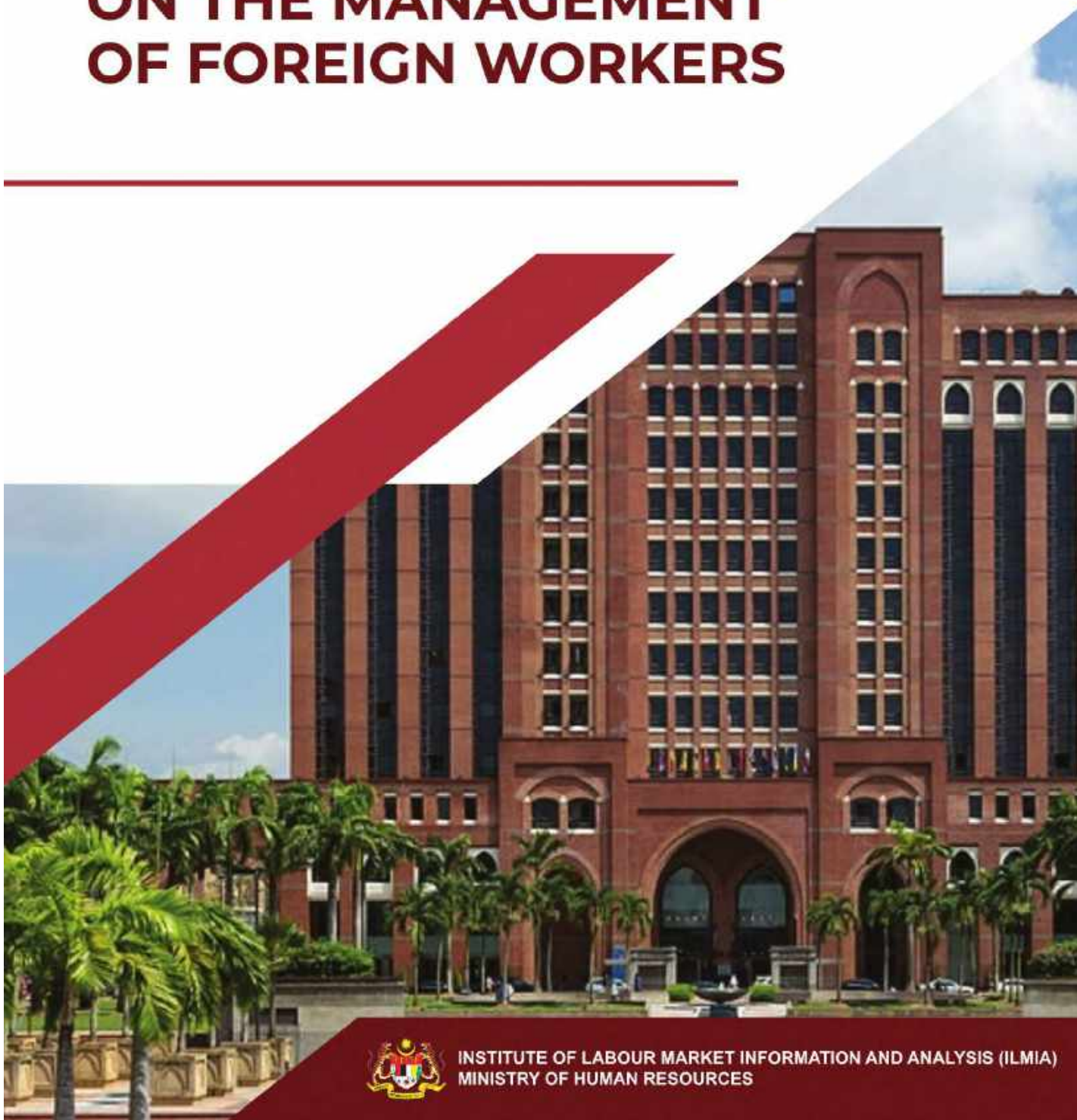


REPORT OF THE INDEPENDENT COMMITTEE ON THE MANAGEMENT OF FOREIGN WORKERS



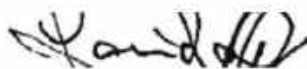
INSTITUTE OF LABOUR MARKET INFORMATION AND ANALYSIS (ILMIA)
MINISTRY OF HUMAN RESOURCES

Report of the Independent Committee on the Management of Foreign Workers

INDEPENDENT COMMITTEE MEMBERS



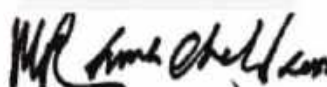
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Deputy Chairman



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Tan Sri Datuk Seri Panglima Sukarti bin
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Dato' Sri M Ramachelvam



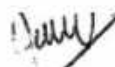
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Table of Contents

ACRONYMS	6
EXECUTIVE SUMMARY	8
CHAPTER 1: INTRODUCTION.....	15
Appointment of the Independent Committee	15
Activities of the Independent Committee	15
Interim Report and Final Report.....	22
CHAPTER 2: PRIMER ON THE LABOUR MARKET IN MALAYSIA	24
2.1 The labour market in Malaysia	24
2.2 Foreign workers in the workforce of Malaysia	24
2.3 Foreign workers in other countries	28
2.4 The contribution of foreign workers to economic growth and development	29
CHAPTER 3: CURRENT POLICIES IN THE MANAGEMENT OF FOREIGN WORKERS IN MALAYSIA	31
3.1 Overall policy on governance for foreign worker management	31
3.2 Designated economic sectors and subsectors	32
3.3 Designated source countries	33
3.4 Undocumented workers	34
3.5 Malaysian employment and other applicable laws covering foreign workers.....	34
3.6 International conventions and norms covering foreign workers	34
CHAPTER 4: ISSUES AND CHALLENGES ARISING FROM CURRENT POLICIES IN THE MANAGEMENT OF FOREIGN WORKERS.....	35
4.1 Shortcomings of overall policy on governance for foreign worker management	35
4.2 Complaints on the designated economic sectors and subsectors	36
4.3 Criticisms on the designated source countries.....	37
4.4 Complaints on handling of undocumented workers	37
4.5 Violations of Malaysian employment and other laws and international conventions or practices	37
4.6 The lack of an end-to-end online system and an inadequate database of foreign workers.....	38
4.7 Complaints about enforcement policies.....	40
4.8 Corruption and rent seeking practices.....	41
4.9 Demands for prolonging the length of stay and levy payments for PLKS workers	42
4.10 Abuse and mistreatment of foreign workers.....	43
4.11 Source country issues and MOUs.....	45
CHAPTER 5: RECOMMENDATIONS FOR REVAMPING THE FOREIGN WORKERS MANAGEMENT SYSTEM.....	47
5.1 Overall policy recommendations	47

5.1.1 Overall policy and a single government authority to manage foreign workers.....	48
5.1.2 Foreign Worker Management System Governance Structure.....	48
5.2 Single end-to-end integrated online modules of the NFWMS.....	49
5.3 PLKS workers management policy.....	49
5.3.1 Overall policy recommendations for PLKS workers.....	49
5.3.2 Recommendations for the online PLKS module, database and monitoring system.....	50
5.3.3 Policy recommendation for adopting the Multi-Tier Levy System.....	51
5.3.4 Policy recommendations contained in the online process for PLKS Workers.....	52
5.3.5 Policy recommendations for PLKS worker enforcement.....	54
5.3.6 Policy recommendations on recruitment of PLKS workers.....	56
5.3.7 Policy recommendations for a PLKS workers complaints mechanism.....	60
5.3.8 Policy recommendations on obligations applicable to source countries and MOUs on PLKS workers.....	61
5.4 Policies for undocumented foreign workers.....	62
5.4.1 Overall policy for managing undocumented foreign workers.....	63
5.4.2 CLEAR2019 for employers.....	63
5.4.3 CLEAR2019 for employees.....	65
5.4.4 Supplement to CLEAR2019.....	66
5.4.5. Enforcement actions to reduce the numbers of undocumented workers.....	66
5.5 Policies for expatriates.....	66
5.5.1 Issues and problems.....	67
5.4.2 Policy recommendations for expatriates.....	68
5.6 Policies for foreign domestic workers.....	69
5.6.1 Issues and problems.....	70
5.6.2 Policy recommendations for FDWs.....	70
5.7 Policies for refugees.....	72
5.7.1 Policy recommendations for refugees.....	73
5.8 Policies for foreign spouses.....	74
5.8.1. Overall policy applicable to foreign spouses.....	75
5.8.2 Governance of the approval process for employment of foreign spouses.....	75
5.8.3. Details in the approval Process for employment of foreign spouses.....	75
5.8.4. Enforcement matters.....	76
5.9 Foreign students and interns.....	77
5.9.1 Issues and problems.....	77
5.9.2 Policy recommendations for foreign interns and students.....	78
5.10 Stateless persons.....	79

CHAPTER 6: MALAYSIAN LAWS APPLICABLE TO FOREIGN WORKERS AND INTERNATIONAL MIGRANT WORKERS CONVENTIONS OR PRACTICES AND ACCESS TO JUSTICE.....	81
6.1 List of Malaysian Laws, Regulations or Guidelines regulating employment.....	81
6.2 List of Malaysian Laws, Regulations or Guidelines regulating employment passes.....	81
6.3 Occupational and safety health issues.....	81
6.4 List of international conventions or norms.....	82
6.5 ASEAN migrant issues.....	83
6.6 Access to justice.....	83
6.7 Other issues.....	84
CHAPTER 7: NEXT STEPS AND ACTION PLANS.....	86
APPENDIX I.....	88
TERMS OF REFERENCE OF THE INDEPENDENT COMMITTEE.....	88
MEMBERS OF THE INDEPENDENT COMMITTEE.....	90
APPENDIX II.....	91
The Single Online Integrated Modules of the Foreign Worker Management System (FWMS).....	91
APPENDIX III.....	98
Summary of the Multi-Tier Levy System.....	98
APPENDIX IV.....	103
End-to-End Integrated Online System.....	103
APPENDIX V.....	105
Secretariat Members.....	105
Figure 1: Principal statistics of the labour force in Malaysia, 2016-2017.....	24
Figure 2: Employed Persons by Citizenship, 2010-2020.....	25
Figure 3: Foreign Workers by Nationality as at June 2018.....	26
Figure 4: Employed Persons by Industry and Citizenship, 2017.....	27
Figure 5: Employed Persons by Occupation and Citizenship, 2017.....	28
Figure 6: Benchmarking Foreign Workers in Malaysia versus Other Countries.....	29
Box 1: Migrant Worker versus Foreign Worker.....	31
Box 2: PLKS Workers – Peninsular	33
Box 3: PLKS Workers – Sarawak	33
Box 4: PLKS Workers – Sabah.....	33
Box 5: Expatriates.....	33
Box 6: Source Countries.....	34
Box 7: Frozen Subsectors.....	36
Box 8: Stages for Processing Foreign Workers.....	39
Box 9: Proposed Policy Adjustments for Selected Enforcement Agencies.....	56

ACRONYMS

3D	Dirty, Dangerous and Difficult
ACMW	ASEAN Committee on Migrant Workers
ASEAN	Association of Southeast Asian Nations
CIDB	Construction Industry Development Board
CLEAR2019	New Amnesty Program
CSO	Civil Society Organizations
DR	Dependency Ratio
EIS	Employment Insurance Scheme
EP	Employment Pass (Expatriates)
EPF	EPF Employees Provident Fund
ePPAX	<i>Sistem Pengurusan Pekerja Asing Bersepadu</i> (Foreign Workers Integrated Management System)
ESD JIM	Expatriate Services Division of the Immigration Department of Malaysia
FOMEMA	Foreign Workers' Medical Examination Monitoring Agency
FDW	Foreign Domestic Worker
FW	Foreign Worker
I-CARD	Immigration Card
ID	Identification Document
ILMIA	Institute of Labour Market Information and Analysis
ILO	International Labour Organization
IMM13	Immigration Pass 13
ISC	Immigration Security Clearance
JIM	<i>Jabatan Imigresen Malaysia</i> (Immigration Department of Malaysia)
JKB	<i>Jawatankuasa Bebas</i> (Independent Committee)
JKE	<i>Jawatankuasa Ekspatriat</i> (Expatriate Committee)
JKI	<i>Jawatankuasa Inspektorat</i> (Inspectorate Committee)
JKK-PA	<i>Jawatankuasa Kabinet Pekerja Asing</i> (Cabinet Committee on Foreign Workers)
JTPD	<i>Jawatankuasa Teknikal Pegawai Dagang</i> (Technical Committee on Expatriates)
KPI	Key Performance Indicators
LTSVP	Long-Term Social Visit Pass
MIDA	Malaysian Investment Development Authority
MITI	Ministry of International Trade and Industry
MOA	Ministry of Agriculture
MOF	Ministry of Finance
MOHA	Ministry of Home Affairs
MOHE	Ministry of Higher Education
MOHR	Ministry of Human Resources
MOU	Memorandum of Understanding
MPIC	Ministry of Primary Industries
MYIMMS	Malaysia Immigration System
NFWMS	National Foreign Workers Management System
NGO	Non-Government Organization
NIOSH	National Institute of Occupational Safety and Health

OFW	Other Foreign Workers Subcommittee
OIG	Online Integrated Foreign Worker Management Gateway Subcommittee
OPRM	Overall Policy Review and Monitoring Committee
OSC	One Stop Centre
PATI	<i>Pendatang Asing Tanpa Izin</i> (Undocumented Foreigner)
PLKS	<i>Pas Lawatan Kerja Sementara</i> (Temporary Employment Pass)
PWM	PLKS Workers Management Subcommittee
PVP	Professional Visit Pass
PLKS	<i>Pas Lawatan Kerja Sementara</i> (Temporary Employment Pass)
RELA	<i>Jabatan Sukarelawan Malaysia</i> (Peoples Volunteer Corps)
SOCSSO	Social Security Organization
SOP	Standard Operating Procedures
SPIKPA	<i>Skim Perlindungan Insurans Kesihatan Pekerja Asing</i> (Foreign Workers Medical Protection Insurance Scheme)
SPPA	<i>Sistem Permohonan Pekerja Asing (Bangladesh)</i> (Foreign Workers Application System (Bangladesh))
SUHAKAM	Human Rights Commission
TOR	Terms of Reference
TVPRA	Trafficking Victims Protection Reauthorization Act
UN	United Nation
UNHCR	United Nations High Commissioner for Refugees
US-DOL	United State - Department of Labour
VLN	<i>Visa Luar Negara</i> (Foreign Nationals Visa)

EXECUTIVE SUMMARY

1. The recommendations of the Independent Committee support the Government's intention to effectively manage the admission and repatriation of foreign workers whilst reducing the dependence on them without harming the economic growth objectives and the well-being of Malaysian citizens. The availability of a comprehensive foreign workers database to monitor and track foreign workers will help to reduce the presence of undocumented workers. The creation of an appropriate environment and ecosystem for the deployment of foreign workers will facilitate employers to abide by the employment norms for the protection of the workers and to safeguard Malaysia's international reputation on the treatment of migrant workers.

2. The presence of foreign workers has brought and will continue to bring economic benefits for the growth and sustained development of Malaysia. Notwithstanding the need for foreign workers, the collection of current policies on employment of foreign workers is an accumulation of a succession of measures, sometimes ad hoc, taken in response to the demands of industry. As a consequence, the policies lack a proper framework and a comprehensive strategy for the effective management of foreign workers. Moreover, in the absence of a central agency with overall responsibility and authority, these disparate policies have seldom been evaluated for continued relevance or effectiveness.

3. The Independent Committee has deliberated on the feedback and criticisms from industry, civil society and other stakeholders on the shortcomings and embedded corrupt practices in the current policies and procedures pertaining to the engaging of foreign workers. They portray a foreign worker management system that is in disarray and dysfunctional. More alarmingly, the Committee has detected unethical practices, collusion and transgressions in the procurement of service providers for procedures essential for an effective foreign worker management system. The widespread rent seeking, money-making and captive preferences have inflated the operational and developmental costs to the Government, employers and foreign workers.

4. The Independent Committee notes that the discretionary powers granted for special approvals and the arbitrary decisions made on the determination of the quantity of foreign workers needed are the major complaints by employers and industry. These procedures are also perceived to have led to concealed corrupt practices, misdeeds and breaches of trust.

5. The Government needs to reform in a comprehensive manner the policies pertaining to the recruitment, employment and monitoring of foreign workers. There must also be more effective policies for the handling of undocumented foreign workers. Whilst the two largest groups of foreign workers are the documented low skilled and the undocumented workers, the Government must also specifically address foreign domestic household workers, expatriates, the right to work of refugees, foreign spouses of Malaysian citizens and stateless persons consistent with international obligations and human rights.

6. A single government entity is needed and charged with implementing a coherent set of policies within a strategic framework for the effective management of foreign workers. The Independent Committee recommends that the Ministry of Human Resources (MOHR) be this single authority responsible for formulating the policies and implementing them effectively within the National Foreign Workers Management System (NFWMS). MOHR is

best placed to take on this role as it already has the mandate for determining the labour market needs of the economy. MOHR also has the responsibility for the oversight and enforcement of industry's compliance with the employment laws of Malaysia and consistency with international norms and practices.

7. The Independent Committee recommends that the NFWMS prioritise the development of an integrated end-to-end single online system to administer all aspects of foreign workers management. This online system will remove the inefficiencies and unnecessary processes stemming from the current mix of manual, face-to-face, multiple electronic and discretionary procedures. More importantly, the integration and digitalization of currently outsourced processes and procedures will remove all forms of corruption, rent seeking, monopoly and market capture from preferential appointment of service providers. It will also reduce the incidences of cascading and unnecessary increases in fees and charges.

8. The Independent Committee recommends that sufficient financial and human resources be provided to MOHR and involved agencies to implement this single online system, starting with the PLKS worker component module. The new system should build upon functioning segments of the existing system. All current concession contracts with outsourced service providers for foreign workers management should be terminated.

9. The Independent Committee endorses the Multi-Tier Levy System as the centrepiece mechanism of the PLKS worker online application and approval system. The dependency ratio formula embedded in the multi-tier mechanism and the online decision algorithm will eliminate discretion and delays in the approval process. This automatic decision process will eliminate the need for the one-stop-centre manual and discretionary processes.

10. All pre-arrival, post arrival and repatriation procedures will be undertaken online. The findings of mandatory processes like health checks, etc. and identity verification protocols like biometrics, etc. and other requirements will be digitalized in a single standard format platform and uploaded into the centralized data warehouse of the NFWMS. This database will be managed by MOHR; and all agencies that have a role in regulating foreign workers will be given access to this database. The real time database will have the capability for generating a variety of management indicators on a timely basis for the monitoring of all types of foreign workers.

11. The amount of levy to be paid will be determined by the Multi-Tier Levy system and payments are to be made through online banking arrangements. Levy must be paid online directly to a Treasury account and confirmed by the system upon which the PLKS or employment pass is issued or renewed. An option for quarterly payments of the levy will be allowed.

12. All employers must make an online standardised statutory declaration that they comply with all Malaysian employment and other applicable laws, regulations, guidelines and international norms pertinent to foreign workers.

13. The PLKS to be issued to the foreign worker and other forms of employment passes will be in digital form and linked to a Smart ID to be generated for each foreign worker. Enforcement agencies must accept the Smart ID for identification purposes and not demand paper passports at check points.

14. A committee chaired by MOHR will manage the enforcement actions to safeguard the integrity of the NFWMS. It will comprise all agencies with roles in regulating foreign workers. The subcommittee will also engage with state and local authorities who have a role in safeguarding the welfare, health and safety aspects of foreign workers. A primary objective of enforcement activities is to understand the root causes for the existence of undocumented workers and strive to reduce their numbers.

15. The Independent Committee is strongly against the use of PLKS workers for businesses that outsource labour. However, the Independent Committee recognises that firms that are engaged in the businesses involved in outsourced service functions are legitimate and should be permitted to employ PLKS workers on their payroll.

16. The Independent Committee recommends that the maximum length of continuous stay of a PLKS worker should not exceed 10 years. A PLKS worker can be reemployed after the return to the source country for a period of 3 months; and can be reemployed for a further maximum period of 10 years subject to the age restriction for re-commencement of employment. Levy payments will follow the multi-tier levy system. The current policy which allows for an additional 3 year stay with a higher levy rate should be discarded.

17. The Independent Committee recommends that the policy over the past few years to freeze the hiring of foreign workers in selected subsectors of services should be abrogated immediately. Instead the hiring of foreign workers in these subsectors should immediately be restored.

18. The Independent Committee welcomes the recent Government measures to grant access of foreign workers to SOSCO for work accidents coverage and for the initiative to enact new legislation to improve their accommodation facilities. The Committee recommends that consideration also be given for further improvements in the health and accident coverage, outside of the work context.

