

Contextualizing Fair Migration in Malaysia: From Sovereign Migration Governance Toward Developmental Global Migration Governance

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Abstract

This paper proposes that fair migration governance in Malaysia reflects a gradual shift from sovereign migration governance towards developmental global migration governance. It examines three approaches the Malaysian government takes to enhance migrant rights protection: concluding a zero-cost migration memorandum of understanding (MoU), digitalizing the recruitment process for foreign workers, and introducing joint liability schemes for employers and private employment agencies. These approaches are a significant move towards rights-based solutions, consistent with Sustainable Development Goals (SDG) 10.7: Facilitate orderly, safe, regular, and responsible migration and SDG 8.8: Protect labor rights and promote safe and secure working environments for all workers. Document analysis examines data from official documents and legislations, reports from international organizations, statements from migrant advocacy organizations and trade unions, parliamentary debates, and newspaper articles. The findings have two implications. First, it reflects a central shift in the conceptualization of Malaysia's labor migration industry from a business model to a rights protection model through eliminating intermediaries. Second, it illustrates the transition of Malaysia's migration policy from sovereign migration governance to developmental global migration governance. In the Malaysian case study, policy changes are both the consequence of a top-down statist approach and global and societal movements toward developmental global migration governance.

Keywords

Bilateral MoU; digitalization; fair migration; joint liability scheme; SDGs 8 and 10

Introduction

This paper examines how the Malaysian government shifted its migration governance from sovereign to developmental global migration governance. Pécoud (2021) classified migration governance into five patterns: 1) sovereign migration governance, which holds that migration is a matter of state sovereignty; 2) global anti-migrant governance, which holds that cooperation exists to regulate migration; 3) global rights-based migration governance based on human rights; 4) developmental global migration governance aimed at maximizing utility; and 5) free (non)-governance of migration supporting free movement. Sovereign migration governance operates on the premise that managing migration is not a global or international matter but should instead be controlled by individual nations. Sovereign migration governance aligns with the Westphalian tradition, which asserts sovereignty is based on managing a territory and its inhabitants. The foundation of sovereign migration governance is based on the belief that migration poses a security risk and that, as such, managing migration is crucial for strategic purposes (Pécoud, 2021).

Meanwhile, developmental global migration governance is based on the philosophy that migration should be appropriately managed to achieve the best possible outcomes. Target 10.7 of the Sustainable Development Goals (SDGs) to facilitate orderly, safe, regular, and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies, represents the underlying idea of developmental global migration governance. Migration may be regulated as a means of development while highlighting the advantages of how well-managed migration can address labor market shortages in host nations (Pécoud, 2021).

Based on the case study of Malaysia, this paper answers the following questions: What factors explain the shift toward developmental global migration governance? How does the Malaysian government implement a fair migration agenda? What are the implications for migrant protection? The labor migration system in Malaysia was parallel to sovereign migration governance until the introduction of policy reforms in the 2010s. The Malaysian government remains the primary actor in the migration governance system. However, many non-governmental organizations (NGOs) and civil society organizations (CSOs) with extensive networks throughout Malaysia and Southeast Asia have increased to influence migration governance in Malaysia over the past decade. Policy formulation, enforcement, and implementation are all conducted through state mechanisms (Foley, 2023). In Malaysia, NGOs are severely constrained in their ability to address the economic and legal challenges faced by migrant laborers within the political sphere, primarily due to the influence of state authoritarianism on migrant labor activism (Piper, 2006).

Transnational activism contributes to the expansion of labor activism by drawing attention to the multifaceted challenges foreign workers face (Piper, 2006). There are practical constraints that rights-based activism encounters within the Malaysian setting: the authoritarian function of the state, factions within the activist community, and the inherent characteristics of the rights language. Rights activism occurs within the framework of a government that has endeavored to restrict any form of it and has restricted the ability of migrants to exercise the same rights as Malaysian citizens (Elias, 2010). Civil society has limited maneuverability in authoritarian Malaysia. There is a notable absence of confrontational advocacy from associations led by migrants. The CSOs frequently advocate for migrants' rights by highlighting the economic benefits of regulating migrant labor since human rights

frameworks alone have proven ineffective (Henninger & Römer, 2021). Malaysia has implemented a restrictive policy regarding migrant rights, which provides minimal opportunities for migrant self-organization (Rother, 2018).

The Malaysian government has moved towards developmental global migration governance and tackled recruitment abuses since the 2010s. The measures implemented include the following: a zero-cost memorandum of understanding (MoU) with labor-sending countries; direct recruitment through digitalization, the employers-pay recruitment model; eliminating outsourcing companies; and joint liability for employers and private recruitment agencies (Laws et al., 2017; Low, 2021; Wickramasekara, 2020). The initiatives align with the calls of the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Sustainable Development Goals (SDGs) (Jones, 2022; Likić-Brborić, 2018). Objective 6 of the GCM aims to facilitate fair and ethical recruitment and safeguard conditions that ensure decent work (United Nations, 2019). Lowering migration costs and eliminating workers-pay fees adhere to SDG Target 10.7 concerning facilitating orderly, safe, regular, and responsible migration. The SDG indicator 10.7.1 is defined as the recruitment cost borne by employees as a proportion of yearly income earned in the destination country. The SDG Target 8.8 recognizes the importance of protecting labor rights and promoting safe working environments for all workers (United Nations, 2023).

