches undermine enforcement measures when irregular migrants understand their presence will be tolerated and endured. An increased influx of PATIs was reported when the PATIs understood they could be legalized later due to amnesty. In 2008, Chor Chee Heung, Deputy Home Affairs Minister, stated amnesty undetermined the state's attitude:

The government outlines that any foreigners who wish to work here must do it legally. The government will persevere on its cause and will not change the status of a PATI via amnesty since an influx of PATI was reported a few years ago due to the granting of amnesty. Amnesty is in fact; seen as a means for more PATI to enter our country. The government will no longer continue with it. (Federation of Malaysia, 2008b, p. 17)

Voluntary removal may not have the intended long-term result. Garcés-Mascareñas (2012) pointed out the limitation of amnesty: "In this regard, voluntary return does not mean leaving the country for once and for all. Since borders continue to be porous, programmes for voluntary return would seem to facilitate movement back and forth between countries" (p. 93). Scholars are skeptical that the soft approach is an uncommitted position. Kanapathy (2006) noted that irregular migrants "perceive the regularization and amnesty exercises as weaknesses on the part of the government and have been encouraged to illegally extend

their stay in the country" (p. 9). Devadason and Chan (2014) attributed the influx of undocumented migrants to inconsistencies in migration and deportation policies. Deportation, retrenchment and migration bans carried out through policy reforms are mostly *ad hoc* administration measures that are followed by return migration and the lifting of bans due to the increasing need for migrant workers.

Aguiar and Walmsley (2013) found that the benefits of amnesties (in the US context) "diminish over time," though they have a positive impact on the labor force and the economy. However, in the long run, amnesties are unlikely to stop the flow of undocumented workers or to fulfill the cheap labor demands. Aguiar and Walmsley (2013) reminded that "timing is an important consideration when examining the impact of immigration policies" (p. 261). Amnesty "delivers a very large one-off gain in productivity through greater mobility of labour" but a better solution would be increasing the number of foreign worker visas to fulfil the need of the labor force over time (Aguiar & Walmsley, 2013, p. 261).

Conclusion: Policy Recommendations

This study recommends two possible innovations for improving the governance of the deportation system. First, we suggest the gradual privatization of certain Malaysia deportation regime functions. Privatization involves the shedding of state responsibility in the management of migration detention centers and prisons. The privatization of prisons is proven to be a positive experience in some cases where private companies are conducting better practices and improving detention facilities compared to government agencies. Privatization merits further actions by the state, considering that the host states are often faced with prison overcrowding, high operating costs and humanitarian issues (Flynn & Cannon, 2009). The United Kingdom, Australia and the United States have witnessed the significant involvement of private sectors in both control and enforcement. Private security companies are involved in managing detention centers and transportation companies are sharing the responsibility on immigration management (Menz, 2011). Privatization may be a policy choice for the Malaysian deportation regime to further reduce its operating costs and human resources.

Second, Malaysia's deportation system lacks a readmission clause in the MOUs signed with labor-sending states. Bilateral readmission agreements, which are a common policy framework in the European Union, are absent in the Malaysian context due to a lack of cooperation throughout Southeast Asia. A common policy framework of the European Union (EU) is the conclusion of bilateral readmission agreements to facilitate the removal of the irregulars (Collyer, 2012: 280). Collyer (2012) showed that the EU's increasing deportation rate is attributed to the use of European financial influence in ensuring poorer states signed readmission agreements. Thus, readmission agreements and the role of international organizations play a significant role in facilitating deportation. Deportation and global asymmetric power relations are closely interrelated; the states' failure to accept their own nationals affects bilateral relationships. Therefore, the EU uses coercive language to leverage African, Caribbean and Pacific (ACP) states to include a readmission clause in treaties (Collyer, 2012). In the Malaysian context, a readmission clause is absent from the signed MOUs; therefore, Malaysia lacks an institutional framework to regulate migrant laborers' exit at the regional level.

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