19. The Independent Committee recommends that it be mandatory that all foreign workers and employers of foreign workers contribute to the Employees Provident Fund (EPF) and that contributions by foreign workers and employers be the same as paid by local workers and employers for local workers. This would be a better proposal than the deduction of 20% of wages of foreign workers contemplated by Government, which should be discarded. Arrangements for participation of foreign workers in the Employment Insurance Scheme (EIS) should be considered. These actions will further equalise the workers' safety net provisions with Malaysian workers so as to be consistent with international norms.

20. A PLKS and other foreign worker complaints mechanism should be established. This mechanism must be accessible to all foreign workers and confidentiality must be strictly assured. A foreign worker seeking redress for any grievance relating to employment must be given the time and opportunity to complete the established process and not be forcefully repatriated.

21. The Independent Committee recommends that MOUs to be negotiated or reviewed with source countries should have standardised core coverage and definitions. It is important that all stages of the process and the associated charges and fees are covered and to state that

all recruitment related costs should be borne by the employer. The MOU process should be made more inclusive and transparent (other than disclosure of sensitive information) through a consultative process with all stakeholders prior to negotiations taking place. The completed MOU agreement should be uploaded on the NFWMS portal.

22. The Independent Committee recommends that a new amnesty program for regularizing undocumented workers be put in place with more flexible terms and incentives to enhance attractiveness and effectiveness. The use of outsourced service providers must not be allowed. MOHR and MOHA will jointly take charge of this new regularization program which should be carried out in a decentralized manner throughout Peninsular Malaysia, Sabah and Sarawak.

23. A segment of the amnesty program, will allow the undocumented workers to voluntarily register themselves to benefit from repatriation back to their country of origin. They will be processed for repatriation to the country of origin. The Independent Committee strongly recommends that all offences resulting in liabilities, punishment, penalties and fees associated with the violation of Malaysian immigration laws and regulations should be waived or discounted. Repatriation must take place expeditiously without undue bureaucratic hurdles.

24. Only an undocumented worker who previously held a PLKS but has, with acceptable mitigating circumstances, overstayed or switched employer or sector without authorization, or otherwise absconded, will qualify to participate. The acceptable mitigating circumstances are clearly defined to include mistreatment and abuse or misrepresentation of the employment agreement by a previous employer. Other categories of undocumented workers will face more stringent and stricter conditions for regularizing their undocumented status.

25. The Independent Committee recommends that Operation Mega 3.0 should cease with immediate effect.

26. The policy for expatriates should be streamlined and integrated into the online application and approval system and the data warehouse. The criteria for the entry of EPIII expatriates should be revisited to ensure that these workers do not compete and take away the positions of Malaysians.

27. The Independent Committee recommends that Regulations pursuant to the Employment Act be promulgated or a Domestic Workers Act be enacted for Malaysian and foreign domestic household workers to provide for protection of their rights. MOUs with all source countries for foreign domestic workers (FDW) with standardised terms should be negotiated. The FDW process module should be developed and integrated into the online application and approval process.

28. The Independent Committee recommends that Malaysia considers putting in place a system to regulate the status and rights of stateless people, refugees and asylum seekers. This will allow refugees and asylum seekers the right to work and prevent them from being exploited in forced labour situations as undocumented workers. MOHR should develop the module applicable to refugees and asylum seekers to integrate into the online system, which would permit a proper Smart ID to be issued to registered refugees and asylum seekers.

29. The Independent Committee recommends a policy that should routinely allow and facilitate the employment of foreign spouses of Malaysian citizens. This policy is to be extended to cover foreign spouses of expatriates to ensure consistency. A module to integrate the approval process into the online system and database is to be developed.

30. The Independent Committee recommends that stateless persons should be registered and given identities, the opportunities and the right to work just like for refugees which will serve to provide them financial independence and safeguard them from being exploited in forced labour situations. An online application module is to be developed to integrate the approval process into the foreign worker system and database, which will allow a Smart ID to be generated to legitimised stateless persons' right to work.

31. The Independent Committee recommends the development of a module to integrate into the online system for registering and approving foreign students to take up employment as interns and trainees. A transparent process will prevent abuses by employers to keep labour costs down and take away jobs that can be filled by Malaysians.

32. The Independent Committee has received complaints of harassment and solicitation of payments and other unethical practices by law enforcement officials against foreign workers and employers. The Independent Committee recommends that the Government take immediate steps to clampdown on these unethical and illegal practices.

33. The Independent Committee recommends that foreign workers should have meaningful access to justice and that barriers to accessing justice in our administrative, civil and criminal justice systems should be addressed. The Committee recommends that foreign workers should be eligible for Biro Bantuan Guaman (BBG) and Yayasan Bantuan Guaman Kebangsaan (YBGK) assistance.

34. The Independent Committee recommends that Occupational Safety and Health Measures be improved across the board for all workers. Enhanced training and support be provided to employers and workers in OSH processes and procedures. Breaches of OSHA be dealt with in an effective and meaningful manner for better protection of vulnerable foreign workers.

35. The Independent Committee recommends that the physical and mental health of foreign workers need to be addressed in a comprehensive manner. An Insurance Scheme for medical expenses outside the SOCSO scheme should be provided for foreign workers. The issue of the high costs of medical care for foreign workers at the public health system locations should be addressed. It is recommended that there be parity in healthcare costs for foreign workers, refugees and locals in the public healthcare system.

36. The Independent Committee notes that undue dependence on foreign workers has held back industry from automating and investing in innovative production equipment and process to increase productivity and to move into higher value output of goods and services. Therefore the Independent Committee recommends that the Government provide incentives for industries that rely on foreign workers to automate and invest in innovative production equipment and processes.

37. The Independent Committee strongly recommends that this full Report of the Committee be **made public**.

Independent Committee Core Recommendations	
<i>1. Overall National Policies</i>	
1.1	MOHR be appointed the single authority responsible for formulating and implementing policies pertinent to the National Foreign Workers Management System (NFWMS) Review all previous Cabinet and Government decisions on FWs and make them consistent with MOHR's new mandate. Special approvals for FWs must be repealed
1.2	MOHR will chair a committee comprising all relevant agencies to manage enforcement actions pertaining to the NFWMS - Cease all harassment and exploitation of FWs by law enforcement officials - Improve occupational safety and health for FWs - Address comprehensively the physical and mental health of FWs - Introduce a specific Domestic Workers Act. Pending this, provide regulations under the Employment Act to better protect domestic workers. - Expedite the amendment of 9 labour laws drafted for submission to Parliament - Proactively address and enforce existing laws on forced labour and human trafficking
1.3	Provide sufficient financial and human resources to MOHR as the single authority to manage the single online NFWMS system
1.4	MOUs to be negotiated with source countries should have standardized core coverage and definitions
1.5	Accede to all applicable international instruments e.g. UN and ILO Conventions on Migrant Workers; UN Refugee Convention of 1951; ILO Protocol on Forced Labour; Global Compact on Migration; etc.
1.6	Provide incentives for industry to automate and innovate to reduce reliance on FWs
<i>2. Recruitment Policies</i>	
2.1	Develop an end-to-end single online system covering all components of the NFWMS - Make the Multi-Tier Levy System the centrepiece mechanism of the PLKS worker component of the online application and approval system under the NFWMS - All employers must make an online standardised statutory declaration that they comply with all applicable laws, regulations, guidelines, etc. pertinent to FWs - All relevant foreign worker information will be digitalised and uploaded online into a centralized data warehouse of the NFWMS to be managed by MOHR - Policy for expatriates to be streamlined and integrated into the online application and approval system and the data warehouse - Policy should routinely allow and facilitate the employment of foreign spouses of Malaysian citizens and be a component of the online system - Develop a module within the online system to register and approve foreign students seeking employment as interns and trainees
2.2	The use of services providers such as MyEG, Bestinent, SPIKPA, SPPA must be terminated. The Government will take back the roles and service operation functions of these service providers

2.3	The business of outsourcing of labour should be abolished This should be in contrast to legitimate businesses involved in outsourced service functions in the approved sectors which should be permitted to employ foreign workers on their payroll
2.4	The policy to allow the hiring of foreign workers in selected services subsector should be immediately restored. Hiring in these subsectors had been frozen in the past few years.
<i>3. Employment Policies</i>	
3.1	Issue Employment Passes in digital form and link it to a Smart ID to be generated for each foreign worker
3.2	The maximum length of continuous stay of a PLKS worker should not exceed 10 years and the FW can be reemployed subject to qualifying conditions (e.g return to source country, age, health, etc.)
<i>4. Repatriation Policies</i>	
4.1	In addition to participation in SOCSO, FWs should be required to join the mandatory provident fund, EPF. Membership in EIS should also be considered. The rate of contributions by FWs and employers should be the same as those applied to Malaysian workers
4.2	Arrangements should ensure portability of social security payments and benefits stemming from SOCSO, EIS, EPF, and the applicable health insurance schemes for FWs
<i>5. Regularisation of Undocumented Workers</i>	
5.1	A new amnesty program for regularizing undocumented workers must be put in place with flexible terms and incentives to enhance attractiveness and effectiveness. A voluntary repatriation component must be added Ops Mega 3 should be terminated with immediate effect
<i>6. Stateless Persons and Refugees</i>	
6.1	In line with recommendation 1.5 above, Malaysia needs to put in place a system to regulate the status and rights (especially the right to work) of stateless persons, refugees and asylum seekers
6.2	Stateless persons should be given identities, the opportunities and the right to work just like refugees
<i>7. Access to Justice</i>	
7.1	A foreign worker complaints mechanism should be established which is accessible and with confidentiality assured
7.2	Foreign workers should have meaningful access to justice and barriers for such access addressed
<i>8. The Report of the Independent Committee should be made public</i>	

CHAPTER 1: INTRODUCTION

Appointment of the Independent Committee

1. The Independent Committee was set up by a decision of the Cabinet, upon the initiative of the Ministry of Home Affairs and Ministry of Human Resources, and charged with the task of proposing comprehensive policy changes to more effectively manage in a holistic manner the deployment of foreign workers to support economic activities in Malaysia. The Independent Committee is composed of competent and knowledgeable senior officials with a wide range of experience and involvement in foreign workers matters to address the challenges and shortcomings afflicting the administration of effective and responsive policies. The management of foreign workers have long been contentious stemming largely from the lack of clarity in policy implementation aggravated by the multi layers of associated procedures and processes that have contributed to increasing cost. Violations of national employment laws and international norms have also damaged the reputation of the country. It is therefore opportune for the Government to receive independent advice to revamp the entire foreign workers ecosystem.

2. The members of the Independent Committee are:
- a. Dato' Seri Mohd Hishamuddin bin Md Yunus – Chairman
 - b. Dato' Noor Farida Binti Ariffin – Deputy Chairman
 - c. Tan Sri Datuk Seri Panglima Sukarti bin Wakiman – member
 - d. Dato' Sri M Ramachelvam – member
 - e. Datu Haji Salleh Sulaiman – member
 - f. Dr. Azizah Binti Kassim – member
 - g. Mr. Selvaraja a/l Chinniah – member
 - h. Mr. Jerald Joseph – member
 - i. Mdm. Jenny Ooi – member
 - j. Dr. Vimalaswari K. Ramasamy – member
 - k. Mr. Alex Ong Kiang Yen – member
 - l. Mr. Wan Zulkfli Wan Setapa – Secretary

3. The Independent Committee was free to carry out its task and to make its recommendations without interference from any quarter. This Report of the Independent Committee takes into account the views and proposals from a wide range of stakeholders including employers, employees, politicians, government regulators, international agencies, academics, trade unions, civil society organizations, community groups and the general public.

Activities of the Independent Committee

4. The Independent Committee held its inaugural meeting on 5 October 2018. Thereafter the Committee held a series of town hall meetings in the month of October. This was followed by focus group meetings with selected stakeholders in the remaining period of October and into November, 2018.



The Special Task Force on Foreign Workers' Management Meeting on 14th August 2018
chaired by YAB the Prime Minister



The Independent Committee Members

5. The Independent Committee presented an Interim Report on its findings together with discussions on its preliminary recommendations to the Minister of Human Resources on December 18, 2018 and to the Minister of Home Affairs on January 14, 2019.

6. The Independent Committee held thirteen town hall sessions in Kuala Terengganu, Kuantan, Melaka, Kuching, Miri, Kota Kinabalu, Sandakan, Alor Setar, Ipoh, Kepala Batas, Seremban, Putrajaya and Johor Bahru. A total of 6090 participants attended the Town Hall sessions. During these sessions the Secretariat recorded 797 oral responses touching on weaknesses in the foreign workers management system.

7. The Secretariat received 167 written memorandums from a variety of stakeholders ranging from employers, to employee groups, to civil society organisations and individuals with an interest in the welfare and social struggles of foreign workers. They contained complaints about shortcomings in the system but there were also many suggestions proposed for strengthening or revamping the system. Furthermore, stakeholders also sent to the Secretariat a total of 110 suggestions and memorandums via email.

8. The Secretariat has collated and summarized all these very useful feedbacks which the Independent Committee has had the opportunity to review and to take into consideration in its deliberations and recommendations to revamp comprehensively the foreign workers management system.

9. The feedbacks from the town hall sessions formed the basis for the subsequent focus group discussions with selected stakeholders. The discussions mainly focused on policy changes and adjustments that the stakeholders felt were essential for a more effective holistic foreign workers management system. The discussions with in-house unions and national unions of employee representatives saw the participation of 6 entities from the private and public sectors and was attended by 7 persons. In the discussions with the group composed of employers' associations and unions some 18 entities covering a variety of economic sectors attended with 57 representatives present.

10. There was also a group discussion with international organizations, the Bar Council and Suhakam where 12 entities attended with 19 representatives. This was followed by another group discussion involving 25 entities from the migrant and refugee communities who sent 102 representatives to the focus group discussions. We purposely held it on a Sunday morning to facilitate the attendance of foreign workers.

11. A separate group from 9 source country embassies were invited with twelve representatives to gather their views. The invitation to NGOs saw the attendance of 20 entities who sent 28 representatives to convey their suggestions and concerns to the Independent Committee.

12. There was also a group discussion held in Parliament attended by 19 members of Parliament and 4 senators. The last focus group discussion was held for regulatory agencies and 8 foreign worker service providers. There were 40 participants who attended.

13. Including the inaugural meeting, the Independent Committee met on 6 occasions to discuss the feedbacks and inputs received from the town hall sessions and focus group discussions. We have debated the significance and the pros and cons of the various policy

options and changes called for, after distilling through all the information collated. After preparation of the Interim Report, members of the Committee gathered together on a further 3 occasions to discuss and finalize this Report.



Town Hall Session held on 1st November 2018 at Putrajaya International Convention Centre officiated by YB Minister of Human Resources



YBhg. Tan Sri Azman Shah Dato' Seri Haron, President of Malaysian Employers Federation (MEF) handing over the memorandum to YB Minister of Human Resources during Town Hall Session



Town Hall Session held on 11th October 2018 at Kuantan Pahang officiated by YB Deputy Minister of Human Resources



Town Hall Session held on 19th October 2018 at Sandakan Sabah officiated by Secretary General, Ministry of Human Resources



Town Hall Session held on 18th October 2018 at Kuching, Sarawak



Focus Group Discussion with migrant and refugee communities held on 18th November 2018 at Bar Council Office



Focus Group Discussion with international organisations, SUHAKAM and Bar Council held on 18th November 2018 at ILMIA, Cyberjaya



Focus Group Discussion with NGOs held on 14th November 2018 at ILMIA Cyberjaya

Interim Report and Final Report

14. The Interim Report attempted to gather the evolving key proposals emerging from the deliberations of the Independent Committee. Given the tight deadline imposed on the Committee, the Interim Report prepared was not as focussed as desired. Following discussions of the preliminary findings and recommendations with the Ministers of Human Resources and of Home Affairs, and further deliberations by the Independent Committee in a series of meetings in January 2019, we believe this Final Report is more thorough and comprehensive. It sets out clearly the shortcomings of the current foreign worker management system.

15. The recommendations cover a wide array of areas in which changes and reform efforts are needed. There are recommended measures that could be immediately put in place and some other measures that will require a longer period of time to become fully effective. The Independent Committee feels very strongly that the immediate measures that could be taken be focused on urgent removal of the corrupt practices and preferential treatment granted to appointed service providers. The impediments faced by employers in employing FWs should be addressed and resolved immediately. There must also be an immediate end to the abuse of foreign workers (documented and undocumented) by employers, recruitment entities and enforcement agencies.



The Interim Report pre-discussion in the Joint Committee Meeting held on 14th January 2019 at Ministry of Home Affairs, Putrajaya



Representatives of the Independent Committee together with YB Minister of Home Affairs, YB Minister of Human Resources and Deputy Minister of Home Affairs during pre-discussion on the Interim Report



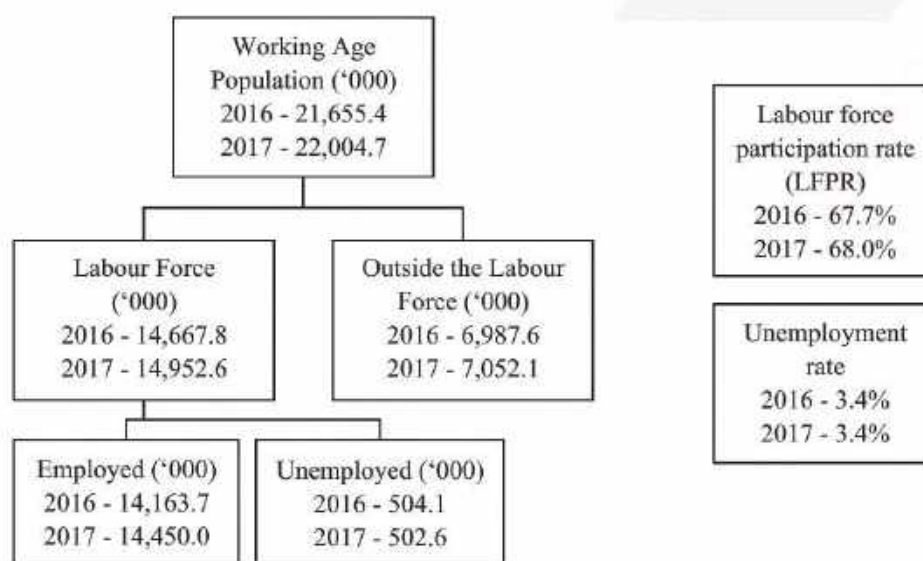
The Independent Committee members handing over the Final Report to YB Minister of Human Resources on 30th January 2019

CHAPTER 2: PRIMER ON THE LABOUR MARKET IN MALAYSIA

2.1 The labour market in Malaysia

1. The labour force in Malaysia rose to almost 15.0 million persons in 2017 from 14.7 million in 2016 (Figure 1). This figure in 2017 represented 68% of the working age population of Malaysia, referred to as the labour force participation rate, which experienced a marginal increase from the rate of 67.7% in 2016. Within the labour force, about 14.4 million were gainfully employed in 2017, and employment increased by a net amount of 286,300 persons during the year. There were 502,600 persons unemployed which represented an unemployment rate of 3.4% in 2017, almost unchanged from 2016.

Figure 1: Principal statistics of the labour force in Malaysia, 2016-2017



Source: Labour Force Survey Report 2017, Department of Statistics Malaysia

2.2 Foreign workers in the workforce of Malaysia

2. Sustained and rapid economic growth in Malaysia in the last two decades have resulted in Malaysia having a very tight labour market, in part reflecting the small population base of Malaysia. This can be seen in the low unemployment rates, oscillating around 2% to 3% observed throughout this period. Malaysia can be said to be in a full employment mode. The rapid industrialization as well as the increasing urbanization, accompanying the strong economic growth contributed to acute labour shortages. This is particularly so in the rural areas, where rural worker migration to industry locations near emerging metropolitan cities created manpower shortages for the plantations and other agricultural activities.

3. At the same time, the jump in education levels leading to higher qualifications resulted in a shift from jobs in agriculture, construction and labour intensive manufacturing sectors to increasingly better-remunerated knowledge-based employment in the public and private sectors. As more women joined the labor force there was also a high demand for the services of domestic household workers.

4. In 2017, the non-Malaysian citizens' component of the labour force totalled 2.2 million or 15.5% of the employed workforce in Malaysia (Figure 2).¹ The trajectory of growth in foreign workers has been steady between 2010 and 2017 with a deceleration observed in recent years. In 2010, there were 1.7 million non-citizen workers constituting 14.1% of the employed workforce.