The paper is structured into five sections. The methodological approach is discussed in the first section, followed by an analysis of the contextual shift toward a fair migration agenda in Malaysia. Then, it examines how the state has improved migration governance through newly introduced regulatory changes such as bilateral MoUs, digital recruitment, and joint liability schemes. Finally, the concluding section summarizes the implications for migrant protection. It suggests that the recent move to fair migration governance reflects a central shift in 1) the conceptualization of Malaysia's labor migration industry from a business model to a rights protection model and 2) the framing of Malaysia's migration policy from sovereign migration governance to developmental global migration governance. Malaysia's labor migration reform towards fair recruitment is necessitated by the obstacles posed by forced labor and trade sanctions. This progress is vital for enhancing migrant workers' social protection and security as well as ensuring their safe migration in a state confronted by irregular migration and human trafficking. Policy changes in Malaysia result from a top-down statist approach and global and societal movements toward developmental global migration governance.

Methodology

This study uses document analysis as the qualitative research methodology. The data analysis sources are the official documents of the Malaysian government and intergovernmental organizations, reports by NGOs and CSOs, Hansard documents, press statements, data from digital recruitment platforms, and newspaper articles. The process of document analysis encompasses the activities of skimming, reading, and interpretation. Content is systematically categorized using the content analysis technique based on its relevance to the primary research questions (Bowen, 2009). This method generates reliable and credible interpretations from textual data, enabling a deeper understanding of the circumstances in which the texts are utilized. Answers to research questions are then derived from inferences drawn from the texts. A text-driven analysis begins with a body of text, followed by a review of texts to summarize the collective meaning of these texts and what they denote, connote, or imply, or how they could be used as a whole (Krippendorff, 2019).

Qualitative content analysis is implemented through the following steps: determining research questions, selecting material, constructing a coding frame, segmenting the material into coding units, experimenting with the coding frame, assessing and adjusting the coding frame, analyzing the data, and presenting the research results. Working inductively involves systematically creating categories and subcategories based on empirical facts (Schreier, 2012). Based on the three research questions in the introduction, this research categorizes the empirical data into zero-cost migration MoU, digitalization of foreign worker management, and joint liability schemes. The discussions within these main categories include the subcategories, such as factors driving the initiatives and the implications of such initiatives. Inferences drawn from these discussions are then presented in the conclusion.

Literature review

There is a growing concern for a fair migration agenda that integrates development goals with migrant labor rights across international borders (Jensen, 2022). Human and labor rights violations among migrants have occurred as a result of the absence of an inclusive framework for migration governance, inadequate emphasis on the human rights aspect, and the lack of accountability in redress mechanisms. The institutional architecture of global migration governance has been informal, ad hoc, non-binding, and state-led (Crépeau & Atak, 2016). Labor migration governance is viewed from the perspective of a migration management or migration control approach rather than a rights-based approach. Migration policies grounded on a rights-based approach would ensure that all migrants, regardless of migration status, are entitled to the promotion of their rights in terms of employment, decent work, and social protection (Hujo, 2019). The most difficult challenge in advancing a rights-based migration agenda is shifting the focus of migration policy from national security concerns, which criminalize migrants, to development and international cooperation concerns (Wise et al., 2013).

Governments and civil societies must advocate for an agenda that addresses the issues of fair trade, human security, free and voluntary mobility, decent work principles, and social inclusion (Wise et al., 2013). Valadez (2012) viewed migration governance as an issue of global justice. The interests of all stakeholders affected by migration, including vulnerable migrants in developing countries, should be considered in a just migration policy. A rights-based and socially just approach to the global migration regime involves regulatory efforts to increase labor mobility while eliminating the structural function of transnational recruiters (Jones, 2022). The temporary nature of economic migrants and irregular migration provide challenges in approaching migration from a rights-based approach (Piper, 2008). The ineffectiveness of specific legal and policy initiatives to combat abusive practices is due to the lack of rights-based and migrant-centered approaches to recruiting governance. A rights-based approach would enhance accountability from the private sector (Farbenblum, 2017).

Revamping the labor recruitment system is crucial for fair migration governance since irregular migration is mainly caused by unethical recruitment and high recruitment costs for legal migration. A flawed setup in labor recruitment and management and the profit-making motives of the labor migration trade result in over-recruitment, fraud, and exploitation. Foreign workers are considered irregulars when they enter the country under forged permits, are recruited without an actual employer, work with a different employer not ascribed to their work permits, or abscond from their ascribed employer (Garcés-Mascareñas, 2012; Wahab, 2020; Yi et al., 2020). The recruitment industry in Malaysia is based on a business-to-business

approach, which involves third parties through outsourcing companies and private employment agencies (Muñoz Moreno et al., 2015). Corporate interests that dominate Malaysia's labor migration industry override the rights of migrants. In particular, migrant worker recruitment is viewed as a business opportunity rather than a service.