Figure 2: Employed Persons by Citizenship, 2010-2020

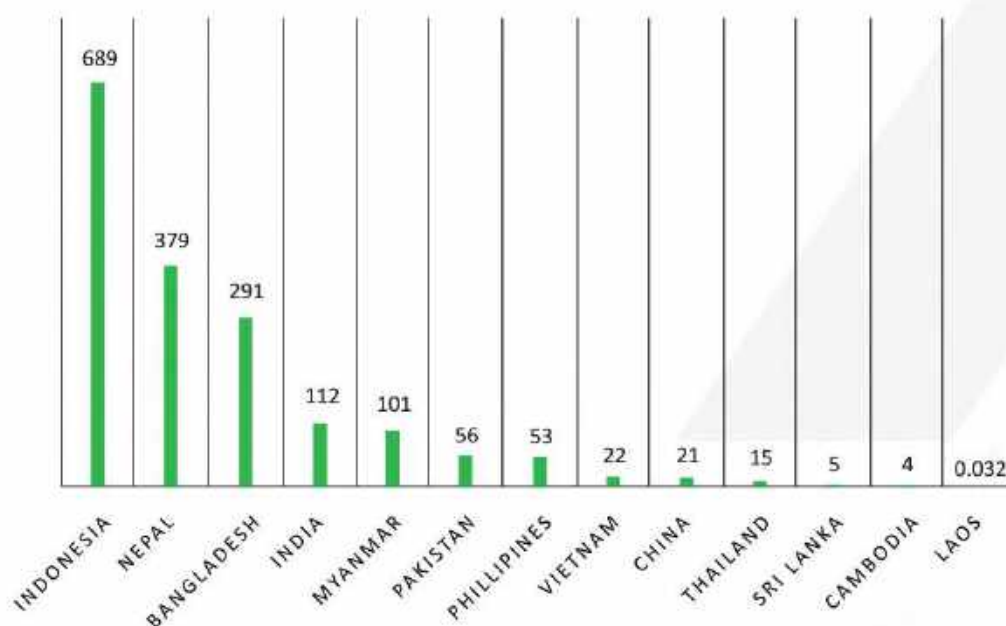


Source: Labour Force Survey Reports 2010-2017, Department of Statistics Malaysia and ILMIA estimates.

5. Through June 2018, the largest contingent of foreign workers (those holding temporary employment passes (PLKS workers)) were from Indonesia representing 39% of these workers (Figure 3). The next largest group of PLKS workers came from Nepal (22%), followed by Bangladesh (17%), India (6%) and Myanmar (6%).

¹ The Department of Statistics of Malaysia denotes foreign workers to be employees who are non-Malaysian citizens employed in the formal and also informal sectors. These foreign workers may be persons who hold a valid employment pass but also include those who do not have valid employment documents. The latter group of workers are referred to in this report as "undocumented foreign workers".

Figure 3: Foreign Workers by Nationality as at June 2018



Source: Immigration Department of Malaysia

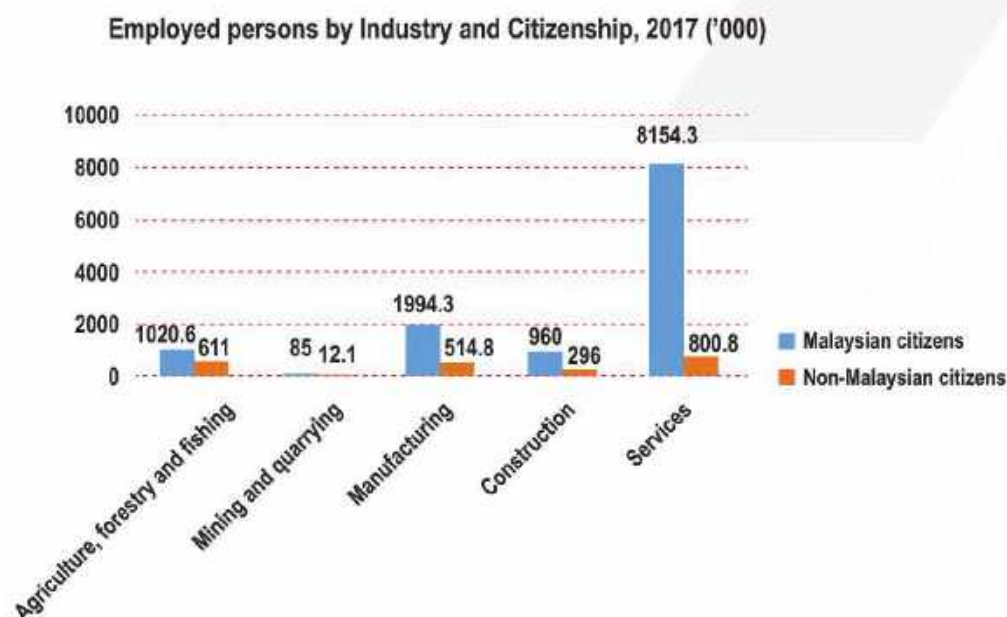
6. On the basis of recent trends and with current growth targets and policies, the number of foreign workers are estimated to rise to 2.6 million or 16.2% of the employed workforce by 2020.

7. There are no official estimates on the numbers of undocumented foreign workers in Malaysia. Using information from the undocumented workers amnesty and rehiring programs between 2016 and 2018 of the Immigration Department, undocumented workers are estimated to be about 1 million. This is made up of 750,000 persons who registered for the various amnesty programs and another around 250,000 workers who had been arrested for violation of immigration laws.

8. The World Bank in a recent study estimated there are some 1 to 2 million undocumented workers in Malaysia, but how this figure was arrived at was not specified. The UNODC provided an estimate of between 600,000 to 1.9 million of undocumented workers in Malaysia, also unspecified. In the U.S, researchers estimate that up to 5% of the population may be considered to be undocumented or irregular foreign workers. Using this metric as a proxy, 5% of Malaysia's population of 31 million will give a figure of 1.6 million as undocumented workers. Others believe that undocumented workers are some 2 to 3 times the number of documented workers, or 3.4 to 5 million compared to 1.7 million of officially registered documented foreign workers.

9. Foreign workers have a large presence in the agriculture sector where they make up just under 60% (611,000 workers) as a ratio to the number of Malaysian workers (1.02 million) employed in this sector in 2017 (Figure 4). The next sector in which many foreign workers are employed is the construction sector, where the number of foreign workers are 31% relative to Malaysians. The manufacturing sector is next in hiring foreign workers with a ratio of 26%. Another prominent sector where foreign workers are concentrated is in services, where they account for some 10% as a ratio of the Malaysians working there in 2017.

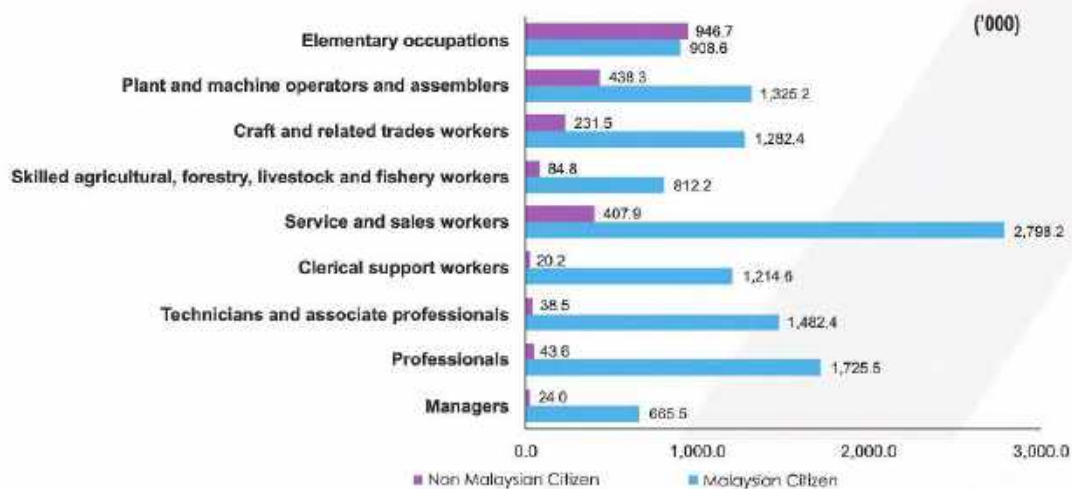
Figure 4: Employed Persons by Industry and Citizenship, 2017



Source: Labour Force Survey Report 2017, Department of Statistics Malaysia

10. Foreign workers are employed mostly in low-skilled and semi-skilled occupations (Figure 5). There are more foreign workers in elementary occupations (in accordance with the Malaysian Standard Classification of Occupations, MASCO) than there are Malaysian workers. 42.4% of non-citizen workers in 2017 were engaged in elementary occupations which are mainly associated with 3D jobs that require low educational qualifications and low skills. The next popular occupation where demand for foreign workers predominate is as plant and machine operators and assemblers, in which 19.6% of foreign workers took up positions. 18.2% of foreign workers were employed in service and sales workers jobs.

Figure 5: Employed Persons by Occupation and Citizenship, 2017



Source: Labour Force Survey Report 2017, Department of Statistics Malaysia

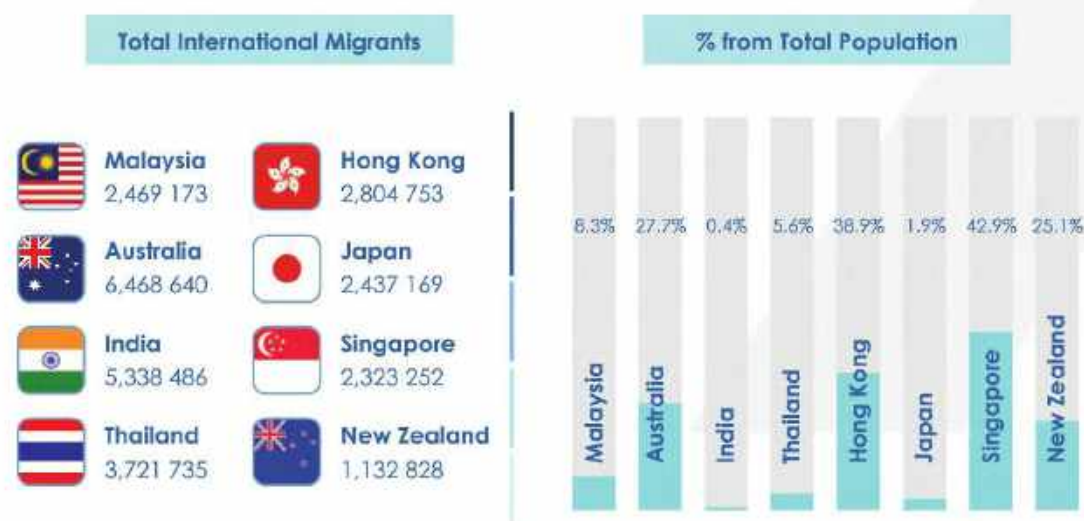
2.3 Foreign workers in other countries

11. International migration of workers is one of the key issues that policy makers have to address in the Asia Pacific region. The United Nations estimated that there were 59.3 million international migrants in the countries and areas of Asia and the Pacific in 2015.² All countries in the Asia Pacific have experienced the effects of both emigration and immigration as well as the potential workers in transit migration. In this phenomena it is possible to differentiate between mainly destination countries (e.g. Brunei, Hong Kong, Japan, Singapore, South Korea, Taiwan), countries with both significant immigration and emigration (e.g. Malaysia and Thailand), and those that are mainly source countries (e.g. Bangladesh, Burma, Cambodia, China, India, Indonesia, Laos, Nepal, Pakistan, Philippines, Sri Lanka, and Vietnam).

12. In this UN report, the estimated total foreign migrant workers in Malaysia for 2015 totalled 2.5 million and made up 8.3% of the total population in Malaysia (Figure 5). The equivalent comparable statistic for Singapore, showed international migrants constituted 42.9% of their population. Foreign migrant workers made up 38.9% and 27.7% of the population of Hong Kong and Australia, respectively

² Asia-Pacific Migration Report 2015, Migrants' Contributions to Development, ST/ESCAP/2738

Figure 6: Benchmarking Foreign Workers in Malaysia versus Other Countries



Source: Asia-Pacific Migration Report 2015

2.4 The contribution of foreign workers to economic growth and development

13. The presence of foreign workers bring economic benefits for the growth and sustained development of Malaysia. Studies show that the presence of foreign workers is positive for the creation of skilled and semi-skilled jobs for Malaysians. However, they do have negative effects for low-skilled Malaysians who have to compete with these foreign workers. In addition, the generally low wages associated with foreign workers is believed to exert downward pressure on wage levels for this group of Malaysian workers and, more broadly, for wage formation as a whole. As foreign workers are mostly employed in low-skilled and labour intensive segments of industry, undue dependence on them are also contributory factors in holding back industry from automating and investing in innovative production equipment and processes to increase productivity and move into higher value outputs of goods and services.

14. Reliance on foreign workers also allow Malaysians to invest more in their education to acquire better qualifications to take up the higher skilled jobs consistent with the government's desired objective of reaching high income status for the country. Foreign workers are also important for maintaining the competitiveness, particularly for the manufacturing sector exports. Studies show that large firms, particularly those that export, benefit more from the presence of foreign labour than small and medium-sized enterprises (SMEs). However, in Malaysia SME activities represent a large proportion of the economy, but as foreign workers participation in production and services are associated with low productivity, SMEs seeking to increase productivity may have to reduce reliance on foreign workers and invest in automation to remain competitive in the export supply chain.

15. A World Bank study showed that for every 1,000 foreign workers deployed, some 836 full time jobs are created for Malaysians together with 169 part-time jobs. This result is attributed to the effect from maintaining production costs low because of the use of foreign workers, thereby making Malaysian firms competitive and giving them the possibility to expand exports, consequently leading to an increase in demand for Malaysian workers. The analysis in this study showed that more jobs are created in the agriculture and services sectors, and relatively less in the manufacturing sector. Unfortunately, the study result indicate a gender bias, in that more jobs suitable for men are created and less of the types associated with women.

16. The World Bank study³ showed that hiring foreign workers was beneficial for workers with mid-level to higher educational qualifications. Its impact on workers with primary to no formal education was quite negative. For 100 foreign workers hired, about 114 jobs of Malaysians were lost or taken up by foreigners. This shows that foreign workers compete directly with this low skilled segment of Malaysian workers. It should be noted that these foreign workers in general also have very low educational levels. A mitigating factor is that the relative numbers of Malaysians in this low skilled segment is relatively smaller today as most Malaysian workers are now better educated.

17. The impact from the hiring of foreign workers on wages of Malaysian workers in general do not show any marked impact. The findings do suggest that there is a marginal impact in raising the level of overall wages and indicate that Malaysian labour is highly mobile across sectors to take advantage of positive changes in wages across sectors.

18. In terms of the social impact of the presence of foreign workers, the study showed that an increase of foreign workers into a community is associated with lower incidences of crime in the neighbourhood. This result is largely explained by the fact that an increased presence of foreign workers tends to increase economic activities in that area, which is the principle reason for a lowering of crime. In most jurisdictions around the world, an increase in incomes from rising economic activity is strongly correlated with a lower crime rate.

³ Immigration in Malaysia: Assessment of its Economic Effects, and a Review of the Policy and System. 2013. Human Development Social Protection and Labor Unit, East Asia and Pacific Region, World Bank in coordination with ILMIA.

CHAPTER 3: CURRENT POLICIES IN THE MANAGEMENT OF FOREIGN WORKERS IN MALAYSIA

1. The bundle of current policies on employment of foreign workers is an accumulation of a succession of measures taken in response to the demands of industry to support the booming economic growth experienced by Malaysia. The need for foreign workers is also a reflection of the inability of the Malaysian labour market to keep pace with the requirements of industry in terms of the numbers of workers required as well as shortages in certain skills essential to sustain competitiveness and make technological advances. Due to the practice of responding under pressure to the manpower needs of industry, a proper framework with a comprehensive strategy for the effective management of foreign workers had not been developed. More often than not policy responses were ad hoc, seldom reviewed for continued relevance or effectiveness and without any central monitoring and management mandates.

3.1 Overall policy on governance for foreign worker management

2. Currently, there are 10 Ministries with their associated regulatory bodies with approving authority and oversight over the entry of foreign workers into Malaysia and the deployment of foreign workers to the permitted sectors of the economy (see Box 1 below for a description of the meaning and usage of the term foreign workers). The procedures that are followed are somewhat different dependent upon whether the foreign worker is deployed in Peninsular Malaysia, or in Sarawak or in Sabah; arising from the unique separate legal arrangements for regulating foreign workers in these three distinct territories.

Box 1: Migrant Worker versus Foreign Worker

For the United Nations, the term "migrant worker" refers to a person who is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.* It is believed that migrant workers usually do not have the intention initially to stay permanently in the country of work. This is in contrast to immigrants who intend to reside and work permanently in the foreign country.

Migrant workers are also referred to as "foreign workers" or "expatriates" or "foreign labour" or "guest workers". There is also the term "Frontier workers" being used. Frontier workers are unlike "migrant workers" mainly because they reside in the frontier of the source country adjacent to the targeted foreign country, and usually commutes back and forth on a daily or periodical basis.

"Guest workers" usually refer to those who already have job positions before they depart the source country. Whereas other "migrant workers" could be those who may not have secured job positions before departing the source country. The usage of the term "foreign labour" is applied predominantly to casual, manual or unskilled workers who move from one region to another offering their services on a temporary seasonal basis and thus they are also called "seasonal workers".

In Malaysia “migrant workers” who are granted official legal status to work in the formal sector are designated as:

- “foreign workers” when they are engaged in manual and unskilled jobs for an agreed contractual period with a specified employer and in specified economic sectors. They are also referred to as “PLKS workers”.
- “expatriates” when they are engaged in high skilled and extremely specialised jobs for an agreed contractual period with a specified employer and in a specified industry.
- “foreign domestic workers” when they are engaged to undertake household duties or tasks and related jobs for an agreed contractual period with a specified employers and in a specified household or premises.

There are other types of “migrant workers” in Malaysia who have to be considered. They are referred to in this report as “undocumented workers”. These workers are employed predominantly in the informal sector and are not covered by the provisions of the Employment Act:

- Undocumented workers are predominantly: (1) “foreign workers” whose work permits have expired but choose not to be repatriated; (2) “foreign workers” who have chosen to abscond for a variety of reasons, e.g. changing employers or sectors, debt bondage, mistreatment, etc.; (3) persons who have overstayed or violated the conditions of their tourist visitor pass and seek work; and (4) persons who have crossed the international borders into Malaysia other than through an official entry point and now seek work.
- Refugees as a status are currently not recognised in Malaysia. UNHCR operating in Malaysia grants such persons refugee status but officially they are not eligible to seek employment in Malaysia while awaiting resolution of their situation.
- Foreign Spouses of Malaysian Citizens who are eligible to seek employment. This category would also cover foreign spouses of “expatriates”.
- Foreign Students and Interns who seek employment in industry within structured programs as part of fulfilment for course of studies in Malaysian or foreign universities or institutions of higher learning.
- Stateless persons domicile in Malaysia seeking employment.
- “Migrant workers” who want to be self-employed which is not recognized in Malaysia.

* United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

3.2 Designated economic sectors and subsectors

3. The current overall policy only allows for foreign workers to be employed in designated economic sectors and subsectors. These differ depending on whether they are deployed in Peninsula Malaysia, or in Sarawak or in Sabah and on the type of foreign workers (mainly PLKS workers or expatriates)(see Boxes 2 - 5). There are some uncertainties about the treatment of foreign workers in the fishing industries, where it is sometimes stated

that if the fishermen do not come on land, they would not be technically under Malaysian jurisdiction.

Box 2: PLKS Workers Peninsular Malaysia • Manufacturing • Construction • Plantation • Agriculture • Mining & Quarrying • Services • Restaurant (include coffee shops) • Resort Island • Cleaning & Sanitation • Theme park • Hotel • Golf Caddy (Men) • SPA • Reflexology • Cargo Handling (Port / Airport) • Domestic Worker	Box 3: PLKS Workers Sarawak • Manufacturing • Construction • Agriculture • Transportation • Services • Restaurant • Coffee House • Dobby • Cargo Handling • Others based on need Box 4: PLKS Workers Sabah • Manufacturing • Construction • Plantation • Agriculture • Domestic Worker • Services	Box 5: Expatriates • Manufacturing • Hotel • Agriculture • Tourism • Research and Development • ICT • Others (Financial, Education, etc)
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3.3 Designated source countries

4. Foreign workers may only be recruited from the approved list of source countries. There are more source countries for Peninsula Malaysia than for Sarawak or Sabah (see Box 6). For Sarawak, other than Indonesia as a source country, the authorities there have the discretion for hiring workers from other countries based on needs on a case-by-case basis. In Sabah, only foreign workers from Indonesia and the Philippines are allowed. There are cases of FWs from China and North Korea being recruited but they do not go through the regular channels of approval.

Box 6: Source Countries

Peninsular

- Indonesia
- Thailand
- Cambodia
- Nepal
- Laos
- Myanmar
- Vietnam
- Philippines
- Sri Lanka
- Pakistan
- Kazakhstan
- Uzbekistan
- Bangladesh
- Turkmenistan
- India

Sarawak

- Indonesia
- Case by case

Sabah

- Indonesia
- Philippines

3.4 Undocumented workers

5. There is no established continuous policy for addressing the presence of undocumented workers (sometimes referred to as PATIs or Pendatang Asing Tanpa Izin) nor are there specific sustained policies to counter the attraction of being an undocumented worker in Malaysia. From time to time there have been time-bound programs involving amnesty for undocumented workers to identify themselves to secure valid work permits or to benefit from incentives for repatriation to their countries of origin.

3.5 Malaysian employment and other applicable laws covering foreign workers

6. Employers must comply with Malaysian employment and other applicable laws, regulations, guidelines and norms covering foreign workers. These include immigration laws and health and safety regulations.

3.6 International conventions and norms covering foreign workers

7. Malaysia is still reviewing but has not acceded to many applicable international conventions and practices covering migrant workers (see Chapter 7 below for a discussion on these international conventions). Malaysia subscribed to the ASEAN Consensus on the Treatment of Migrant Workers from within the community. Nevertheless, as a member of the United Nations, Malaysia is obliged to respect human and migrant rights.

CHAPTER 4: ISSUES AND CHALLENGES ARISING FROM CURRENT POLICIES IN THE MANAGEMENT OF FOREIGN WORKERS

1. This chapter describes the feedback and criticisms from industry, civil society and other stakeholders on the shortcomings and embedded corrupt practices in the policies and procedures pertaining to the engaging foreign workers. They portray a foreign worker management system which is in disarray and dysfunctional. More alarmingly, the Independent Committee has detected unethical practices, collusion and transgressions in the procurement of service providers for procedures essential to effective foreign worker management. Additionally, these rent seeking, money-making and captive preferences have inflated the operational and developmental costs to employers, employees and the Government.

2. This state of affairs is causing some distress to the production process of industry which is negatively impacting the future investment outlook with dire implications for the pace and sustainability of economic prospects. The Government needs to reform in a comprehensive manner the policies for recruiting, employing and monitoring foreign workers. In so doing, it should draw lessons from the policy reforms and best practices in regard to foreign workers undertaken by other countries, in particular the strengthening of enforcement capabilities and reducing reliance on foreign workers including the complications arising from the presence of undocumented foreign workers.

3. Furthermore, a comprehensive policy for the management of foreign workers must also consider the right to work of refugees and asylum seekers, foreign spouses of Malaysian citizens as well as of expatriates, stateless persons and other groups of persons, consistent with international obligations and human rights.

4.1 Shortcomings of overall policy on governance for foreign worker management

4. The actions of multiple ministries and agencies have largely been uncoordinated and have frequently given rise to inconsistencies, inefficiencies and contradictions in policy objectives and directions in the management of foreign workers. There is thus essentially an absence of a coherent system to manage the number of foreign workers to support the production of goods and services in the industries which need them and to cope with the undue reliance especially on low skilled foreign workers.

5. Some details of the many shortcomings identified by stakeholders include the arbitrary nature in the determination of the quantity of workers applied for, e.g. where decisions were often made that granted a lower number of workers than requested for without explanation and following lengthy delays. Furthermore, the procedure in seeking special approvals to secure foreign workers are often lacking transparency. The approvals could be secured from sector ministries, with the ultimate authority (when needed) to grant, adjust and even overturn any approvals vested in the Minister of Home Affairs.

6. Of specific interest is the distinct arrangements applicable to investors and projects from China, where special dispensations are provided for the deployment of Chinese workers and where the applicability of Malaysian employment laws are unclear. It was always a

mystery to applicants and the industry as to how these approval decisions were arrived at and why certain groups of applicants were favoured over others. There was widespread perception that this lack of transparency concealed corrupt practices, misdeeds and breaches of trust.

7. Even though the application process saw improvements through the introduction of online systems, there were however several unrelated online systems which were deployed. The online systems also do not have completely integrated modules to accomplish conveniently the multiple-step processes involved in the application, recruitment, renewal, replacement and repatriation stages in the administration of foreign workers.

8. Even with the introduction of one-stop-centres in an attempt to speed up the approval process, there continued to be heavy reliance on physical processes requiring submissions of voluminous documentation; face-to-face contacts for interviews; discretionary decision making, sometimes involving the Ministerial special arrangements referred to above; and the inconvenience of having senior managers to travel often to regional headquarters (including Putrajaya) to attend to applications and to secure approvals.

4.2 Complaints on the designated economic sectors and subsectors

9. Stakeholders have requested that foreign workers be allowed in more sectors than the currently designated economic sectors and subsectors where manual and casual workers are in short supply to support these other economic sector's production requirements.

10. Employers have also asked that gender discrimination be removed for example, in employment of only male foreign caddies. Similarly, nationality discrimination such as the prohibition of Indonesian male workers in manufacturing, should be abolished as the "justification" for its imposition in the past no longer exists.

11. Finally, there are demands for the withdrawal of guidelines that prohibit foreign workers being deployed in front office activities, for example hotel reception or in activities that require direct face-to-face contacts like sales clerks or cashiers.

12. There are sub-sectors where the entry of foreign workers have been frozen (see Box7). Stakeholders have asked that services subsectors that have been frozen should be reopened again for the entry of foreign workers. The reasons behind why these subsectors have been frozen are not explained and the decisions to freeze appear to have been arbitrarily made. The businesses in these subsectors have been severely affected and Malaysian customers continue to demand these services which are essential to them and for which Malaysian workers are not available or do not have the skills required, e.g. goldsmiths, specialized tailoring of Indian clothes, barbers, etc.

Box 7: Frozen Subsectors

- Retail and Wholesale Trade
- Textile Trade
- Goldsmith
- Welfare Home
- Metal Scrap & Used Item
- Barbering
- Dobby
- Cargo Handling (Warehouse and others)

4.3 Criticisms on the designated source countries

13. In Sabah where only Indonesian and Filipino workers are permitted some stakeholders have asked that foreign workers be allowed from a wider choice of source countries. They believe that this diversity will quicken the process for meeting their production needs. More importantly, a wider pool will allow them to better source workers with the needed experience, basic skill and work ethics. Also, workers from more distant source countries will be less tempted to abscond which will help to temper employers' recruitment costs.

4.4 Complaints on handling of undocumented workers

14. It is recognized that some of the Government programs to regularize undocumented workers have led to voluntary repatriation of numerous undocumented workers as well as returning many workers to the formal economy. Whilst the programs may have lowered the presence of undocumented workers immediately following the end of the amnesty periods, the continued lack of consistent and enduring effective enforcement and monitoring mechanisms have seen a constant recurrence of the undocumented workers problem.

15. Moreover, some of these amnesty programs have been infiltrated by unsavoury elements and corrupt practices. The most recent regularization program for undocumented workers have attracted substantial criticisms from stakeholders as it was largely carried out by outsourced service providers that have collected the large fees but have not fulfilled the obligations to complete the regularization process.

16. The parties involved in human smuggling and trafficking, even when identified have not been adequately prosecuted. It is largely suspected that this is due to the connivance of federal, state and local authorities in these illicit activities. It is openly discussed that the involvement in these unspoken despicable activities have penetrated the rank and file of all the regulatory agencies responsible for the administration of both foreign workers and other categories of migrants. The inaction of the Government thus far is unacceptable and an affront to Malaysia's international reputation.

4.5 Violations of Malaysian employment and other laws and international conventions or practices

17. Stakeholders have pointed to numerous shortcomings in the application of provisions of the employment law to cover foreign workers. The litany of complaints include violations of requirements concerning employment contracts, payment of wages, working hours, overtime and time off; participation in workers' organizations; worker safety net coverage; accommodation and health coverage outside the work context. Malaysia has also been cited for debt bondage, forced labour and child labour practices. In addition, the current policies prohibiting pregnancy of female foreign workers are a violation of the reproductive rights of women.

18. In particular, there are many shortcomings in the employment laws applicable to household workers which in numerous instances have led to inadequate protection for foreign domestic household workers.

19. The use of third party employment agencies both in Malaysia and especially in the source countries, have given rise to the spectre of hidden costs and charges. These concealed practices are the principal causes of debt bondage.

20. The handling of employment for foreign spouses remains unsatisfactory. The policies in this area remain unclear and where there is documentation of procedures they do not seem to be adhered to. Officials in the multiple regulatory agencies involved have unspecified discretions in handling applications and decisions to be made are not time-bound nor adhered to. Although generally more facilitative, foreign spouses of expatriates have faced similar difficulties at times when seeking employment in Malaysia, many of whom have the qualifications and high skills equivalent to the expatriate which could be of tremendous value for Malaysia.

21. In relation to the violation of international norms, Malaysia has poor ratings for compliance and has been associated with forced labour practices, employing child labour and insufficient measures to deal with the presence of human trafficking of undocumented migrant workers. Moreover, the right to work of refugees and of stateless persons has yet to receive formal recognition.

22. Clear information and standard operating procedures for the employment of foreign workers (expatriates, domestic workers and low skilled foreign workers) and the associated laws/regulations applicable are not easily accessible and dispersed in the various websites and other repositories.

4.6 The lack of an end-to-end online system and an inadequate database of foreign workers

23. In addition to complications and lack of transparency from the deployment of multiple online service providers handling a variety of processes in the different stages of the management of foreign workers (application stage, approval stage, recruitment stage, replacement stage and renewal stage), these processes are not well integrated and do not feed into a central database system (see Box 8).

24. Multiple agencies using a multitude of criteria, formulas, rules and methods to determine and approve the entry of foreign workers across the designated sectors and in the three different territories in Malaysia have led to total confusion and acute dissatisfaction among all stakeholders (the criteria and rules are summarized in the “red book”).⁴

25. Another consequence of the chaotic approval process is that it actually undermines the objective of reducing reliance on foreign workers because of ineffective controls on the number of workers actually entering the workforce. This has additionally contributed to arbitrary decisions to cut legitimate demand for workers and to even freezes in access to foreign workers without clear explanations and coherent reasons provided.

⁴ The “Red Book” refers to the criteria and rules summarized in the Buku Panduan Dasar, Prosedur Dan Syarat-Syarat Pengajian Pekerja Asing Di Malaysia, Jabatan Tenaga Kerja Semenanjung Malaysia, 2011.

Box 8: Stages for Processing Foreign Workers

- o Initial Application for foreign workers
 - JobsMalaysia & ePPAX - managed by Labour Department
 - SPPA for workers from Bangladesh managed by MOHA (currently inoperative)
- o Prior to arrival of foreign workers (not an exhaustive list)
 - Immigration Security Clearance (ISC) – by S5 Biotech Sdn Bhd
 - eBiomedical – by Bestinet Sdn Bhd
 - Visa Luar Negara – by Ultra Kirana Sdn Bhd
 - One Stop Centre for VLN - by Omni Sarana Cipta and other vendors
 - eVisa Dengan Rujukan - by Bestinet Sdn Bhd
- o While in Malaysia
 - Medical check up/screening - by FOMEMA Sdn Bhd
 - SPIKPA – Medical Insurance
- o Other selected processes:
 - System related to Immigration matters - by MyIMMS
 - Rehiring PATI - by MyEG Sdn Bhd, Bukti Megah Sdn Bhd, IMAN Resources
 - Renewal of PLKS - by MyEG Sdn Bhd

26. Moreover, the current disparate mostly unconnected systems for management of foreign workers continue to combine manual processes (final quota approval in OSC, endorsement from Malaysian embassy) and online digital processes. The current approval process is not transparent and subject to arbitrary discretions (including special ministerial approvals) while the established time for approval is not adhered to per the client charter.

27. The use of multiple service providers makes difficult the integration of management information for generating key indicators for monitoring. Multiple services providers also result in cascading unnecessary cost from charges and fees imposed on both foreign workers, employers and sometimes also the government.

28. The absence of an integrated single online system leads to gaps and inefficiency in managing a comprehensive control framework for foreign workers to facilitate effective supervision and regulation activities. An end-to-end single online system for capturing application, approval, recruitment, arrival, permit renewal, repatriation and absconding worker is needed. Without a more systemic and strategic approach, effective enforcement programs cannot be adequately designed and implemented.

29. There is no official agency entrusted with reporting and disseminating on a regular basis the number and types of foreign workers present in Malaysia. Lack of reliable time series and timely information make the understanding and analysis of the trend in foreign worker evolution and their implications difficult and indistinct.

30. Absence of a comprehensive database to monitor the deployment of foreign workers lead to gaps in evidence based policy making and evaluation of policy effectiveness. In this regard, the levy payment attached to PLKS workers has also raised several issues. Several rates have been set which differs across sectors and territories. However, the objective of the levy as a tool to influence the relative cost of utilizing foreign workers has not been accomplished because of its inappropriate application.

31. The obligation for paying the levy which by design should be imposed on the employer, as a cost for reliance on a foreign worker, has instead seen the obligation for payments alternating between employers and the foreign workers. Several billions ringgits are collected every year from the foreign levy and some stakeholders have argued that sufficient resources are available to strengthen the management of foreign workers and enhance enforcement of employment laws.

32. Lack of financial and human capabilities have contributed to the design of inappropriate or weak responses to the rise in undocumented workers. There are also no official estimates of the number of undocumented workers and the Independent Committee could not find any agency of government responsible for tracking and conceiving policies to address undocumented workers. In particular, the number and distribution of PLKS workers by occupation, sectors and location which may be available are not readily shared for analysis and enforcement purposes.

4.7 Complaints about enforcement policies

33. As would be expected, there are many procedures and requirements to be complied with before the arrival of foreign workers, upon arrival of foreign workers, when the worker is in place, for the extension or replacement of such workers, upon their repatriation, etc. These multiple bureaucratic procedures in the form of regulations (reflecting the multiple agencies involved) are meant to control and safeguard against abuse of the system and the workers by unscrupulous employers and third party entities who may be involved. They also serve as a shield to filter out workers that may pose security and health risks to the country.

34. However, effective enforcement may only be undertaken if all the regulatory officials have the knowledge and understand the intricacies of how the regulated procedures and requirements interact and are manifested in the field. The Independent Committee strongly believes that one of the major causes of ineffective enforcement stems from the loss of knowhow and network contacts of Government enforcement personnel arising from the outsourcing of the essential procedures, functions and requirements previously performed by regulatory agencies to third-party private service providers.

35. The first hand field experience and learning on-the-job of enforcement officials have been truncated by outsourced functions or digitalized by online applications which are then subsequently maintained by these service providers as vendors. It is uncertain if these officials have been involved in the design of the online systems, understand how and what data are being generated and have the capability to generate the needed monitoring and management indicators to support enforcement activities. The Independent Committee is of the view that the separation of enforcement officials from direct involvement in the gathering of information and building the database may have impaired their ability for proper analysis and intelligence gathering on the risks posed by the ebb and flow of foreign workers.

36. This shortcoming is different from the other more disturbing problems stemming from how the functions have been outsourced without open tender, with the duration of concessionaries granted containing inflexible conditions and pricing schemes which are unfavourable to Government finances. These dishonest and unlawful practices are highlighted further below.

37. At the same time ironically, it appears that insufficient financial and human resources have been allocated to the multiple agencies involved in undertaking their enforcement tasks effectively. Together with the inefficiencies from inadequate coordination, insufficient and poorly trained staff have contributed to a situation of weak and even absence of proper enforcement of compliance with procedures and applicable immigration and employment laws as well as international norms. This has resulted in the abuse and mistreatment of foreign workers, affecting negatively the ratings and international standing of Malaysia for the protection of workers. This situation is particularly exasperating because in the other areas of their operations e.g. issuing passports, a few of these regulatory agencies have received super star ratings for the adoption of innovative technologically advanced applications.

38. For enforcement purposes principal reliance is placed on a range of specifically created identification documents and credentials. Several issues and complaints were raised by stakeholders about identification documents and their verification. While ID cards have been provided to several categories of foreign workers, they are not standardized and they do not receive common recognition among the different enforcement agencies involved.

39. When a documented worker is intercepted by the police, the well-known complaint is that the officer may choose not to accept the proffered worker ID issued by the immigration department and demand sight of a passport with the employment pass attested. These actions are usually associated with improper disguised attempts to solicit bribes and unfortunately occur very often near locations where foreign workers are employed, reside or congregate.

4.8 Corruption and rent seeking practices

40. Other than in the course of enforcement activities, corruption rears its head most rampantly during the recruitment stages of the foreign workers management process. Corruption is also most likely at the stage where the foreign workers sojourn in Malaysia is administered. Corrupt practices are taking place of course in both source countries and in Malaysia, where their incidences are more insidious.

41. The most absurd of these corrupt practices must be the questionable and nontransparent appointments of recruitment agencies or outsourcing entities for sourcing foreign workers. Many of these entities had been established specifically to undertake the activities granted even though it is obvious they do not have previous experience and track record in such a business. The dishonesty is overt and blatant as these firms are purportedly associated with politicians, serving members of the legislature or other branches of government or their family members, former government officials and other proxies of these groups. There is then collusion with similar corrupt and well connected groups in the source countries in the recruitment of workers.

42. The outcome of the corrupt ecosystem, in the first instance, leads to an escalation of costs from collusive fees and charges imposed along the chain of the recruitment process. This places a cost burden on employers but more harmfully on the workers themselves. Of greater concern is that these corrupt practices are the foundation and principal causes of workers getting into circumstances of debt bondage which may ultimately lead to forced labour situations for the settling of the accumulated debt. The conditions then provide the seed or trigger for foreign workers to escape from their predicament and become undocumented workers.

43. Another layer of corruption may at first glance appear to be innocuous by hiding behind what would seem to be legitimate business practices. This concerns the nontransparent outsourcing of public sector functions previously undertaken by MOHA, MOHR and other relevant government agencies (e.g. health assessments, visa renewals, etc) to preferential companies at both the recruitment and in-country worker administration stages. The outsourced functions at the recruitment stages include providing bio-metric information, identifying certified health screening clinics, developing online processes for registering these undertakings and uploading the findings of medical examinations, etc. At the in-country administration stage, outsourced functions include the renewal of employment passes, periodical health screening and provision of worker safety net coverage for work accident and health insurance, etc.

44. The outsourcing of the digitalization of manual functions to online processes may appear to be aimed at improving efficiency and reducing costs. However, how these processes are managed and tendered for as well as the lack of clarity in the pricing of the functions performed, including the duration of the concessions given to the service providers as vendors give rise to questions. The service providers appear to have a captive market that allows the generation of easy profits at the expense of government, employers and ultimately the workers. Depending on the functions outsourced there are instances where charges are apportioned to both employers and sometimes the government itself, whereas previously such services were provided free of charge or with a nominal fee to the government. This then contributes to augmentation and distortions in labour costs.

4.9 Demands for prolonging the length of stay and levy payments for PLKS workers

Duration of stay of a PLKS worker

45. The current policy allows for the extensions of the PLKS work permit for a maximum period of 10 years. Employers have been pushing for a further extension of this period, as they argued that such foreign workers have acquired the needed work experience and skills while contributing to the productivity of the firm. Losing the experienced worker will entail additional high costs to the firms from having to recruit a replacement who will not have the required skills nor experience thus affecting productivity and requiring additional outlays for training.

46. Recently, a decision was taken by government to allow for an additional stay of 3 years but with an increased levy of RM 10,000 a year per worker compared to the normal highest levy of RM1,850. Some employers have expressed the willingness to pay this high

levy because they value the services and experience of the worker in question. However, other employers have protested at what they considered to be an unjustified decision without satisfactory explanations.

Levy payment

47 The levy rates are different for Peninsula Malaysia, Sabah and Sarawak. Furthermore, they also differ across sectors where workers are deployed. Over the years, obligation for the levy payment has alternated between employers and employees. Between 2012 and 2017 the annual levy was paid by employees. In 2018, this policy was changed again and employers must now pay the levy. As is to be expected, employers were unhappy with this change as they claim it will add to cost. They were even more unhappy with the decision to apply a RM10,000 levy rate for extension of a worker beyond 10 years.

48. To add to their distress, starting from 2018 employers must make a full upfront levy payment for all approved new foreign workers before they can begin the process for recruiting the new employees in the source country. This gives rise to several issues because if the employers later decide on the basis of need to recruit less than the approved number of workers they will face difficulties in a getting a timely reimbursement. The reimbursement process by the immigration department is complicated and prolonged. A similar situation arises when a newly arrived foreign worker fails the mandatory medical check and must be repatriated.