The commercialization and privatization of recruitment are problematic as these weaken the gatekeeping mechanism of employers on the labor market front, as well as distance recruitment, supervision, and accountability from employers. Labor brokers have brought in excessive numbers of workers, and employers are competing to cut costs in their race to the bottom while neglecting worker welfare (Anderson & Franck, 2019; Lee, 2017; Low, 2020). Migration has been viewed as a business, with institutions, agents, and individuals profiting from the industry. Various industry actors, including recruitment agencies, transnational companies, governments' migration management, human smuggling networks, and migrant networks, have played a significant role in facilitating migration and are part of the business (Salt & Stein, 1997; Sørensen & Gammeltoft-Hansen, 2012; Testaverde et al., 2017).

Since the 2010s, Malaysia has undertaken significant labor reforms to eliminate intermediaries. There are a few reasons for Malaysia's reforms towards fair recruitment. First, as a destination country, Malaysia was aware of the problematic involvement of intermediaries in the foreign workers' intake system, which benefits third parties and burdens migrant workers. The main problem with the recruitment process is that it was profit-driven. The Ministry of Human Resources (MOHR) pledged to overhaul the recruitment system in July 2018 to eliminate intermediaries after Nepal suspended its workers from coming to Malaysia (Issahak, 2018). Second, countries of origin, such as Nepal, pushed for better treatment of their workers and reduced workers' economic burden. Nepal initiated its "Free Visa, Free Ticket" policy in 2015. Employers in seven countries (Malaysia and six Gulf States) must pay visa processing costs and flight tickets for Nepali workers (Amnesty International, 2017).

Similarly, Indonesia, another labor-sending country, introduced the Law on the Protection of Indonesian Migrant Workers No. 18/2017, which exempted migrant workers from any placement costs. This law also regulates protection for migrant domestic workers through pre-departure training, legal assistance during employment, and facilitating their return to Indonesia. In 2020, the Indonesian government promulgated the Regulation of the Indonesian Migrant Worker Protection Agency No. 9/2020 on the Zero Placement Cost for Indonesian Migrant Workers (Khairunnisa & Anggani, 2020).

Third, businesses were under increased pressure from advocacy organizations and U.S. authorities to ensure their supply chains were free of forced labor and human trafficking. As a result of rights group petitions, U.S. Customs and Border Protection (CBP) blocked the import of palm oil products produced by Malaysian companies in 2020 (Chu & Ananthalakshmi, 2021; Verité, 2021). The U.S. CBP issued two withhold-release orders against two Malaysian palm oil producers. The companies' products, along with their subsidiaries, joint ventures, and affiliated entities, were detained following confirmation of the presence of the International Labour Organization's (ILO) forced labor indicators (U.S. Customs and Border Protection, 2020). The U.S. CBP extended trade sanctions to a few Malaysian rubber glove companies the same year.

The imposition of trade sanctions indicated that U.S. supply chains would not tolerate noncompliance with labor standards. Strengthening worker rights protection in migrant worker recruitment is part of Malaysia's efforts to address human trafficking. The government has been revising bilateral agreements, reviewing the workers-pay recruitment model, and

addressing forced labor involving foreign workers. Based on the 2021 U.S. Trafficking in Persons (TIP) report, Malaysia was downgraded to Tier 3, which is the lowest ranking, due to non-compliance with the minimum standards for combating human trafficking (Bengali, 2020; “Malaysia to review recruitment fees,” 2021). Since 2014, Malaysia has been ranked by the TIP report as follows: Tier 3 in 2014, Tier 2 in 2015 and 2016, Tier 2 in 2017, Tier 2 in 2018, 2019, and 2020, and Tier 3 in 2021. The report states that the government did not sufficiently address allegations of labor trafficking (U.S. Department of State, 2021). The following section examines the regulatory efforts taken by the Malaysian government to promote fair migration.

Analysis and findings

Zero-cost migration MoU with countries of origin

Since 2018, Malaysia has been renegotiating new memorandum of understanding (MoUs) with the countries of origin based on the zero-cost principle to prevent labor exploitation. The priority of the bilateral labor agreement is to eliminate human trafficking and forced labor. The country would be subject to international trade sanctions if it dropped into Tier 3, the lowest ranking in the TIP report (U.S. Department of State, 2021). Trade sanctions would have greater undesirable consequences than employers’ concerns about increased operating expenditures. The first zero-cost MoU based on ILO standards was concluded with Nepal on October 29, 2018 (Babulal & Abdul Karim, 2018). Nepal barred its citizens from working in Malaysia in May 2018 because of the high financial burden on Nepali workers and the complex recruitment process. Various costs were charged to migrant workers through different immigration requirements, such as security and health checks outsourced to different appointed private companies (Bernama, 2018). The unfairness of the recruitment system was raised during the bilateral talks: Nepali workers had two-year contracts and were required to pay up to eight months of their salaries to cover migration fees. Both countries agreed that workers should not have to cover recruitment costs. They also decided that employers would pay Nepali recruiters a small fee of up to half a month’s salary. The lucrative labor recruitment industry, which allowed intermediaries in both countries to profit by overcharging migrants, led to workers’ exploitation (Dixit, 2019).

On October 29, 2018, a new memorandum of understanding (MoU) on workers’ recruitment, employment, and repatriation was signed due to pressure from the Nepalese government. This Nepal-Malaysia MoU is critical in realizing fair migration because it eliminates worker-paid recruitment fees. All recruitment costs for a two-year contract are paid by Malaysian employers, including recruitment service charges, round-trip airfare, visa fees, health check-ups, accommodations, security screenings, levy charges, and repatriation costs (Poudal, 2018). In addition, Malaysian employers are responsible for picking up their workers within six hours of landing, depositing their salaries in the bank account by the seventh of every month, offering bonuses and overtime payments, providing additional security for female workers, allowing workers to change jobs in case of abuse, and sending a worker’s body back in the event of death (Sapkota, 2018). Before 2015, Nepali workers paid USD 1,346 to recruitment agents, USD 549 more than the legal limit, to secure overseas jobs. In some cases, migrant workers are charged up to three or four times the legal limit for profit-making and compensation purposes in cases of absconding workers (Amnesty International, 2017).

In 2018, Malaysia imposed a moratorium on recruiting Bangladeshi workers and proposed a zero-cost migration model for Bangladesh. The government was concerned about possible trade sanctions by the United States if they failed to eliminate forced labor, as indicated in the Trafficking in Persons (TIP) Report. Between 2016 and 2018, Bangladeshi workers paid up to MYR 19,000 (\approx USD 4,070) to secure a job in Malaysia, and agents in Bangladesh sent excessive workers. The proposed new MoU terms were modeled on the Malaysia-Nepal MoU, where workers are not required to bear any costs (“Malaysia looking at zero-cost system”, 2020). There were pressures and criticisms by rights groups and US authorities on the government to solve workers’ exploitation in plantations and factories. The 2021 TIP report indicated that Malaysia failed to comply with the minimum standards for eliminating trafficking and was downgraded to Tier 3 after being at the Tier 2 ranking for three years. The MOHR’s concern was focused on addressing forced labor involving foreign workers and checking any hidden charges that could contribute to the risks of debt bondage. Strengthening the protection of workers’ rights in MoUs is part of addressing human trafficking (Chu & Ananthalakshmi, 2021). In its report titled “2020 List of Goods Produced by Child Labor or Forced Labor,” the United States Department of Labor (USDOL) identified four items produced by forced labor in Malaysia: electronics, garments, palm oil, and rubber gloves (U.S. Department of Labor, 2020).

In December 2021, Malaysia concluded a new MoU on recruiting Bangladeshi workers, which outlined the responsibilities of Malaysian employers, Bangladeshi workers, and private employment agencies in both countries. Employers must provide accommodation facilities stipulated under the Workers’ Minimum Standards of Housing and Amenities Act of 1966. A Joint Working Group (JWG) comprising members from both countries was set up to monitor the implementation of the MoU. The Malaysia-Bangladesh MoU (2021–2026) aimed to address the labor market shortage for foreign workers (“Malaysia, Bangladesh sign MoU,” 2021). Under the zero-cost agreement, employers could not collect any payment from their workers upon arrival in Malaysia. Employers must cover all costs, including airfare, levy, and medical fees. In June 2022, Malaysia assured at the bilateral talks that the intake of Bangladeshi workers would conform to international standards, including housing, salary, and social security (“Zero-cost or quotas,” 2022). The Malaysia-Bangladesh MoU (2021–2026) lifted the Malaysian government’s moratorium on worker recruitment, which was imposed in 2018. The moratorium was due to recruitment malpractice, high costs, debt bondage, and forced overtime faced by migrant workers (Zainal & Vethasalam, 2022).

Indonesia was the next labor-sending country to conclude a zero-cost migration agreement with Malaysia on April 1, 2022. Indonesia demanded that its domestic workers not be required to pay the migration costs and be treated respectfully. Malaysian employers must cover agents’ fees, airfare, documentation, training, and medical expenses. The costs payable by the employer are capped at MYR 15,000 (\approx USD 3,213). Workers’ rights are protected with the stipulation of a minimum wage of MYR 1,500 (\approx USD 321), eight days of annual leave, one rest day every week, unrestricted use of mobile phones, and specific job designations such as housekeeper and cook, child caretaker, and caregiver for older adults. Salary payments that are delayed beyond two months would result in a fine of 5% of the total amount due (Parkaran, 2022a). The following are the new terms for employing Indonesian domestic helpers (IDH), as stated in the updated MoU: the maximum cost to hire an IDH with an authorized Malaysia Recruitment Agency (MRA) is MYR 15,000 (\approx USD 3,213); the required household income is MYR 7,000 (\approx USD 1,500); a single household shall comprise no more than six members; IDHs are employed to work as housekeepers, family cooks, child caretakers, and caregivers for older adults in single-family households; the monthly minimum salary is MYR 1,500 (\approx USD

321); and applications should be submitted via the Indonesia Placement Agency (IPA) and the MRA (Immigration Department of Malaysia, 2023).