4.10 Abuse and mistreatment of foreign workers

Restriction to one employer and approved sector

49. A PKLS foreign worker can only be employed in the business entity and sector, for which approval has been granted. There is no available mechanism to permit the worker from switching employer nor the approved sector for work. It is largely known, that this is one of the reasons which has caused PKLS workers to become undocumented workers either because they find themselves in an employer abusive situation or cannot tolerate the conditions in the sector in which they are employed. In addition, the worker might have been the victim of human smugglers or traffickers disguised as recruitment agents and offered an employment different from what was originally agreed.

Accommodation

50. It is compulsory for employers to provide accommodation for foreign workers which comply with the minimum standard guidelines enforced by the MOHR. These guidelines in force since January 2016, are applicable to all sectors, except for the plantation and construction sectors which are covered by different regulations. However, compliance continue to be not well regulated and living conditions especially in construction sites continue to be abysmal. Local government and authorities have an enforcement role in this regard, but have not taken up the tasks. Also many accommodations provided continue to exhibit overcrowding conditions, inadequate sanitary services, in locations giving rise to conflicts with Malaysians and unduly removed from the workplace.

Insurance Schemes

51. It is mandatory for employers to insure all foreign workers employed. However, stakeholder complaints have highlighted the unnecessary expense stemming from multiple insurance schemes with multiple insurance providers (26 insurance providers). They suggest that insurance requirements may be subsumed into one package to be competitively provided by the appointed insurance provider.

52. Current insurance provisions must go through an appointed third party service provider - Skim Perlindungan Insurans Kesihatan Pekerja Asing (SPIKPA). They direct coverage network for foreign workers' health care needs together with provision of hospitalization benefits. However the Insurance Scheme does not cover for nonhospitalisation treatment. It has been asserted that the premium cost is unduly high and the RM20,000 overall coverage annual limit is insufficient to meet a major medical emergency. A second insurance scheme as required under section 26(2) of the Workmen Compensation Act 1952 is the Foreign Worker Compensation Scheme. This is for protection of foreign workers for employment workplace injury and but it is unclear if injury sustained outside the workplace is sufficiently covered.

Human smuggling and trafficking

53. Malaysian law prohibits all forms of human smuggling and trafficking. Malaysia has enacted the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. Nevertheless, enforcement actions to detect and punish criminals engaged in human smuggling or trafficking have not been pursued with conviction and determination. For example, investigators have discovered in 2015 illegal migrant camps and burial ground for deceased migrants on the border with Thailand which have implicated both federal and state enforcement officials as well as local government authorities. However, none of the perpetrators have been brought to book and further progress on prosecution appeared to have stalled.

54. The majority of human smuggling and trafficking victims are from Indonesia, India, Bangladesh, Myanmar and China. As described above, these victims of human smuggling or trafficking are likely to be undocumented workers subject to forced labour from debt bondage at the hands of their employer, employment agent or informal labour recruiters.

55. Reflecting this reality on the ground, Malaysia had been placed on the Tier 2 Watch List nine times in the period 2006 to 2018 based on the annual United States State Department: Trafficking in Person Reports.

Forced Labour Issues

56. The International Labour Organisation defines forced labour as work that is performed involuntarily and under the menace of any penalty. (ILO Forced Labour Convention 1930) (No: 29). It refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as manipulated debt, retention of identity papers or threats of denunciation to immigration authorities.

57. Various indications are used to ascertain when a situation amounts to forced labour such as restriction on workers' freedom of movement, withholdings of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debt from which workers cannot escape.⁵

58. There has been several reports of forced labour practices and conditions involving migrant labour in Malaysia. According to several NGO's and independent social audits, forced labour is a problem in Malaysia with migrant workers especially in the palm oil, electronic industry and manufacturing sector.

59. The issue of forced labour in Malaysia has grave repercussions for Malaysia's economy and global reputation. Therefore it is imperative that Malaysia take urgent steps to develop its capacity to address forced labour in Malaysia.

60. The present laws against forced labour in Malaysia are stated in the Penal Code and the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.

Other transgressions and shortcomings

61. Stakeholders have made reports about unreasonable and illegal deductions of wages of foreign workers to offset expenses incurred in the recruitment process as well as in fulfilling the Malaysian employment law requirements.

62. Complaints have also been raised that age limitation placed on the recruitment of foreign workers at 45 years is discriminatory and should be raised. Similarly they contend that not allowing PLKS foreign workers to bring in family members or to get married is equally discriminatory and against international human rights provisions. In any case, the reality on the ground demonstrates that these restrictions cannot be enforced adequately.

4.11 Source country issues and MOUs

63. As pointed out above, there is also widespread corruption in source countries stemming from the use of selected, preferential and monopolistic agents for recruitment and pre-departure training of prospective foreign workers. In addition, in the absence of formal MOUs, the established recruitment costs charged to Malaysian employers as well as hidden fees imposed on the departing workers are on most occasions not transparent.

64. Stakeholders, particularly employers and those from civil societies strongly support the development of bilateral MOUs with source countries. However, they demand that the process be made more transparent and inclusive, and that the MOUs be disclosed to the public, with sensitive information removed. In particular, they insist that before the MOUs are negotiated with the source countries they should be discussed in consultations with all relevant stakeholders in Malaysia. They expect that a similar parallel process of consultations will also take place in the source country. This will allow the relevant stakeholders who are closer to the ground to provide their inputs and concerns to better safeguard the welfare of the foreign workers as well as the Malaysian employers.

⁵ ILO Indicators of Forced Labour: retrieved from <https://www.ilo.org>

65. In particular they suggest that the coverage, terms and conditions of the MOU should have core components which are standardized, so that the treatment of foreign workers no matter from which source countries would enjoy comparability and equality.

CHAPTER 5: RECOMMENDATIONS FOR REVAMPING THE FOREIGN WORKERS MANAGEMENT SYSTEM

1. Independent Committee members believe that in general the presence of foreign workers brings economic benefits for the continued and sustained growth and development of Malaysia. We are aware that the many studies commissioned by the government on the contribution and impact of foreign workers in the economy show that skilled and semi-skilled Malaysian workers benefit from their presence. In contrast, low skilled Malaysian citizens bear the brunt of the negative labour market impact from the presence of foreign workers as reflected in low wage levels and competition for jobs within this low skilled segment of the workforce.

2. The presence of unskilled foreign workers also allows Malaysians to invest in their education to secure the qualifications needed to be employed in relatively higher skills occupations to drive the high income economic aspirations of the nation. Given the importance of the presence of foreign workers for economic growth, policy reforms should not hinder their deployment but should be more responsive to the needs of industry.

3. The Independent Committee members are confident that our policy recommendations set forth here, if implemented comprehensively, will successfully support the government's intention to effectively manage the admission of foreign workers while reducing the dependence on them, in the longer term, without harming the economic growth objectives and the well-being of its citizens. In parallel, the Independent Committee would emphasize the need to develop a "real time" database to properly monitor the need for foreign workers and to create a conducive environment for the deployment of the foreign workers which meets national employment regulations and international labour standards.

5.1 Overall policy recommendations

4. It is clear from the foregoing discussions that the foreign worker management system is in disarray mainly because of the absence of a single government entity charged with implementing a coherent set of policies within a strategic framework for the management of foreign workers. The main objectives of this strategic framework should principally be to support the economic growth targets of the country which would be underpinned in part by the labour requirements of industry, including the continued recourse to foreign workers to achieve the product and services output of the economy. This paradigm is consistent with Malaysia's historical experience as described in Chapter 2 above. A subsidiary objective would be to better manage the dependence on foreign workers as the economy transforms itself and prepares for the onset of Industry 4.0, greater automation and use of artificial intelligence towards an innovative knowledge based high income country. Whether the future situation would entail a reduction in the deployment of foreign workers will very much depend on other development policy exigencies underlying the government's long-term growth strategy consistent with the demographic trend of the country.

5.1.1 Overall policy and a single government authority to manage foreign workers

5. The Independent Committee recommends that the Ministry of Human Resources (MOHR) be the single authority responsible for formulating the policies within the strategic framework described above and implementing these policies effectively within the National Foreign Workers Management System (NFWMS). MOHR is best placed to take on this role as its mandate already involves expediting the labour market needs of the economy and oversight of industry's compliance with the employment laws of Malaysia and their alignment with international norms and practices.

6. To ensure there is no conflict with this mandate of MOHR, the earlier final decision authority on foreign worker management matters given to the MOHA Minister under JKKPA Ke-33 Bil. 2/2005 and other Government decisions on foreign worker management should be reviewed and may need to be formally repealed by the Cabinet to make the revised policies consistent with this single authority mandate of MOHR. Previous special approvals for hiring foreign workers would also need to be repealed. In addition, the Cabinet may need a new decision to expand the role of MOHR to include these strategic functions.

5.1.2 Foreign Worker Management System Governance Structure

7. Within the governance structure of the NFWMS, MOHR will chair an Overall Policy Review and Monitoring Committee (OPRM) which will incorporate all supporting Ministries and Agencies that have roles in oversight of laws and regulations applicable to foreign workers. The OPRM's principal task will be to manage the enforcement actions of the NFWMS and safeguard the overall integrity of the national foreign workers policy. The OPRM will be assisted by three subcommittees:

- a) the Online Integrated Foreign Worker Management Gateway Subcommittee (OIG), which will develop the end-to-end integrated single online system to manage foreign workers: with modules to monitor recruitment; in-country administration; repatriation; enforcement and populating a centralized foreign worker database.
- b) the PLKS⁶ Workers Management Subcommittee (PWM), which will oversee the major component of the Online Gateway applied to PLKS workers. The PWM will also be charged with overseeing the online modules and policies to manage undocumented workers, the second largest contingent of foreign workers.
- c) the Other Foreign Workers Subcommittee (OFW), which will oversee the other components of the online Gateway covering foreign domestic workers, expatriates, foreign spouses, refugees, stateless persons and students/interns.

8. The OPRM will develop its own Terms of Reference (TORs) and those of the other subcommittees and deliberate on their associated annual work programs.

⁶ PLKS = Pas Lawatan Kerja Sementara (Temporary Visitor Employment Pass) is issued to an approved foreign worker and this Pass entitles the worker to be employed by a specified employer within a specified economic sector for a specified period of time. This Report refers to PLKS issued to foreign workers as PLKS workers and excludes PLKS issued to foreign domestic workers, which are addressed separately.

Overall Policy Recommendations	
1.	MOHR single authority to manage foreign worker system
2.	Governance Structure with three subcommittees
3.	Review and repeal previous approval authority and mandates on FWs management

5.2 Single end-to-end integrated online modules of the NFWMS

9. The integrated online system will have separate modules covering PLKS workers, undocumented workers, foreign domestic workers, expatriates, foreign spouses, refugees, stateless persons and students/interns. The online PLKS worker system will be the largest component of the NFWMS (See Appendix IV for flow charts of the end-to-end online system).

10. All these online modules will automatically feed all relevant information and data concerning foreign workers into a central database. This database will have the capability of generating “real time” Management reports “on demand” covering all aspects of development and evolution of foreign workers in Malaysia as well as the labour market information concerning foreign workers. This will allow a comprehensive monitoring of the contribution of foreign workers to the economy. The NFWMS should also consider instituting call center arrangements for stakeholders to seek clarifications and offer suggestions.

11. Urgent attention and sufficient financial and human resources must be allocated to construct the single online foreign worker management system incorporating the required modules and linked to a centralised data warehouse accessible nationwide for management and monitoring foreign workers (starting with PLKS workers with extension progressively to cover other types of foreign workers). This online system is to be housed in and managed by MOHR.

Overall Policy Recommendations for Single End-to-End Online System	
1.	Management of NFWMS through a single online end-to-end integrated system with several modules to cover all types of FWs, including undocumented workers
2.	Online modules will feed all information and data for FWs into a central database capable of generating “real time” Management reports
3.	Sufficient financial and human resources must be allocated to construct the single online system and call centers

5.3 PLKS workers management policy

5.3.1 Overall policy recommendations for PLKS workers

12. MOHR will have sole responsibility for the PLKS management system.

13. Working with all the supporting ministries and agencies involved with foreign workers, MOHR will articulate the roles and responsibilities consistent with the Malaysian

laws and regulations and international practices applicable to the employment of PKLS workers, e.g. MOHA's role will touch on issuance and renewals of work passes; MOA and MPIC roles will involve verification of foreign worker needs of the agriculture and plantation sectors etc.

5.3.2 Recommendations for the online PLKS module, database and monitoring system

14. The management of PLKS workers requires a holistic online end-to-end integrated monitoring module to ensure comprehensive coverage, verification, data collection and effective monitoring. The details of the PLKS online module and the other modules of the NFWMS as described on paragraph 10 above are set out in Appendix II and Appendix IV.

15. The integrated PLKS module will have interlinked segments. The starting process will cover an Application segment followed by an Approval segment. The Approval segment will be based on the multi-tier levy agreed Dependency Ratio (DR) formula (described in paragraph 5.3.3 below).

16. At this juncture, employers shall make a standardised Statutory Declaration that they will comply with all Malaysian employment and other applicable laws, regulations, guidelines and international norms.

17. Once approval for hiring a FW is given, the online system then shifts to Pre-Arrival processes which by and large will take place mostly in the source country. All the required processes in the source country will continue to be recorded in this single online system and all required information uploaded using a standardized format.

18. When the pre-arrival process is successfully completed, the Arrival segment will kick in, with the online processes recorded all the way to when the PLKS is issued and levy payment is made electronically through online banking arrangements.

19. The records in the online database of biometric and other socio-economic information of the FW will facilitate the PLKS to be issued in digital form and linked to a physical Smart ID. There is no need for a paper stamp in the worker's passport. This Smart ID similar to the Malaysian ID card must be recognised by all enforcement agencies.

20. This same online system will be used for the monitoring of all FWs during their stay in Malaysia. There will be a segment for the renewal of PLKS of the worker. Another segment will handle the replacement of FWs if they continue to be needed with timely procedures and in an integrated end-to-end manner.

21. In addition, there will be a segment for repatriation to send FWs home, including deceased workers. The check-out memo will be replaced by this on-line process. This segment will incorporate a capability for reporting and managing workers who run away or abscond. All relevant enforcement agencies like the Police will be provided access or otherwise informed.

22. This comprehensive integrated online system may be developed by building upon components of the existing system. All current concession contracts with outsourced service providers should, in principle, be terminated.

23. The single integrated online system module for PLKS workers will remove inefficiency and bureaucratically unnecessary procedures of the current mix of manual, faceto-face, multiple electronic and discretionary procedures. Removal in discretion for decision making by the online decision algorithm will eliminate corrupt practices and delays in the approval process. It will reduce unnecessary cost currently borne by employers and foreign workers while producing real time management indicators to develop evidence based policy responses to issues and problems that may emerge.

24. Integration and digitalization of currently outsourced processes and procedures will remove opportunities for corruption, rent seeking, monopoly and market capture from preferential appointment of service providers, and reduce the incidence of cascading and unnecessary increases in fees and charges.

Overall Policy Recommendations for PLKS System	
1.	MOHR will have sole responsibility for the PLKS Management System
2.	Management of PLKS workers through a single online end-to-end integrated system This will be the largest module of the NFWMS online system.
3.	Employers needing PLKS worker must register and make the statutory declaration that they comply with all Malaysian employment laws
4.	Approval segment based on the multi-tier levy agreed Dependency Ratio (DR) formula
5.	PLKS in digital form linked to Smart ID to be recognised by all enforcement agencies
6.	Replacement, Renewal, Repatriation segments to be integrated into online system
7.	Online payments of levy to MOF account
8.	Online system will build upon functioning elements of current system

5.3.3 Policy recommendation for adopting the Multi-Tier Levy System

25. The Independent Committee endorses the Multi-Tier Levy System as the centrepiece mechanism of the PLKS worker online application and approval system (see Appendix III for a description of the Multi-Tier Levy System).

26. The Independent Committee strongly recommends that, from the large revenue to be collected, prominent considerations be given within the multi-tier levy system context for allocation of sufficient resources to develop an efficient end-to-end online foreign worker management system and database. These financial resources should also support reform efforts to have more effective enforcement actions and well operating programs to reduce reliance on foreign workers through promoting automation and the associated upskilling of Malaysian workers.

Policy Recommendations on Multi-Tier Levy System	
1.	The Multi-Tier Levy System will be the centrepiece mechanism of the PLKS worker online application and approval system
2.	Programs to reduce reliance on foreign workers by promoting automation and the associated upskilling of Malaysian workers.

5.3.4 Policy recommendations contained in the online process for PLKS Workers

Sectoral dependency ratio quota system

27. The online application and automatic approval will be based on the agreed sectoral dependency ratio (DR) quota system for PLKS workers embedded in the multi-tier levy system. The approval process will also determine the applicable multi-tier levy to be imposed for the applicable cohort of PLKS workers.

Single employer and sector policy

28. The approval process will continue to apply the policy which prescribes that the PLKS worker can only be employed in the specified business entity and sector for which approval has been granted. (Each PLKS worker will have a unique ID for this policy to be enforced). MOHR in coordination with other concerned ministries and agencies will develop a mechanism to permit a variation to this policy based on defined circumstances, e.g. worker abuse.

Policy of no limitation on work functions of PLKS worker in line with qualifications

29. The Independent Committee proposes adoption of a new policy with no limitations on the work functions of the foreign worker within the assortment of occupational positions aligned to normal qualifications, skills and experience levels as reflected in the salary scale of the firm. PLKS workers should be allowed to work in all segments of operations of a legitimate employer e.g. front and back office, where unforeseen pressure points in business operations may occasionally arise, etc. However, the occupational position that a PLKS worker is assigned to occupy permanently must meet the qualification, salary and work experience level of a similar employee within the firm or the industry at large. Accordingly, the employer must provide evidence of training provided to all Malaysian and foreign workers to function within the business, including in-house SOPs and training manuals where appropriate.

PLKS workers only in approved sectors and subsector

30. The current policy for allowing PLKS workers in selected sectors should be largely maintained for Peninsular Malaysia, Sarawak and Sabah. Any future considerations for adding or removing sectors will be managed by MOHR on the basis of strict criteria and based on consultations with all relevant stakeholders.

Lift restrictions on frozen subsector

31. The current policy to permit the hiring of PLKS workers in certain services subsector shall be immediately restored. A hiring freeze of FWs had been imposed on these subsectors in the past several years. MOHR will develop a mechanism based on strict criteria for adding

or removing service subsectors after consultations with all relevant stakeholders. The Independent Committee believes there is a strong case for allowing PLKS workers in businesses offering senior citizens services and palliative care.

PLKS workers from approved source countries

32. The current policy in sourcing PLKS workers from selected countries should be largely maintained for Peninsular Malaysia, Sarawak and Sabah. MOHR should consider removing Kazakhstan, Uzbekistan and Turkmenistan from the list as the basis for their inclusion no longer exists. The Independent Committee suggests that Sarawak and Sabah should have a similar list as the Peninsular in the future.

Age limit for PLKS workers

33. The policy on the age limit for eligibility of foreign workers who are new applicants will be maintained at 45 years. For renewal of PLKS purposes, at the time of renewal, the age limit will be 55 years.

Family members and marriage of PLKS workers

34. The policy to prohibit family members of PLKS workers from joining them and the prohibition of PLKS workers from marriage should be reviewed. MOHR should institute a policy that accords with international standards, Malaysia's obligations under CEDAW and domestic law. This policy will also apply in Sarawak and Sabah to new PLKS workers. However, the existing PLKS workers will continue to benefit from the previous waiver from enforcement of this policy.

Employer statutory declaration

35. Employer must periodically make or renew the mandatory Statutory Declaration that it complies with all applicable labour laws, especially those applicable to foreign workers e.g. accommodations, standard employment contracts, IDs, Passports, security bonds, etc.

Policy Recommendations on Details of PLKS System	
1.	Online application and automatic approval based on the sectoral dependency ratio (DR) quota system for PLKS workers
2.	PLKS worker only employed in specified business entity and sector
3.	No limitation on work functions of PLKS worker
4.	Policy on hiring FWs in services subsectors currently subject to a freeze to be immediately restored
5.	PLKS workers from approved source countries to continue
6.	Age limit for PLKS workers – application 45 years; renewal 55 years
7.	Policy on family members and marriage of PLKS workers to be reviewed for compliance with domestic law and international norms

5.3.5 Policy recommendations for PLKS worker enforcement

Subcommittee on enforcement of PLKS workers policies

36. A subcommittee for enforcement affecting PLKS workers is to be established within the Overall Policy Review and Monitoring Committee (OPRM) (chaired by MOHR). It will comprise all regulatory and supervisory agencies for foreign workers e.g. Immigration, MITI/MIDA, Plantations/MOA, NIOSH, SOCSO, CIDB, etc. MOHR should also engage the enforcement authorities of state and local governments to ensure that their enforcement actions are consistent with those pursued by federal authorities. The committee must meet every month to discuss any emerging issues or otherwise review recent trends and developments.