According to Indonesia’s Minister of Manpower, Ida Fauziyah, the MoU is part of Indonesia’s efforts to develop bilateral cooperation on workers’ protection based on Law number 18/2017. The Indonesian government set the requirements in the MoU, which include allowing only eligible employers to hire maids and ensuring their compliance with the law, information sharing on employers, maids, and agencies for blacklisting purposes, and implementing a single channel system for recruitment. The government, however, could not monitor the protection of undocumented workers (“Indonesia, Malaysia MoU”, 2022). The Indonesian embassy and consulate-generals manage a new online system known as the One Channel System (OCS), the only channel all Indonesian agents use to bring in maids. The OCS replaced the Maid Online System (SMO), allowing agents to bring in domestic workers on tourist visas and convert them to work permits. Under the Malaysia-Indonesia agreement, Malaysian recruitment agencies, employers, and domestic workers must sign a pledge (*Aku Janji* in Malay). The pledge obliges Malaysian recruitment agencies to monitor the welfare of domestic workers, as stipulated in the MoU (Parkaran, 2022b). Table 1 summarizes all the fair migration policies, including the new MoUs.

Table 1: Fair Migration Policies in Malaysia, 2012–2022

Year	Policy
November 26, 2012	The signing of the memorandum of understanding between Malaysia and Bangladesh, based on a government-to-government (G2G) approach, removed the involvement of private agencies.
June 15, 2015	The introduction of the Foreign Workers Centralized Management System (FWCMS) as part of the Immigration Department of Malaysia’s effort towards digitalization while eliminating intermediaries in the application process.
January 5, 2015	The move towards the online renewal of foreign worker permits (Temporary Employment Visit Pass or PLKS) aims to eliminate intermediaries, prevent exploitation by private agents, and address corruption.
June 26, 2016	The introduction of the Strict Liability Principle (SLP), where employers are accountable for their foreign workers from employment until their return to their home countries, aims to improve gatekeeping in the labor migration industry.
February 18, 2016	The signing of the G2G Plus between Malaysia and Bangladesh allowed the involvement of private agencies. Employers are responsible for visa fees, health insurance, levies, and expatriation costs. The G2G Plus mechanism was then suspended in 2018.
February 1, 2017	The implementation of the Employer Mandatory Commitment, in which employers were required to sign a pledge called the “Employers’ Undertaking” (<i>Aku Janji</i> in Malay).
April 1, 2017	The launch of three digital application systems for foreign workers: the Integrated Foreign Workers Management System (ePPAx), Foreign Worker Application System (SPPA), and MYXpats.
January 1, 2018	The launch of the Maid Online System (SMO) encourages employers to apply for foreign maid permits without agents.
February 1, 2018	The nationwide enforcement of the Private Employment Agencies (Amendment) Act 2017 aims to empower the government to regulate the activities of private agencies.
October 29, 2018	The signing of the Memorandum of Understanding on workers’ recruitment, employment, and repatriation with Nepal is based on the principle of zero-cost migration.

Year	Policy
March 31, 2019	The abolishment of the services of outsourcing companies in foreign worker recruitment. The existing foreign workers recruited through these companies were either relocated to selected employers or repatriated.
December 19, 2021	The signing of the MoU on the recruitment of Bangladeshi workers is based on the principle of zero-cost migration.
April 1, 2022	The signing of the Malaysia-Indonesia MoU on Employment and Protection of Domestic Workers eliminates worker-paid migration costs.

Note: Compiled by the author

Digitalization of foreign workers management

Malaysia digitalized its foreign worker management to realize fair migration. In 2015, the state introduced the Foreign Workers Centralized Management System (FWCMS) to manage pre-departure processes and an online system called My Electronic Government (MyEG) for the renewal of foreign worker work permits (Laws et al., 2017). Digitalization was initiated to gradually eliminate the role of agents, combat corruption in the manual process, and reduce costs. The rigidity of the manual application system for hiring foreign workers caused employers to hire workers without permits or not renew working permits. The FWCMS was introduced to digitalize some immigration functions, such as visa applications and health status clearances, to improve efficiency and eliminate hidden charges (Low, 2020). The government's long-standing issue of non-integrated migration flows, with multiple stakeholders involved in the application of migrant workers, was resolved through FWCMS. Therefore, an IT-based system can overcome the limitations of the labor migration recruitment process and benefit all stakeholders in both the public and private sectors, including migrant workers, by shortening the recruitment process from 6–9 months to 1–3 months (Shaari, 2020).

The integrated technological and online solution, FWCMS, replaces all manual and time-consuming processes while addressing corruption in the existing manual system. Corruption is reduced by minimizing physical interactions and changing the manual system online. The efficiency of the digital system lies in its ability to eliminate problems associated with human trafficking (including cases of fraud in medical reports), which addresses the concerns raised by the ILO and TIP reports. The FWCMS offers many features to ensure the welfare of migrants, including Online Foreign Worker Insurance Compliance, Foreign Worker Compensation Scheme, Foreign Worker Hospitalisation and Surgical Scheme, Foreign Worker Insurance Guarantee, online payments for government fees, and levy and visa payments. Government agencies, employers, embassies, recruitment agents in the source country, biomedical centers in the source country, and migrant workers can benefit from FWCMS (Bestinet, 2015a).

In essence, FWCMS serves as a holistic platform to realize fair recruitment, aligning with the ILO standards and the UN Sustainable Development Goals to protect workers' rights and improve their quality of life. The platform, which consists of different modules (bio-recruitments, bio-induction, and bio-medical systems), is implemented in labor-sending countries to resolve the major challenges of fair migration, ensuring the joint responsibility of both labor-sending and labor-receiving countries for a fair recruitment process, promoting legal migration, regulating the activities of labor recruiters, establishing an enforcement mechanism, and protecting migrant workers from abuses. In addition, a new digital platform, the Migrant Management System (MiGRAMs), was developed to enhance the capacities of

labor-sending states to promote fair recruitment (Foreign Workers Centralized Management System [FWCMS], 2019).

According to its developer, Bestinet (2015b), MiGRAMS is implemented to achieve the following benefits: reducing illegal immigrants, protecting public health against contagious diseases by screening unhealthy and unfit foreign workers, eliminating high migration costs, eradicating unauthorized and unscrupulous agents, eliminating forged documentation, eradicating human trafficking, and providing surveillance data of more than two million foreign workers for the government. The e-recruitment system was developed with these digital capacities: biometrics enrolment and verification in all steps of the process; security screening in labor-sending countries, receiving countries, and international watch list; practical medical screening assessment and usage of digital X-ray; accredited medical centers in labor-sending countries; and an integration-ready platform for all delivery mechanisms via web or mobile.

Regarding fair recruitment compliance, MiGRAMS adheres to the ILO Ethical Recruitment Practices and the WHO Effective Health Screening Assessment. The MiGRAMS is fully integrated and provides an end-to-end solution for recruiting, managing, and monitoring foreign workers (Bestinet, 2015b). By submitting applications online, business enterprises can lower recruitment costs, ensure legal compliance with national regulations, reduce administration burden, manage the recruitment process by integrating vital services, and manage all the data in a single database. It enables the assignment of workers to potential employers and is integrated with the FWCMS Bio-Medical System (Migrant Management System [MiGRAMS], 2015a). As such, MiGRAMS assists business enterprises in maximizing the efficiency of worker recruitment processes in labor source countries. The single online platform transformed the migrant worker recruitment industry. The MiGRAMS, with its digital recruitment capacity, was later integrated into the FWCMS Bio-Medical System (MiGRAMS, 2015b).

Since 2017, new digital recruitment platforms have been introduced to encourage direct hiring, such as the Integrated Foreign Workers Management System (ePPAx), the Foreign Worker Application System (SPPA), and the Maid Online System (SMO). The ePPAx is used for foreign workers from all other source countries except Bangladesh. The government believed that the digitalization and centralization of immigration functions were imperative to eliminate the role of intermediaries, prevent employers from being cheated by agencies, and prevent workers' abuse (Low, 2021). The ePPAx supports UN SDG Goal 8 in "promoting sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all." The system enhances workers' protection by detecting employer data fraud, prohibiting blacklisted employers, monitoring worker recruitment by various parties, and reducing the risk of abuse of power. The integrated management of foreign workers ensures efficient service delivery and welfare protection for foreign workers. It also prioritizes local workers for employment and provides data surveillance on foreign workers and their employers (Department of Labour of Peninsular Malaysia [JTKSM], 2024).

The SPPA system is used for Bangladeshi workers and is the outcome of the 2012 Malaysia-Bangladesh MoU. The government-to-government (G2G) recruitment agreement stipulated, among others, an online application system for workers' selection, fixed recruitment fees of Bangladesh Taka (BDT) 40,000 (\approx USD 341), a minimum wage of MYR 900 (\approx USD 193) per month, and a standard employment contract. The MoU removes the roles of private recruitment agencies to reduce worker-paid recruitment fees (Harkins, 2016). Only hiring employers are eligible to complete the online application forms for the intake of foreign

workers through FWCMS to improve employers' accountability. Employers are also prohibited from using any private employment agency (PEA) for foreign worker recruitment, and PEA can only act as facilitators. The government would reject applications from cooperatives and outsourcing companies ("7,500 foreign worker applications", 2022). The then Minister of Human Resources, M. Saravanan, committed in June 2022 to expedite the e-recruitment approval process. He announced that employers using FWCMS to hire foreign workers will receive approval within a week (Zainal, 2022).