37. The enforcement sub-committee members will review each other's SOPs to ensure consistency in coverage and completeness to safeguard against violations of the foreign worker management policy, Malaysian employment laws, international migrant labour standards, applicable human rights provisions, etc. A primary objective of enforcement activities is to understand the root causes for the existence of undocumented workers and strive to reduce their numbers.

38. The subcommittee will prepare a monthly report for submission to OPRM and onwards to Cabinet (if needed) detailing overall developments in the foreign worker situation and management actions taken. The report is to include enforcement measures implemented, violations detected, corrective actions taken, and future adjustments to measures to reflect lessons learned and to mitigate gaps in enforcement revealed.

39. All regulators must revamp their inspection and investigation processes on foreign workers to support an effective management of foreign workers. For this purpose they must source their information and intelligence gathering from the established online database for management of foreign workers.

Governance and effectiveness in enforcement actions

40. Regulators must play an active role in the governance and evaluation of effectiveness of the system for management of foreign workers. They must prepare monitoring and evaluation reports for submission to the steering or working committees on the work within their mandate on regulating foreign workers. Any issues raised and shortcomings identified in the management of foreign workers should be evidence-based. Suggestions for corrective actions must be agreed and implemented.

41. Regulators must enforce compliance with employment labour laws. They must ensure that employers use standard contracts, not withhold or retain PLKS worker passports, engage in unlawful deductions for employer incurred fees (health, insurance, visa renewal, levy, etc) and other inappropriate outlays, etc.

42. Regulators must strictly ensure that the employer is a legitimate business and in an approved sector for hiring foreign workers. Special attention must be paid to employers that are service outsourcing companies to ensure compliance with employment laws and the foreign workers management system.

43. Regulators must enforce that the fees and charges, established for services and mandatory requirements expected of employers (e.g health, insurance, biometrics, etc) are adhered to. There should be no hidden charges imposed on PLKS workers and that such fees should be paid by the employers as per agreement.

44. Regulators must enforce that authorised recruitment companies comply with the terms of their licence and establish safeguards against bonded labour or forced labour arrangements.

45. Regulators must enforce that employers do not employ undocumented workers. Immigration and the Police must in particular have effective programs to identify and repatriate undocumented workers without undue delay.

Recognition and SOPs in use of PLKS Smart ID cards

46. The online system must have the capability to issue standard digitalized ID cards, including virtual SmartPhone Online IDs sourced from biometric information and the PLKS worker unique ID number stored in the online database. All enforcement officers must give recognition to these Smart ID cards. Enforcement authorities must no longer demand sight of hardcopy IDs like passports whose absence currently constitutes an offence.

Terminate Ops Mega 3

47. The Independent Committee recommends that with immediate effect the current enforcement program designated as Ops Mega 3 should be terminated. The operational objectives under this program are unclear and remain non-transparent with large elements of unreasonable arbitrary actions. This is causing unwarranted distress for employers and foreign workers. They also give rise to huge detention expenses compounded by inflexibility in easing fines for immigration offenses to allow for quick repatriation of detained undocumented workers.

48. The Independent Committee has listed a few policy changes that enforcement agencies should consider as set forth in Box 9.

Policy Recommendations on Enforcement of PLKS System	
1.	Subcommittee on enforcement of PLKS workers' policies
2.	Proper governance and effectiveness in enforcement actions
3.	Recognition and SOPs in use of PLKS Smart ID cards
4.	Terminate Ops Mega 3

Box 9: Proposed Policy Adjustments for Selected Enforcement Agencies

Enforcement Policies for Ministry of Home Affairs

- Accelerate the repatriation of migrants in detention depots and improve the sanitary and health facilities at the depots;
- Foreign workers are to undergo a safety / crime screening process before being allowed to work;
- Establish effective procedures to deal with the exploitation of marriage contracts.

Enforcement Policies for Immigration Department

- Increase enforcement and inspection levels at the border including at airports and entrance points frequented by migrant workers;
- Ensure that Travel Agencies that bring tourists into Malaysia are registered and have valid credentials. They should ensure that tourist have return flight tickets, hotel or lodging arrangements, travel itinerary and source country travel agency detailed information;
- Need to closely monitor tourist visa holders;
- JIM should focus on the causes and circumstances giving rise to the occurrence of illegal migrants and to ease over emphasis of enforcement activities mainly on documented migrant workers
- It is recommended that Key Performance Indicators (KPI) for enforcement agencies set on the basis of number of arrest of illegal immigrants be reconsidered. KPIs should be set using broader and more diverse indicators e.g. programs to educate and deter PATIs;
- The Immigration Department is advised to issue a list of suspected employers or a Black List of employers who violate foreign worker employment regulations.

Enforcement Policies for the Labour Department and Policy Division of MOHR

- Need to re-activate the Employment (Restriction) Act 1968 by incorporating new provisions in accordance with the latest policies regarding the employment of foreign workers;
- Penalize employers who fail to renew the PLKS before the expiry date
- Take decisive legal action against illegal and corrupt recruiting agents;
- Provide similar protection to foreign workers as applied to Malaysians who are involved in accidents at work
- Make more rigorous the monitoring of accommodation facilities provided to foreign workers;
- Review all fees with a view to their standardization that are imposed by the employment agencies or their agents in the source country.

5.3.6 Policy recommendations on recruitment of PLKS workers

49. The policy must be enforced requiring that it is mandatory for the PLKS workers to be on the payroll of the eligible business entity. However, business entities may use licensed recruitment companies to help them recruit, renew the permits of or replace PLKS workers.

50. The policies applicable to the licensing of recruitment companies for foreign workers will need to be reviewed and amended to be consistent with the overall Foreign Workers Management Policy recommendations of the Independent Committee. Eligible employers who are in the service outsourcing business.

51. The Independent Committee recommends that the businesses involved in the outsourcing of labour which are PLKS workers be prohibited.

52. The Independent Committee agrees that the outsourcing of business service functions is a legitimate business model, and thus, businesses can be formally registered to offer outsourced service functions, e.g. gardening, cleaning services, drivers, security/guard services, etc. Such outsourcing businesses are entitled to use PLKS workers so long as the service functions to be performed are in the eligible sectors, e.g. service sectors as security guards, cleaners, drivers, etc. or in construction sector as prescribed by CIDB, etc. However, the PLKS workers must then be on the payroll of the outsourcing company who will be liable for complying with all applicable labour policies and requirements under the Foreign Workers management policy.

53. MOHR will determine what constitutes legitimate outsourced service functions in which PKLS workers may be deployed, following consultations with concerned ministries and agencies, employer and employee representatives and civil society.

Policy for standard employment contracts

54. The employment contracts for all PLKS workers will be standardised. All core components of the employment contract will be similar and variations only permitted to cover the requirements of source country legislation where applicable. The contents of the employment contract must comply with Malaysian employment laws and applicable international norms. The employment contract will in addition also be provided in the language of the source country (official translations).

55. The employment contract will be attested to by the PLKS worker before departure from the source country. This same employment contract will then be attested to a second time and in subsequent occasions at the point when the PLKS is first issued or upon renewal of the PLKS.

56. The employment contract should be both in digital form (mandatory) and in hard copy if needed. A copy must be provided to the PLKS worker in the source country language.

Policy for the length of stay for a PLKS worker

57. The Independent Committee proposes that the duration of stay in Malaysia for a PLKS worker must not exceed 10 years. After 10 years of continuous stay under the PLKS, the worker must return to the source country. After a period of at least 3 months from the date of departure, this same worker is eligible to reapply and return to Malaysia as a PLKS worker provided the worker is below 45 years of age.

58. The PLKS worker will be eligible to receive an employment initially for a duration of two years from the date of first arrival following a clean bill of health from an official formal medical evaluation within 30 days following arrival in Malaysia. The PLKS can be renewed for a further two years each time following a clean bill of health from a medical evaluation. In any case, the PLKS worker must undergo and be declared fit after a yearly official medical evaluation in the first three years of stay in Malaysia for the PLKS to continue to be valid. Thereafter the medical evaluation is to be undertaken every two years consistent with the validity and renewal of the PLKS.

59. The findings from the medical evaluation are considered valid when the evaluation is carried out within 3 months from the expiry date of the prevailing PLKS. Furthermore, the medical evaluation must be undertaken no later than one month before the expiry date of the PLKS. Failure to comply with this requirement will result in a penalty of RM30 a day, to be borne by the employer.

60. The PLKS will be valid and /or issued and renewed only when the annual applicable levy in accordance with the multi-tier levy stipulations are paid in full or in accordance with the quarterly schedule of payments established.

61. Failure to renew the PLKS resulting in a lapse in its validity will incur a penalty of RM30 a day to be borne by the employer. Failure to renew the PLKS beyond one month of its expiry date will result in the cancellation of the PLKS and trigger the repatriation requirement and process of the foreign worker in question. MOHR in coordination with other concerned ministries and agencies will develop a mechanism to permit a variation to this repatriation policy based on defined circumstances, e.g. deliberate worker abuse by not renewing PLKS.

Policy recommendations for PLKS worker safety net

Accident and Healthcare Insurance

62. The physical and mental health of foreign workers is a critical issue that needs to be addressed in a comprehensive manner. It has been stated that the increase in the number of foreign workers has led to the emergence of new diseases and the re-emergence of some diseases that had been eradicated or that have been on the verge of eradication. The costs of treatment for FWs have been significantly increased due to the government policy of charging the full fee without any rebate or subsidy.

63. The Committee recommends that foreign workers, refugees, asylum seekers and stateless persons pay the same rate as Malaysian in the public healthcare system.

64. Occupational Safety and Health Measures should be improved across the board for all workers, targeting foreign workers who seem to be afflicted by accidents more often. Enhanced training and support should be provided to employers and workers in OSH processes and procedures. Breaches of OSHA should be dealt with in an effective and meaningful manner to protect vulnerable foreign workers.

65. The Independent Committee welcome the government's commitment to enhance protection for foreign workers. The government has announced that the Workmen's Compensation Act 1952 will be abolished so that Malaysian and foreign workers in the country are afforded equal work place protection.

66. In addition, Malaysia has recently ratified the Equality of Treatment (Accident Compensation) Convention 1925 (No. 19) and Conference Committee on Application of Standards under the International Labour Organisation.

67. Accordingly the government has declared that beginning January 2019, employers who hire foreign workers with valid documents including expatriates must register these workers with SOCSO and contribute to the Employment Injury Scheme under the Employees Social Security Act 1969. Benefits under this scheme include Medical Benefits, Temporary Disablement Benefits, Permanent Disablement Benefits, Constant – Attendance Allowance, Dependant's Benefit and Rehabilitation and Repatriation Cost including funeral expenses. The benefits will not include coverage provided by the Invalidity Pension Scheme. The SOCSO Scheme in the present form will not cover hospitalisation and medical expenses for matters that do not arise from the workplace or in the course of travelling to and from work.

68. It is recommended that an Insurance Scheme for Medical expenses outside the SOCSO Scheme be introduced for foreign workers. The scheme should also cover outpatient treatment. The Committee recommends that the employers should pay for this coverage. Access to EPF Scheme and Employment Insurance Scheme (EIS)

69. The Independent Committee recommends that it should be mandatory for employers and PKLS workers to participate in the Employers Provident Fund (EPF) scheme or similar pension saving-type funds. This is particularly relevant where the PLKS worker duration of service may potentially be up to 10 years or beyond. The Committee recommends that the contributions by foreign workers and employers be at the same rate as paid by Malaysian workers and employers for Malaysian workers.

70. The Independent Committee further recommends that foreign workers be included in the Employment Insurance Scheme (EIS)

71. The Independent Committee notes with concern the recent proposal to deduct 20% of the foreign workers wages and for the said sum to be channelled to SOCSO. The deducted sum would be returned to the foreign workers when they leave Malaysia. The ostensible reasons stated are to ensure that foreign workers will have savings to be taken back when they have completed their contract work here; and to prevent foreign workers from absconding. This proposal would be discriminatory to foreign workers vis a vis Malaysian workers who would not be subjected to the same deduction to ensure savings and to prevent absconding.

Portability of SOCSO, EPF benefits and payments

72. The global Compact on Migration to achieve its goal of “safe, orderly and regular migration” has proposed several actionable commitments including calling upon states to “establish mechanism for the portability of social security entitlements and earned benefits. The Independent Committee recommends that as the Government has proposed that foreign workers be covered under the SOCSO Scheme and the Committee has proposed that the EPF

also be extended to foreign workers (see paragraph 69 above) it would be imperative for MOHR to establish the necessary requisite mechanism for the portability of social security and other worker safety net entitlements to be applied to foreign workers.

73. The Independent Committee is of the considered view that its recommendation that all foreign workers and employers contribute to the Employees Provident Fund (EPF) would achieve the stated objectives for the proposed salary deductions that is being considered by the NLAC. Therefore the Independent Committee is of the view that the proposed salary deductions of foreign workers as proposed to the NLAC is not necessary and should be discarded.

Worker accommodations

74. The Independent Committee urges the government to immediately act on its intention to pass new legislation to better regulate decent accommodations and housing to be provided to all workers, including foreign workers.

Policy Recommendations on Recruitment of PLKS Workers	
1.	Only businesses involved in outsourcing services functions should be allowed to hire PLKS workers on their payroll
2.	Businesses involved in the outsourcing of labour using FWs to be prohibited
3.	PLKS workers must have standard employment contracts
4.	The length of stay for a PLKS worker will be 10 years, with further extensions subject to qualifying conditions
5.	PLKS will have worker benefits and safety net covering healthcare, accident insurance, provident fund (EPF), unemployment insurance (EIS) and proper accommodation
6.	Social Security and other worker safety net benefits should be portable

5.3.7 Policy recommendations for a PLKS workers complaints mechanism

75. It is strongly recommended that a formal online complaints component be established within the single online Application and Approval System. Filing of complaints through this online mechanism will ensure that confidentiality of the worker or other stakeholders reporting any grievance will be protected. At the same time, the online standardised complaint form would be simple but detailed enough to ensure that sufficient information is provided to assess the veracity of the complaint without disclosing the identity of the complainant.

76. The online complaint mechanism should be made available on dedicated computers in the employments service centres of MOHR, SOCSO, JobsMalaysia and other public places where feedback is solicited. They should be available also in the main languages of the foreign workers.

77. Together with the complaint mechanism, consideration must be given to procedures that allow the PLKS worker or any foreign worker due process and legal support when dealing with a work related grievance. A PLKS should not be cancelled to trigger repatriation

and thereby permit the foreign worker the opportunity to complete the legal process to seek redress for any grievance formally filed.

78. A monthly report on the main categories and types of complaints received should be published as part of this online complaint mechanism. In addition, a summary of the actions taken to mitigate or resolve the complaints raised should be provided.

Policy Recommendations on Complaints Mechanism for PLKS Workers	
1.	Online complaints component established within foreign worker management system
2.	Accessibility and confidentiality of complaints mechanism to be assured
3.	Periodic reports on online complaints received and actions taken to be prepared
4.	PLKS worker should be permitted to stay to seek redress for work related grievance and not automatically repatriated

5.3.8 Policy recommendations on obligations applicable to source countries and MOUs on PLKS workers

79. MOHR must establish a formal consultation process with relevant Malaysian stakeholders for each bilateral MOU to be negotiated or reviewed for amendments. The government must insist that this consultation process be practiced by source country authorities as well.

80. The Independent Committee recommends that the core contents of the bilateral MOUs with each source country should have standardised coverage and definitions.

81. MOUs should include provisions to prohibit mandatory use of selected and monopolistic service providers for recruitment and pre-departure training of prospective PLKS workers in source countries.

82. MOUs should include a detailed list of essential source and destination country recruitment and medical costs. MOUs must include a clear statement that all recruitment related costs (except for personal items, e.g. passport fees, clothing, etc.) must be borne by Malaysian employers.

Policy Recommendations on MOUs with source countries of PLKS workers	
1.	Consultation process with relevant Malaysian stakeholders on MOUs mandatory. Should also require source country to have similar consultations
2.	Core contents of the bilateral MOUs should be standardised
3.	MOUs should include provisions to prohibit mandatory use of monopolistic service providers for recruitment and pre-departure training processes
4.	MOUs should include a detailed list of essential source and destination country recruitment and medical costs
5.	MOUs must include clear statement that all recruitment related costs must be borne by employers

5.4 Policies for undocumented foreign workers

83. In Malaysia, overstaying the stated period on the PLKS (for foreign workers) and the employment pass (for expatriates) is considered an offence. Such a worker in Malaysia is designated as an undocumented worker which refers to a foreign worker without a valid work permit. A PLKS is also invalidated if the worker changes without authorization the employer or the designated sector for work and will be thereafter categorized as an undocumented worker.

84. In this report as clarified in Box 1 above an undocumented worker maybe: 1) a "foreign worker" whose work permit has expired or become invalidated but choose not to be repatriated; 2) a "foreign worker" who has chosen to abscond for a variety of reasons, e.g. changing employers or sectors, debt bondage, mistreatment, etc.; 3) a person who has overstayed or violated the conditions of the tourist visitor pass and seek work; and 4) a person who has crossed the international borders into Malaysia other than through an official entry point and now seek work.

85. Studies in the United States show that the legalization of undocumented workers tend to raise national income levels over time.⁷ In Spain, a study showed that legalizing undocumented workers leads to an increase in fiscal revenue.⁸ This same study also found that such an action raised the wage level of the legalized foreign worker and that of the highskilled citizens, but had negative effects on equivalent low skilled citizens.

86. Other studies in general find that legalizing undocumented workers tend to lower the unemployment rate of low-skilled citizens and increase the income of citizens as a whole. In contrast, strong initiatives to detain and deport undocumented workers and the sharp tightening of border control measures are associated with increases in the unemployment rate of low-skilled citizens.⁹

87. The evidence is inconclusive for the general claims that the presence of undocumented foreign workers and the high reliance on foreign workers cause a lowering of the wage level and the stealing of jobs from citizens. Instead, what is confirmed is that countries that rely on migrant workers require the unskilled foreign workers to fill the undesirable 3D jobs which are unattractive to local workers regardless of the wages on offer. In other words, undocumented foreign workers take the jobs that no one else wants. According to Borjas George (2013):¹⁰ "The willingness to take undesirable jobs is what gives undocumented foreign workers their employment."¹⁰

⁷ Robert Lynch and Patrick Oakford : "The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants" March 20, 2013, Center for American Progress; Edwards, Ryan; Ortega, Francesc. "The Economic Contribution of Unauthorized Workers: An Industry Analysis". Regional Science and Urban Economics. Volume 67, November 2017.

⁸ Monras, Joan; Vázquez-Grenno, Javier; Elias, Ferran: "Understanding the effects of legalising undocumented immigrants", 15 May 2018, VOX CEPR Policy Portal.

⁹ Chassamboulli, Andri; Peri, Giovanni: "The labor market effects of reducing the number of illegal immigrants". Review of Economic Dynamics, October 2015.

¹⁰ Borjas, George: "The Labor Demand Curve is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market". The Quarterly Journal of Economics. Volume 118 Issue 4, November 2003 . Hanson, Gordon H. (April 2007). "The Economic Logic of Illegal Immigration. Report to the Council on Foreign Relations" Council on Foreign Relations (CSR No. 26). April 2007.

88. Overall, many policy makers and economists see large economic benefits stemming from fostering policies for greater mobility of migrant workers. In particular, they emphasize that countries should shift emphasis of policy from limiting the entry of migrant workers to better management of the deployment of foreign workers. Such a paradigm moderation would facilitate the avoidance of the undesirable effects from the abuse of documented and undocumented foreign workers, the operations of human traffickers and the sufferings from illegal cross-border movement of migrant workers.

5.4.1 Overall policy for managing undocumented foreign workers

89. The Independent Committee recommends that a new far-reaching comprehensive but conditional amnesty program for regularization of undocumented workers be introduced and jointly managed by MOHR and MOHA. The new regularization program must begin even as preparations are being made for an integrated online undocumented foreign worker application and approval system and database within the comprehensive foreign workers management framework. This new amnesty program (CLEAR2019) will be open for the participation of undocumented workers for regularization over a 12-18 months period following the effective operating date.

90. The proposed new amnesty program will not and must not require the use of third party service providers. All procedures and processes should be undertaken jointly by MOHR and MOHA and, when available, online through the components and related modules to be developed as part of the FWMS.

91. The online CLEAR2019 system will have two components. One component will allow for employers to go online to regularize undocumented workers. A second component will allow the undocumented workers to register themselves and participate.