Digitalization was soon followed by the abolition of services by outsourcing companies. Industry players in Malaysia believed that the root problem of irregular migration was the operation of government-appointed outsourcing companies. They attributed it to third-party agents who brought in excessive foreign workers, including the undocumented (Low, 2020). In October 2018, the government announced the gradual termination of outsourcing companies for foreign worker recruitment. The MOHR took over the recruitment role, previously placed under 100 outsourcing companies, to prevent corruption and human trafficking (Tee, 2018). The new policy of eliminating outsourcing companies ensured better treatment of foreign workers who were previously underpaid and put the workers under the direct responsibility of the hiring companies. Without intermediaries, employers could afford to provide 'improved packages' for workers.

Effective March 31, 2019, the services of more than 100 outsourcing companies were terminated. These companies managed 26,000 foreign workers. Foreign workers hired through such companies were relocated to selected employers. Those not successfully absorbed into the labor force were repatriated by the stipulated March 31 deadline, failing which they became undocumented migrants (Zainal, 2019). Although outsourcing companies were phased out, the government did not eliminate third parties in recruiting foreign workers. Under the Private Employment Agencies Act 1981 (Act 246), employers using private employment agencies relied on third parties to hire workers (Ng, 2018). The government then amended Act 246 to better regulate licensing requirements, the activities of PEAs, and permitted fees.

Joint liability for employers and private employment agencies

Globally, countries of destination introduced the concept of joint liability for the rights of foreign workers to hold employers and contractors responsible. The joint liability schemes principally establish the scope of liability for employers and labor recruiters for fraudulent labor practices (Andrees et al., 2015). In the Malaysian context, joint liability is enforced through the Strict Liability Principle (SLP) and the Employer Mandatory Commitment (EMC). Under the SLP, employers are accountable for their foreign workers from the moment they are hired until they are repatriated. The SLP was the deliberation of the Cabinet Committee for Foreign Workers and Illegal Immigrants (JKKPA-PATI) in 2015 (Low, 2017). The government aimed to implement a strict liability program to guarantee that the movement of foreign workers can be appropriately monitored and managed. The program helps both security and public health. Companies are required to provide housing as well as proper health and medical benefits. In addition, they need to take greater responsibility for their employees due to the high incidence of irregularities.

Former Deputy Home Minister Nur Jazlan Mohamed said, "If an employer has 100 workers, the government will come after him even if one worker is missing" (Chuah, 2016). Some employers failed to register their illegal workers for regularization programs, and Nur Jazlan

blamed them for unlawful hiring. Most companies profited from employing foreign workers but refused to invest in their well-being (Strict Liability Programme, 2016). The SLP compels companies to ensure that their recruited foreign workers do not abscond, change jobs unlawfully, or overstay and become irregular migrants. A former Minister in the Prime Minister's Department, Paul Low, summarized the SLP as follows: "The strict liability ruling, once implemented, will mean employers have the right to directly hire workers without going through an agent, but at the same time, they have to be held responsible for the workers' accommodation and safety" (Malayan Chinese Association, 2017).

The SLP is realized when employers use digital recruitment platforms such as the FWCMS to hire foreign workers directly. Employers are responsible for each worker's permit application and renewal online, holding them liable for irregularities in the recruitment process (Parliament of Malaysia, 2016). The SLP ensures employers meet their corporate responsibility in protecting worker welfare. This denotes a shift of responsibility for the welfare of foreign workers from intermediaries to employers. There are three SLP implementation phases: employment, enforcement, and repatriation. Applications to bring in workers can only be made by employers. During the employment phase, employers must sign a Letter of Undertaking each time new foreign workers are employed and existing foreign workers are renewed. During the enforcement phase, employers failing to comply with their responsibilities would be subject to enforcement actions under the Immigration Act 1959/63, the Employment Act 1955, and the Employment (Restriction) Act 1968. At the final stage of the repatriation of foreign workers, employers must provide proof of repatriation to the government; otherwise, they must continue paying the imposed levy. The government also imposes a security bond on employers, which is claimed once employers have provided proof of repatriation (Federation of Malaysian Manufacturers [FMM], 2016).

Next, the government announced the Employer Mandatory Commitment (currently known as Employers Undertaking) on December 31, 2016, to ensure employers' accountability for foreign workers during their employment period and prevent cases of overstaying, absconding from employers, and changing work sectors illegally. Its implementation served to protect workers against labor exploitation, forced labor, and human trafficking. Since February 1, 2017, all employers have been required to sign a pledge called the Employers' Undertaking, which outlines their obligations towards their foreign workers and their compliance with national laws (Low, 2017).

In 2017, around 5,687 employers signed the Employers Undertaking to hire 160,131 new foreign workers. Effective 1 January 2018, employers must bear the levy cost for their foreign workers instead of reducing wages ("Compulsory for employers hiring foreign workers to sign 'Employers Undertaking'", 2017). In the 2022 Malaysia-Indonesia MoU on Employment and Protection of Domestic Workers, 'Employers Undertaking' was included as part of the deal. Employers and Private Recruitment Agencies (PEAs) are required to sign their versions of the *Aku Janji* pledge. Domestic workers must also undertake the pledge when they sign their employment contract in the pre-departure stage. The PEAs are responsible for monitoring the welfare of migrant domestic workers through household visits. This is to ensure that hiring employers abide by the requirements of the MOU and the *Aku Janji* pledge (Parkaran, 2022b; Vinothaa, 2022).

For private employment agencies (PEAs) in Malaysia, joint liability is ensured through licensing regulations for national and international workers' recruitment. The Private Employment Agencies Act of 1981 (Act 246) regulates the activities of PEAs that recruit foreign workers for local labor markets and Malaysian workers for the overseas market

(Andrees et al., 2015). The Act was amended in 2017 to empower the government to curb illegal recruitment agencies and regulate the recruitment activities of 1,202 existing PEAs nationwide. Beginning February 1, 2018, the Private Employment Agencies (Amendment) Act 2017 came into force nationwide. The amended act targeted strict enforcement against illegal recruiting activities and safeguarded the rights of employers from illegal agencies (Yong, 2018). The amendment called for altering and replacing 29 existing provisions, creating 24 new ones, and removing 11. The intention was to modernize the PEA-related legislation to meet current requirements, clarify the application of recruitment-related legislation affecting foreign workers, and strengthen enforcement activities (Parliament of Malaysia, 2017).

According to Section 7 of the Act, recruiting without a license is an offense liable to a fine not exceeding MYR 200,000 (\approx USD 42,840), imprisonment not exceeding three years, or both (Parliament of Malaysia, 2018). A new Section 11a was included to empower the government to suspend or revoke the granted license of any private employment agency if the agency contravened or failed to comply with the Act (Section 11a). The implementation of this harsh penalty prohibits recruitment without a valid license, which can have a significant impact on victims who are frequently associated with trafficking and forced labor (Parliament of Malaysia, 2017). The amended act strictly controls recruitment fees. Section 14 was amended to prevent a private employment agency from imposing fees on a job seeker or non-citizen employee other than those specified in the first schedule.

A private employment agency may impose placement and registration fees as specified in the first schedule. In addition, the agency is prevented from demanding a placement fee from the worker if an employer already pays the fee (Section 14). The amendment capped the placement fees at one month of the first monthly wages for non-citizens employed within Malaysia and 25% for Malaysian workers employed within or outside Malaysia. Meanwhile, the registration fees for registering all employment categories within Malaysia to a job seeker are capped at MYR 30 (\approx USD 6.50) and below (Parliament of Malaysia, 2018). Under the amended Act, only private employment agencies registered under the Companies Act 2016 can be granted a PEA license for recruitment (Section 3).

Conclusions

This analysis offers insights into the shift to fair migration in Malaysia's labor migration management. First, fair migration governance reflects a central shift in the conceptualization of the labor migration industry from the business model to the rights protection model. The state attempted to remove the business aspect from the industry by institutionalizing zero-cost MoUs, implementing direct hiring through digitalization, and introducing joint liability schemes for employers and PEAs. The zero-cost migration regime has unseated the long practice of workers paying for migration costs and institutionalized the migrant-centered approach in line with the call of GCM (Objective 6). In the bilateral MoUs with Nepal, Bangladesh, and Indonesia, the workers-pay model was replaced with the employers-pay model. In the Malaysian case study, rights-based migration governance is realized by eliminating intermediaries and partially deprivatizing the recruitment industry while delegating more responsibilities to employers. These initiatives have made employers the principal 'gatekeepers' of the labor market, overseeing absconding, missing, overstaying, and irregular migrants, as well as their welfare. It should be noted that the role of the private sector has not been completely removed, as employers can utilize private employment agencies with better licensing requirements, regulations, and the activities of PEAs.

Second, the fair migration initiatives illustrate the re-orientation of Malaysia's migration policy from a sovereign migration governance approach to developmental global migration governance. Progress has been made towards a developmental global migration governance framework, particularly SDG Indicator 10.7.1. This is demonstrated by the integration of the employer-pay principle into bilateral MoUs between countries of origin and destination, the Private Employment Agencies (Amendment) Act 2017, which caps the placement fees at one month of the first monthly wages for foreign employees, and the elimination of intermediaries on digital recruitment platforms. The implementation of the GCM has impacted the work of NGOs in Malaysia. As stated by the Migrant Forum Asia (MFA), a regional network of NGOs, associations, and trade unions of migrant workers, the GCM has been a highly beneficial tool, particularly in advocacy, since it was adopted by the Malaysian government. When discussing with the government, the MFA can consult the GCM, which has explicitly articulated its long-standing advocacy. The government has been receptive to the GCM recommendations (Kishna, 2020). Despite the gradual elimination of recruitment agents, other types of exploitation continue to plague foreign labor during their employment, such as wage theft, failure to provide migrant workers with the necessary documentation, and withholding of passports (Beh, 2018).

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