5.4.2 CLEAR2019 for employers

92. Employers who have successfully secured approvals for obtaining new or replacements for foreign workers through the single online system may recruit undocumented workers to fulfil their requirements. Such undocumented workers may currently be already informally employed by the same employer or are known to the employer from its contact network.

93. The details of the mechanism and procedures for the regularization of the undocumented worker will depend on the nature of the undocumented worker concerned and are set forth in the subsections below.

Regularizing undocumented worker who previously held a PLKS

94. An undocumented worker who previously held a PLKS but has, with acceptable mitigating circumstances, overstayed or switched employer or sector without authorization, or otherwise absconded; must be registered by the employer. The acceptable mitigating circumstances are clearly defined to include mistreatment and abuse or misrepresentation of the employment agreement by a previous employer.

95. This undocumented worker must be below 45 years old on the date of registration. Where available, this process will be undertaken using the corresponding segment of the online system where all previous details of the former PLKS granted will be recorded and verified (in so far where the previous records are available). If previous complete records are not available, a new system-generated ID and record will be generated. This undocumented worker is designated PATI-REG1.

- a. The registered PATI-REG1 must bear the liabilities and pay all penalties and fees associated with violation of the employment pass laws. As an incentive, the Committee recommends that these penalties may be waived or a discount offered.
- b. Thereafter, such a PATI-REG1 will be subject to all health, security and normal requirements of a regular PLKS worker. As for a regular PLKS worker, the cost for these procedures will be borne by the employer. The total duration of stay in Malaysia permissible under the new PLKS issued will take into consideration the period of stay under the previous PLKS.
- c. The identified PATI-REG1 who do not meet the stipulated requirements, including the conditional acceptable mitigating circumstances and the procedures stated above will be processed for repatriation to the source country. To the extent that the original employer of the PATI is still liable, this employer will cover the travel cost of the repatriation.
- d. After a period of three months this repatriated PATI-REG1 who have previous arrangements with a qualified employer will be allowed to re-enter Malaysia as a PLKS worker following the established online procedures.

Regularizing undocumented workers as persons who have overstayed or violated the conditions of their tourist visitor pass and seek work.

96. An undocumented worker who has overstayed or violated the conditions of the tourist pass will face more stringent and stricter conditions and must be registered by the employer. Such an undocumented worker would be designated as PATI-REG2, must be below 45 years old on the date of registration and must be from an approved source country. Where available, this process will be undertaken using the corresponding segment of the online system where all details and information required of a PLKS worker will be captured. A system-generated ID and record will be generated.

- a. The registered PATI-REG2 must bear the liabilities and pay all penalties and fees associated with violation of the tourist pass laws. As an incentive these penalties may be waived or a discount offered.
- b. The registered PATI-REG2 must thereafter return to the source country, and after a period of three months will be allowed to enter Malaysia as a PLKS worker following the established online procedures.
- c. The PATI-REG2 will be subject to all health, security and normal requirements of a regular PLKS worker. As for a regular PLKS worker, the cost for these procedures will be borne by the employer. The total duration of stay in Malaysia for the PLKS issued to PATI-REG2 where all requirements are met will be the same as applied to a normal PLKS worker, i.e. no more than 10 years in total.
- d. The identified PATI-REG2 who do not meet the stipulated requirements and procedures stated above will be processed for repatriation to the source or origin country. The government of the origin country will be asked to assist the PATI-REG2 in the travel costs in case of financial need.

Regularizing the undocumented worker as persons who crossed the international borders into Malaysia other than through an official entry point and now seek work.

97. An undocumented worker who has crossed the international borders into Malaysia other than through an official entry point and now seek work will face more stringent and stricter conditions and must be registered by the employer. Such an undocumented worker would be designated as PATI-REG3, must be below 45 years old on the date of registration and must be from an approved source country. Where available, this process will be undertaken using the corresponding segment of the online system where all details and information required of a PLKS worker will be captured. A system-generated ID and record will be generated.

- a. PATI-REG3 must bear the liabilities and pay all penalties and fees associated with the violation of entering Malaysia illegally. As an incentive these penalties may be waived or a discount offered.
- b. The registered PATI-REG3 must thereafter return to the source country, and after a period of three months will be allowed to enter Malaysia as a PLKS worker following the established online procedures.
- c. PATI-REG3 will follow the normal recruitment procedures for a PLKS worker and be subject to all health, security and normal requirements of a regular PLKS worker. As for a regular foreign worker, the cost for these procedures will be borne by the employer. The total duration of stay in Malaysia for the PLKS issued to PATI-REG3 where all requirements are met will be the same as applied to a normal PLKS worker, i.e. no more than 10 years in total.
- d. PATI-REG3 who do not meet the stipulated requirements and procedures stated above will be processed for repatriation to the source or origin country. The government of the origin country will be asked to assist the PATI-REG2 in the travel costs in case of financial need.

5.4.3 CLEAR2019 for employees

98. An undocumented worker can also independently apply to participate in CLEAR2019 to regularize the employment status. Such an undocumented worker would be designated as PATI-REG4 and can register, where available, using the component of the online system designed for this purpose. MOHR should make provisions to allow undocumented workers access to the online registration at MOHR employment centres. For registration to be successful, the undocumented worker must be below 45 years old on the date of registration and must be from an approved source country.

99. PATI-REG4 would follow almost similar procedures as set out for PATI-REG1 (must meet conditional acceptable mitigating circumstances) or REG2 or REG3 (they will face more stringent and stricter conditions), depending on whether the undocumented worker is a former PLKS worker, violated the tourist pass or crossed the border illegally.

100. A registered PATI-REG4 need not already have a job or offer of a job. In that case, following the registration, the PATI-REG4 has up to 6 months to find an employer and comply with all the PLKS requirements. The PATI-REG4 who do not meet the stipulated requirements and procedures will be processed for repatriation to the source or origin country. The government of the origin country will be asked to assist the PATI-REG2 in the travel costs in case of financial need.

5.4.4 Supplement to CLEAR2019

101. CLEAR2019 will also provide for any undocumented worker to voluntarily register themselves to benefit from repatriation back to their country of origin. They will be processed quickly for repatriation to the country of origin. The Independent Committee recommends that all offences resulting in liabilities, punishment, penalties and fees associated with the violation of Malaysian immigration laws and regulations should be waived or discounted. The government of the origin country will be asked to assist the PATI-REG2 in the travel costs in case of financial need. Repatriation must take place expeditiously without undue bureaucracy.

5.4.5 Enforcement actions to reduce the numbers of undocumented workers

102. On the basis of intelligence derived from the online foreign worker database, e.g. the location where foreign workers are concentrated and the economic sectors and subsectors they are frequently found in, enforcement authorities will step up action to identify and detain undocumented workers and keep their numbers low. In particular, enforcement actions should focus on undocumented workers who are self-employed and engaged in trading and similar businesses.

103. New regulations are to be enacted to impose or otherwise increase penalties on employers that knowingly employ undocumented workers, including for violations under the separate legislation covering Employment, Immigration, Health, Construction, etc.

104. All previous programs to regularize undocumented workers will first be suspended and thereafter terminated following due process and repayments of outstanding fees collected.

Policy Recommendations for managing undocumented workers	
1.	CLEAR2019 a new far-reaching comprehensive amnesty program for regularization of undocumented workers
2.	All procedures and processes under CLEAR2019, when available should be undertaken online and no use of third party service providers be allowed. Pending deployment of the single integrated online system, the new amnesty program should proceed using existing systems.
3.	Separate CLEAR2019 for employers and CLEAR2019 for employees. There will also be a supplementary component for undocumented workers who want to benefit from repatriation with penalties waived or discounted.
4.	Step-up enforcement actions to maintain the numbers of undocumented workers low

5.5 Policies for expatriates

105. There are several channels for firms to apply for expatriates to work in Malaysia. Agencies involved in the application and approval processes include JPA, BNM, Magic, IRDA, EC SER, MDEC, TalentCorp and MIDA. The foreign worker identified and approved is then forwarded to the Immigration Department (JIM) for further action. For example, MIDA is one of the approval and regulatory authorities for the expatriate quota application system. MIDA oversees expatriates for deployment as skilled foreign workers in the

manufacturing and manufacturing related services sector of Malaysia. Approval for bringing in expatriates is decided within MIDA by the Jawatankuasa Teknikal Pegawai Dagang (JTPD) established in 2010.

106. The Jawatankuasa Inspektorat (JKI) and Jawatankuasa Ekspatriat (JKE) within the Expatriate Services Division of the Immigration Department of Malaysia (EDD-JIM) manage the processes leading ultimately to issuance of Employment Passes and Professional Visit Passes.

107. Expatriate employment passes are granted to high skilled foreign workers who have the specialized skills and work experience required by industry which are absent in Malaysia or which cannot be supplied in sufficient numbers by Malaysian workers to meet demand.

108. Three categories of Employment Passes are issued to expatriates on the basis of salaries paid.

- Employment Pass I (EPI) – issued to expatriates with salaries of RM10,000 a month and above;
- Employment Pass II (EPII) - issued to expatriates with salaries of RM5,000 to RM9,999 a month;
- Employment Pass III (EPIII) - issued to expatriates with salaries of RM3000 to RM4,999 a month;

109. In the program managed by TalentCorp, a Residence Pass – Talent (RPT) is issued. Unlike EPs this pass has a duration of 10 years and need not be tied to any specific employer.

110. MIDA only approves expatriates with monthly salaries in excess of RM5,000. The duration of the EP for term posts are for up to 5 years and renewable. For key posts the EP can be held indefinitely.

111. ESD also issues Professional Visit Passes (PVP) for a maximum stay of 12 months to undertake specific tasks and projects.

112. Through October 2018 some 105,436 expatriates were recorded. In 2017 there were 134,175 expatriates with 49% holding EPI passes, 40% with EPII passes, 9% with EPIII and 1% with RPT. The fastest growing category of expatriates has been EPIII, which grew by a massive 269% in 2017 and this category was only first established in 2016.

5.5.1 Issues and problems

113. The agencies involved in the expatriates application and approval process and ESD each have differing standard operating procedures (SOPs) and the corresponding differing process flows. This has caused some confusion which on the whole may be considered manageable because until recently application volume has been manageable. There are however some inefficiencies because some processes continue to be manual while others have moved online.

114. Application charges and fees also differ between the agencies and the processing times are not common. Differing SOPs give rise to risks that players may manipulate the system and engage in fraudulent practices. The separate systems do not allow for collection of standardized socio economic, qualifications and skill types information for expatriates. Data on entry and exit of expatriates are not collected systematically, consistently and shared. There is a lack of coordination in supervision, leading to overlaps in enforcement actions.

115. The recent expansion in the numbers of EPIII expatriates indicates that firms are hiring expatriates to fill lower level jobs not commensurate with the qualification required of skilled expatriates. Moreover, the occupations filled by the EPIII expatriates appear to be those where sufficient qualified Malaysians may be available to satisfy the needs of industry.

5.4.2 Policy recommendations for expatriates

Overall Policy

116. The Independent Committee recommends that, in line with the recommendation for a single governance authority, the regulation and management of expatriate policy be coordinated centrally by MOHR through the OPRM.

Online applications and approval system

117. MOHR working with the current agencies and ESD in a subcommittee administering the expatriate program, must design a module for management of expatriates to be integrated into the single online application and approval system. Information from the expatriate module will feed into the central database of the system. With the online system the SOP of all agencies with oversight and regulatory roles will be standardised. An algorithm for approval including the use of a dependency ratio quota mechanism (similar to the PLKS worker multi-tier levy system) will be developed and built into the module to remove as much as possible discretion in the decision making process for approvals. In particular, the criteria for determination of the need for the expatriate and the strategic importance of the industry asking for such skilled professionals within the government's growth objectives will need to be identified and quantified within the decision algorithm.

118. The various employment passes to be issued to expatriates will be in a digital form and transmitted online. The renewal, extension and repatriation processes of the employment passes will also be undertaken online.

119. The online expatriate module will have the capability to issue a standard digitalized ID card specific for expatriates, including virtual Smart online IDs sourced from biometric information and the unique ID number for each expatriate stored in the online database. All enforcement officers must give recognition to this expatriate Smart ID cards. Enforcement authorities must no longer demand sight of hardcopy IDs like passports which absence currently constitutes an offence.

120. The need for EPIII will be reviewed or better enforced to ensure that these expatriates do not compete with Malaysian high-skilled and semi-skilled workers.

Enforcement actions

121. The expatriate subcommittee will manage enforcement and evaluation actions to confirm compliance of the employers with the employment and other applicable laws, regulations, guidelines and good practices.

122. The expatriate subcommittee will seek to develop a user friendly accessible complaints mechanism for expatriates. They will prepare quarterly reports on issues and shortcomings raised affecting expatriates as well as the mitigating policies taken and envisaged. These reports will be disseminated to the general public.

Policy Recommendations for managing expatriates	
1.	Regulation and management of expatriate policy be coordinated centrally by MOHR through the OPRM.
2.	OPRM to develop online system integrated to NFWMS for expatriate application and approval process as well as administration.
3.	Online module will have capability to issue standard digitalized Smart ID cards for expatriates.
4.	OPRM will manage enforcement actions

5.6 Policies for foreign domestic workers

123. Some bilateral MOUs guide Malaysia's foreign domestic workers' (FDW) policies with the source countries. Malaysia is not a party to the ILO Convention 189 which outline the employment laws, working conditions, and social protection mechanism for FDWs. Malaysia does not recognize the status of domestic workers. As of October 2018, there were 127,373 FDWs with 90,118, or 70.17% from Indonesia and 32,997 or 25.91% from the Philippines. From 2015 to October 2018, it was reported that 23,520 FDWs fled from their employers of which some 16,304 were Indonesian FDWs.

124. Currently the management of the process for deployment of FDW is under the purview of the Immigration Department of Malaysia (JIM). The FDW is also provided with a PLKS. There are two methods for the employer when seeking to hire a FDW. The first involves a direct application to JIM and the second method is through the Maid Online System (SMO). Operations also go through the Foreign Workers Centralized Management System (FWCMS). Applications can be made directly by the employer or a registered private employment agency on behalf of an employer.

125. For the first method, the process differs somewhat if the FDW is from Indonesia. On the basis of an MOU with Indonesia in 2011, the application for an Indonesian FDW must first be cleared by the Labour Department of MOHR (JTK) before the process can be completed by JIM. JTK will verify that the employer complies with Malaysian employment laws before providing clearance.

126. For the second method, the SMO application by the employer can be made for a FDW who is already in Malaysia, having entered the country with a tourist visitor's pass.

5.6.1 Issues and problems

127. The SMO gives rise to many risks. Source countries are unhappy because this undermines the programs they have developed to ensure protection for the FDW when they work abroad. With SMO source country authorities will not be able to keep track of citizens who venture abroad without appropriate training and briefing on their contractual rights and the basic knowledge for undertaking the tasks of their prospective jobs.

128. FDW coming through SMOs may become victims of human smugglers and traffickers that subsequently leave the FDW in debt bondage or forced labour situations.

129. The difference in procedures as applied to an Indonesian FDW gives rise to inequality of treatment of FDWs from other countries. Allowing private employment agents to source FDWs may give rise to exploitative, debt bondage and forced labour situations.

130. All domestic workers, including FDWs, are excluded from many of the basic labour protection under the Employment Act (section 59(1)), enjoyed by other workers, e.g. work hours, rest days, continuous rest periods, accommodation, minimum wages, worker safety net, etc

131. FDWs are often subject to exploitation of long working hours, underpayment and overworked conditions. There is also an element of unpaid wages and sexual harassment. FDWs also face unlawful deduction of fees and debt bondage created by recruitment agents.

132. Both Indonesia (2009) and Cambodia (2011) have in the past suspended their nationals from being deployed as FDWs in Malaysia, because of reports of abuse and mistreatment of these workers.

5.6.2 Policy recommendations for FDWs

Overall policies

133. MOHR should consider promulgating a Domestic Workers Act to provide protection for all Malaysian and foreign domestic workers. Pending enactment of such an Act, MOHR could put forward amendments to the Employment Act, including those applicable to Sarawak and Sabah, to ensure that domestic workers and FDWs in particular, are reasonably fully and equally covered as is the practice for other occupations. Malaysia should consider becoming a party to the ILO Convention 189 for domestic workers and its Protocol.

134. MOHR working with other stakeholders should aim towards having MOUs with all source countries for FDWs. These MOUs should be standardised with respect to predeparture health checks, basic training in childcare, handling household chores, communication and the rights of the FDWs. They should also include a standard employment contract with segments containing provisions for workhours, rest periods, periodic contacts with FDW family members, freedom of movement and mechanisms for filing complaints.

135. The MOU should also have a list of agreed procedures to be followed, e.g. bio-metric, health check, training, etc. The contract must also state that all reasonable costs are to be borne by the employer, except for personal items, etc. passport fees, clothing, etc.

Online system and database

136. MOHR working with other stakeholders, through a subcommittee governance structure, are to develop a module for the FDW process to be integrated into the online application and approval system and database.

137. All the FDW processes should be undertaken online, to reduce and even eliminate the need for the services of employment agencies in the source country and in Malaysia.

138. The online FDW module must have similar capability (like for other PLKS workers) to issue standard digitalized ID cards specific to FDWs, including virtual Smart online IDs sourced from the biometric information and the unique ID number for each FDWs stored in the online database. All enforcement officers must give recognition to this FDW Smart ID card. Enforcement authorities must no longer demand sight of hardcopy IDs like passports which absence currently constitutes an offence.

Enforcement actions

139. MOHR will lead in managing the FDW process in coordination with JIM. MOHR will develop enforcement actions involving coordination between JTK and JIM to ensure that employers comply with Malaysian employment and other applicable laws, regulations, guidelines and good practices. The FDW subcommittee will prepare periodic reports on evolution in the FDW space and follow up on problems that may occasionally arise. For this purpose, JIM and MOHR must have a formal mechanism to engage with civil society organizations and other interested parties involved in safeguarding the welfare and wellbeing of household workers, including FDWs.

140. The FDW subcommittee will manage enforcement and evaluation actions to confirm compliance of the employers with the employment, the Domestic Workers Act when enacted and other applicable laws, regulations, guidelines and good practices.

Complaints mechanism

141. The FDW subcommittee will seek to develop a user friendly accessible complaints mechanism for FDWs where their confidentiality will be safeguarded. They will prepare quarterly reports on issues and shortcomings raised affecting FDWs as well as the mitigating policies taken and envisaged. These reports will be disseminated to the general public.

Policy Recommendations for managing foreign domestic workers	
1.	A Domestic Workers Act should be enacted. Pending this Act, MOHR to amend Employment Act to ensure that domestic workers and FDWs in particular are reasonably fully and equally covered as for other occupations. Malaysia should accede to ILO Convention 189
2.	MOHR should aim to have MOUs with all source countries for FDW
3.	The FDW subcommittee should develop the FDW online system to be integrated to the NFWMS with capability to issues Smart IDs for FDWs
4.	The FDW subcommittee should develop enforcement mechanisms and also a complaints mechanism for the workers.

5.7 Policies for refugees

142. Currently in Malaysia there are no laws and government administrative procedures to handle asylum seekers and refugees. This is largely because Malaysia is not a party to the 1951 UN Refugee Convention and its Protocol even as 142 countries around the world are parties, including Cambodia and the Philippines within ASEAN.

143. A legal framework is needed to provide protection to individuals and their families who have been forced to flee their country because of persecution, war or violence. Refugees are persons who are unable or unwilling to return to their countries of origin owing to a wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

144. Malaysia does not recognize the status of 'refugees' and does not provide institutionalised protection to them. Malaysia allows asylum seekers to stay on a temporary basis until they return to their countries of origin or are resettled in a third country. Under Malaysian immigration laws a refugee is not formally distinguished from other undocumented migrants and are considered illegal immigrants.

145. There are presently 161,454 refugees and asylum seekers registered with UNHCR in Malaysia as at 30 September, 2018 of which, 116,789 (72%) are men and women who would be able to work, contribute to Malaysia's economy and provide for themselves and their families. Refugees and asylum seekers registered in Malaysia are provided with UNHCR refugee cards as identification documents. However, these IDs are not generally recognised by many Malaysian enforcement authorities, who continuously arrest UNHCR refugee card holders as illegal immigrants. Malaysia is obligated to cooperate with UNHCR in addressing refugee issues on humanitarian grounds.

146. In Sabah, JIM reports for end 2018 that there are 99,056 holders of IMM13 identity documents (ID), of which some 55,000 are determined to be active. As each ID may be associated with more than one person, it is reported that there were 271,589 individuals, of which 104,562 were active individuals and 167,027 inactive persons. In Sarawak there are negligible holders of IMM13.

147. Refugees' lack of official status do not give them the right to work in Malaysia (unlike holders of IMM documents in Sabah). Consequently, like other undocumented workers they seek employment in the informal sector, particularly in services and construction sites.

148. It has been brought to the attention of the Independent Committee that the National Security Council has a policy that allows refugees and asylum seekers to work in the informal sectors of the economy.

149. The Independent Committee has been informed by members of the refugees and asylum communities and NGO's that refugees and Asylum seekers face harassment and are at times detained whilst working in the informal sector of the economy. The Independent Committee calls for the immediate end of these arrests and harassment of refugees and asylum seekers for working.

5.7.1 Policy recommendations for refugees

150. The Independent Committee recommends that Malaysia considers putting in place a proper system to regulate the status and rights of refugees and asylum seekers.

151. This will allow refugees to be formally registered and provide them access to legal employment. They do not then have to be subjected to exploitation from low wages, long work hours and poor working conditions or become victims of human smugglers or traffickers.

152. MOHR working in coordination with JIM, UNHCR and other concerned stakeholders in refugees matter, through a subcommittee governance structure, are to develop a module for incorporating the right to work process of identified refugees into the online application and approval system and database.

153. The online refugee module will have links to UNHCR and must have the capability to issue standard digitalized ID cards specific to registered refugees, including virtual Smart online IDs sourced from biometric information and the UNHCR registered refugee unique ID number stored in the online database. All enforcement officers must give recognition to this refugee Smart ID cards. Enforcement authorities must no longer demand sight of hardcopy IDs like passports which absence currently constitutes an offence.

154. Employers must accept the refugee Smart ID card, following verification, as equivalent to a foreign worker employment pass to allow the refugee to be formally employed. Refugees in possession of this Smart ID card may work in any occupation and sector for which they are qualified or may be offered a job position, in accordance with the Malaysian employment and other applicable laws, regulations, guidelines and good practices.

155. Granting the rights to formal work together with training will allow refugees to become more financially independent while adding value to the economic development of Malaysia. Refugees will then also be provided with proper identification papers that will prevent them from been arrested by enforcement officers for immigration or employment offences. Refugees will benefit from access to basic needs such as healthcare for themselves and their families, as well as education for their children.

156. Further, the Independent Committee calls upon the Government of Malaysia to immediately accede to the 1951 UN Refugees Convention and its Protocol; in line with the manifesto of the present Government.

Policy Recommendations for managing refugees	
1.	Government to allow refugees to be formally registered and provide them with access to legal employment.
2.	MOHR to work with the subcommittee for refugees is to develop a module for incorporating the online foreign worker application and approval system and database.
3.	The online system will have the capability to issue Smart IDs for refugees which can be used like an employment pass by refugees to seek jobs in the formal sector
4.	Government to immediately accede to the 1951 UN Refugees Convention and its Protocol; in line with the manifesto of the present Government.

5.8 Policies for foreign spouses

157. Non-citizen spouses of Malaysian face many problems when seeking employment in Malaysia. The official policy applicable to employment of foreign spouses appears to be aimed at discouraging such persons from seeking paid employment. Foreign spouses of expatriates face less problems when seeking employment in Malaysia but there were complaints of inconsistent procedures. The obstacles and barriers faced by foreign spouses from established policies and non-standard practices include:

- approval for employment is at the discretion of the Immigration Department without transparent processes or standard recourse for appeals or reconsiderations. In this connection, the duration of the spouse visa also gives rise to problems.
- spouse visa (LTSVP – long-term social visit pass) expressly states “any form of employment is strictly prohibited” which restricts the approval process for employment;
- the process for seeking approval for employment is long and with no set determinate schedule for service delivery;
- approval for employment is restricted to the single employer and state of residence. Any changes in the employer and state of work require engaging in the long reapplication and approval process;
- duration of employment approval is tied to the validity of the LTSVP;
- foreign spouse can only seek employment approval after 6 months of marriage;
- approval for employment of foreign spouses is disallowed in certain economic sectors;
- foreign spouses who become widows or are divorcees have faced difficulties in retaining LTSVP status thus affecting their employment status.

158. In view of the tight labour market situation in Malaysia, the Independent Committee proposes a substantial moderation in the current policy applicable to foreign spouses of Malaysians, and applicable to those of expatriates. The approval process for employment should be made more transparent, less onerous and flexible within a facilitative ecosystem. This is especially appropriate and sensible where the foreign spouse possesses high-skilled knowledge-based qualifications with the relevant work experience consistent with the skilled workforce requirements to drive the economy to achieve high income status. Incorporating female foreign spouses into the work force will also serve to augment the female labour force participation rate.

5.8.1. Overall policy applicable to foreign spouses

159. Purposeful policies tantamount to routinely allowing and facilitating the employment of foreign spouses of Malaysian citizens must be put in place. Where appropriate this policy should be extended to or similar for foreign spouses of expatriates.

5.8.2 Governance of the approval process for employment of foreign spouses

160. Approval for the employment of foreign spouses will be vested in MOHR. The approval process will be incorporated into a segment of the online application and approval system. The online system will cater for both foreign spouses of Malaysians and foreign spouses of expatriates.

161. The online system will include a statutory declaration attesting that the official documentation of marriage has been registered with the relevant Malaysian authorities and meet the conditions and requirements for employment application. The following conditions and requirements will be provided in the online system.

- a. The approval for employment will be provided by the online system within the process duration period
- b. Upon approval with a unique identifier the online system will notify the Immigration Department.
- c. The approval for employment will be open ended and will not be linked to the validity of the LTSVP or Expatriate Spouse Employment Pass.
- d. A foreign spouse must record any change in status through the online system. For LTSVP this involves a change in status to widow or divorcee that meets the conditions and requirements for continued employment. For a foreign spouse of expatriates, a change in status to widow or divorcee will result in the employment approval becoming invalid. In any case, the employment approval will become invalid if the change in status involves the foreign spouse leaving Malaysia permanently.
- e. In the future, upon meeting all the conditions and requirements as established for residing in Malaysia, the Immigration Department is to issue a LTSVP or the Expatriate Spouse Employment Pass only with the following endorsements: "Employment Permitted Upon Official Authorization" The duration and renewal of these residential permits will follow the established guidelines. The LTSVP is to be in digital form and issued online.
- f. The online foreign spouse module will have the capability to issue standard digitalized ID cards specific to a foreign spouse, including virtual Smart online IDs sourced from biometric information and the registered foreign spouse unique ID number stored in the online database. All enforcement officers must give recognition to this foreign spouse Smart ID card. Enforcement authorities must no longer demand sight of hardcopy IDs like passports which absence currently constitutes an offence.

5.8.3 Details in the approval Process for employment of foreign spouses

162. Employment approval granted to a foreign spouse will not be restricted to any employer or location or industry or economic sector or by age. Restrictions will apply for employment in occupations that are designated as sensitive or for security reasons in accordance with the determination of the national security authorities.

163. The established duration between online application and approval for employment for foreign spouse should in principle not require more than 30 work days.

164. A foreign spouse may apply for employment approval without requiring the endorsement of the partner.

165. The current policy providing for employment of foreign spouse to commence after six months of the registered marriage date will continue to apply. However, the application for employment approval may take place during this six months period.

166. The acceptability and genuineness of the documentation submitted for marriage registration will follow the requirements and acceptance of the relevant Malaysian authorities which should be consistent with the determination of the Immigration Department providing the LTSVP or Expatriate Spouse Employment Pass. Similar requirements will apply in documentation for LTSVP change in status to widow or divorcee.

5.8.4. Enforcement matters

167. MOHR in coordination with JIM and the National Registration department will develop the standard operating procedures to verify that the documentation presented to declare the status of being married, divorced or spouse deceased is valid and acceptable to the authorities. This random verification is required to protect the integrity during the application process of the online declaration attesting that the official documentation of marriage has been registered with the relevant Malaysian authorities and meet the conditions and requirements for employment application.

168. The document verification process should be completed within a reasonable time frame, but in any case should not require more than 30 work days. The foreign spouse concerned should be informed that an audit and verification process of the documentation provided is being undertaken. The reasons for rejection of the documentation provided to support the application should be provided and a due process for appeals put in place. The results of these processes will be uploaded using a standardised form into the online database.

169. The Immigration Department in coordination with MOHR and the Police, should develop and undertake a program of random inspections of holders of LTSVP or Expatriate Spouse Employment Pass, to ascertain that they continue to comply with the conditions stipulated to maintain their residence and employment status. Indicators from the online system should be used to monitor the evolution of outcomes under this program and to detect risks of abuse or misuse of the system. The results and findings of the inspections should be uploaded in a standardised format into the online database.

Policy Recommendations for foreign spouses	
1.	Approval for the employment of foreign spouses will be vested in MOHR to routinely allow and facilitate employment
2.	The approval process will be incorporated into a segment of the online foreign worker application and approval system
3.	The online system will have the capability to issues Smart IDs for foreign spouses
4.	Enforcement actions will focus on verification of marriage documents provided

5.9 Foreign students and interns

170. The Immigration Department (JIM) handles entry for foreign students (not registered in Malaysian educational institutions) who are seeking employment as interns or seek to gain practical experience with firms in Malaysia to fulfil academic course requirements. Agencies involved in the application and approval processes include the Ministries of Tourism and of Education, private and public universities, and employers themselves. For example, the Ministry of Tourism will give approval to allow for internship programs at hotels that have been rated 3 stars and above.

171. The foreign students and interns identified and approved are then forwarded to the Immigration Department (JIM) for further action. Those who seek to take part in work activities that do not involve payments of wages or allowances are normally granted a Student Pass. They have a duration of six months and allow the foreign student to work no more than 20 hours a week. Foreign students who are registered for pursuing courses of study and training in Malaysian institutions of higher learning are normally also issued Student Passes that allow them to seek employment for up to 20 hours a week.

172. Those foreign students or interns who are to be paid an allowance or a stipend will be handled by the Expatriate Services Division of JIM. These students or interns will be issued a six month non-renewable Professional Visit Pass (PVP).

5.9.1 Issues and problems

173. The agencies involved in the student application and approval process and the ESD each have differing standard operating procedures (SOPs) and the corresponding process flow are thus also different. This has caused some confusion and has also resulted in the abuse of the system by employers who may not qualify for taking on interns and trainees. There are also inefficiencies because some processes continue to be manual while others have moved online.

174. It is not clear if the current systems and processes allow for the collection of standardized socio economic, qualifications and skill type information for the trainees. Data on entry and exit of trainees are not readily available.

175. It is unknown if enforcement actions are undertaken to assess that employers are genuinely providing the practical training and guidance required by the trainee. We are not aware of evaluations of the effectiveness of the internship or attachment programs undertaken in terms of outcome for trainees.

176. The Independent Committee was informed that some hotels have used large contingents of interns and trainees continuously to fill the positions required. This practice is believed to contribute to lowering labour costs for the hotel as the trainees get minimum emoluments and are also not subject to the other employment requirements under the law, e.g. worker safety and health obligations.

177. Of more concern is that foreign trainees are taking the place of Malaysian workers who should be hired permanently to fill the positions taken up by foreign interns but disguised as training. Excessive reliance on such training arrangement may also result in holding down the

wage levels for the positions where the trainees work. This then give credence to the complaints that foreign workers contribute to lowering overall wage levels.

178. Finally, there is evidence that non qualifying hotels and other businesses have also taken on foreign trainees, who do not hold students passes or PVPs.

5.9.2 Policy recommendations for foreign interns and students

Overall Policy

179. The Independent Committee recommends that the regulation and management of foreign interns and students be coordinated centrally by MOHR through the OPRM.

180. MOHR working with the current agencies involved and ESD through a subcommittee will manage the foreign internships program. A module will be designed for management of foreign interns to be integrated into the single online application and approval system. Information from the foreign intern module will feed into the central database of the system.

181. With the online system, the SOP of all agencies with oversight and regulatory roles will be standardised. An algorithm for approval including the use of a dependency ratio quota mechanism (similar to the PLKS worker multi-tier levy system) will be developed and built into the module to remove as much as possible discretion in the decision making process for approvals. In particular, the criteria for determination of whether a firm (e.g. hotel) is qualified to take part in a structured internship program for interns and the strategic importance of the industry taking interns for prioritised skilled occupations will need to be identified and quantified within the decision algorithm.

182. Similar information to confirm the qualifying course of studies and foreign educational institutions of the foreign intern applicant will be collated and codified in the module.

183. The PVP to be issued to qualifying foreign interns or trainees will be in a digital form and transmitted online. The online module will have the capability to issue a standard digitalized Smart ID card specific for such foreign interns from the biometric information and the unique ID number for each intern stored in the online database. All enforcement officers must give recognition to this intern Smart ID card. Enforcement authorities must no longer demand sight of hardcopy IDs like passports which absence currently constitutes an offence.

Enforcement actions

184. The foreign intern subcommittee will manage enforcement and evaluation actions to confirm compliance of the firms taking part in the structured internship programs. They will also follow up on actions to monitor the activities of foreign interns and evaluate the effectiveness of the internship programs.

Policy Recommendations for foreign interns	
1.	Approval for the employment of foreign interns will be vested in MOHR working with the subcommittee for foreign interns
2.	The approval process will be incorporated into a segment of the online foreign worker application and approval system
3.	The online system will have the capability to issues Smart IDs for foreign interns
4.	Enforcement actions will focus on verification of eligibility of firms and the effectiveness of the structured internship programs

5.10 Stateless persons

185. A 1954 UN Convention governs the Status of Stateless Persons. UNHCR has published a set of guidelines on various aspects of statelessness, including the definition of a stateless person, the statelessness determination procedures, the status of stateless persons, and the prevention of statelessness at birth.

186. The norm on the right to birth registration is established in legal instruments and codified in international conventions. This norm is not only a general right but also an obligation of the state to guarantee all people the right to birth registration and nationality. This reflects the primary role of birth registration in establishing one's legal identity, including citizenship.

187. There is a need to develop a system to ensure that children are registered at or immediately after birth and granted the right to acquire a name as well as a nationality. However, there is still no systematic, coherent, and mutually reinforcing approach to define standards on birth registration at an international level. Neither is there clear guidance for states to implement birth registration which ensures attribution or acquisition of nationality for children.

188. Stateless persons are persons who have no nationality or citizenship under the operation of the laws of any country. In Malaysia there are several groups of people who are described as stateless, the stateless population in Sabah and Sarawak are largely of Indonesian and Filipino descent, some Malaysians of Indian descent, children of refugees and migrants and those born out of wedlock.

189. It is imperative that the government of Malaysia identify and register stateless persons in Malaysia.

190. The Independent Committee recommends that stateless persons residing in Malaysia be given identity documents and be given the legal right to work. Only with the legal right to work can the stateless population be able to lead a meaningful life in Malaysia.

191. Systematic norms (both substantive and procedural) developed through international consultations and good practices must be used as a guide by Malaysia to purposefully and urgently revise and improve the national legislative framework on civil registrations for the current cohort of stateless people held in limbo for such a long period and facing considerable injustices.

Policy Recommendations for Stateless Persons	
1.	Imperative that the government of Malaysia identify and register stateless persons in Malaysia
2.	Develop a system to ensure that children are registered at or immediately after birth and granted the right to acquire a name as well as a nationality
3.	Stateless persons residing in Malaysia should be given identity documents and be given the legal right to work
4.	Urgently revise and improve the national legislative framework on civil registrations for the current cohort of stateless people held in limbo for such a long period and facing considerable injustices

CHAPTER 6: MALAYSIAN LAWS APPLICABLE TO FOREIGN WORKERS AND INTERNATIONAL MIGRANT WORKERS CONVENTIONS OR PRACTICES AND ACCESS TO JUSTICE

6.1 List of Malaysian Laws, Regulations or Guidelines regulating employment

1. Employment Act 1955
2. Sabah Labour Ordinance (Cap.67)
3. Sarawak Labour Ordinance (Cap76.)
4. National Wages Consultative Council Act 2011
5. Workmen Compensation Act 1952 – scheduled to be repealed
6. Anti-Trafficking and Anti-Smuggling of Migrants Act 2010
7. Occupational Safety and Health Act 1994
8. Workers Minimum Standards of Housing and Amenities Act 1990
9. Guidelines on Minimum Standards of Accommodation
10. Employers Undertaking Policy – Declaration
11. Industrial Relations Act 1967
12. Trade Unions Act 1959

6.2 List of Malaysian Laws, Regulations or Guidelines regulating employment passes

1. Passport Act 1966
2. Immigration Act 1959/1963
3. Private Employment Agencies Act 1981, amended Aug 2017

6.3 Occupational and safety health issues

1. Occupational accidents and injuries are concentrated in industries where migrant workers are employed such as construction, manufacturing and agriculture.

Applicable Legislation

- a. Occupational Safety and Health Act (OSHA) 1994
- b. Workmen's Compensation Act 1952 (only for Foreign workers) (to be abolished in 2019).
- c. Petroleum Act (Safety Measures) 1984.
- d. Factories and Machinery Act 1967 (Revised 1974).

2. The OSHA is applicable to all workers including foreign workers in Malaysia however FWs have not been properly protected in the workplace. Undocumented foreign workers are at a greater risk of having accidents due to an increased lack of proper OSH training and support than foreign workers who are documented.
3. It is therefore recommended that:-
 - a. Employers need to ensure that foreign workers safety and health procedures are adhered to.
 - b. Employers should be provided support to improve OSH and working conditions of FWs.
 - c. Foreign workers should be properly trained in OSH process and procedures.
 - d. Regulators should enforce the OSH standards and breaches of OSHA should be dealt with in an effective and meaningful manners

6.4 List of international conventions or norms

1. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 – not party
2. ILO Migration for Employment Convention, 1949 (No 97) – not party
3. ILO Migrant Workers Convention, 1975 (No. 143) – not party
4. ILO Forced Labour Convention (C29) – designated noncompliant for seven consecutive years (2012 to 2018)
5. UN Refugee Convention of 1951 and its 1967 Protocol – not party
6. ILO Fundamental Principles and Rights at Work – not party
7. ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) – not party
8. ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No 19) – not party
9. ILO Protocol to Forced Labour Convention 2014 (No. 29) - not party
10. ILO Domestic Workers Convention, 2011 (No 189) – not party
11. Global Compact for Safe, Orderly and Regular Migration – endorsed
12. Global Compact for Refugees - endorsed
13. CEDAW- Committee on the Elimination of Discrimination against Women - party
14. UNICEF Convention on the rights of Children- Child protection convention - party

International Standing of Malaysia

4. Malaysia has been included in the Trafficking In-Persons Report issued by US-DOL. Malaysia is ranked TIER 2 WATCH LIST; culpable in Trafficking Victims Protection Reauthorization Act (TVPRA) for practicing forced labour and child labour activities. It

implies the Government does not fully meet the TVPA's minimum standards, but is making significant efforts to bring itself into compliance with those standards and:

- a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;
- b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
- c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

6.5 ASEAN migrant issues

5. ASEAN countries have recognized the importance of labour migration in the ASEAN region. In January 2007, ASEAN made a significant move to address the problems of migrant workers by adopting the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The adoption of this declaration followed by the subsequent setting up in 2008 of the ASEAN Committee in the Implementation of the ASEAN Declaration (ACMW) demonstrate ASEAN's commitments to protect the rights of migrant workers.

6. ASEAN countries are to have the following obligations in:

- (1) The protection of migrant workers from exploitation, discrimination, and violence;
- (2) The governance of labour migration; and
- (3) The fight against trafficking in persons.

7. Malaysia signed the ASEAN Promotion of the Rights of Migrant Workers 2017. The ASEAN Consensus stipulates the general principles, fundamental rights of migrant workers and members of their families, specific rights of migrant workers, obligations, and commitments of ASEAN member states. It aims to establish a framework for closer cooperation among member states on addressing migrant workers' issues in the region. However, it is a non-legally binding document.

6.6 Access to justice

8. Access to justice is a basic fundamental human right for all persons regardless of their citizenship or immigration status. Foreign workers face numerous barriers in accessing the administrative legal system provided by the labour laws and the civil and criminal justice systems in Malaysia.

9. The present administrative and legal framework of foreign workers contribute to the inability of FWs to access justice (e.g. the cancellation of work permits in the event of a

dispute with the employers; the need to obtain a Special Pass to pursue claims in the Labour Court or Civil Courts; inability to transfer employment in the event of dispute etc.).

10. Therefore it is imperative that the administrative and legal framework governing foreign workers be reformed to remove the various obstacles that are barriers to FWs accessing justice in Malaysia's administrative and legal system.

11. Therefore the Independent Committee recommends as follows:-

1. That the Labour Department of MOHR be authorised to determine whether a Foreign Worker be allowed to continue to reside and/or to transfer employment in the event of a dispute between the foreign worker and the employer and /or related party to the employment.
2. An appellate process be provided for the affected foreign worker in the event of an adverse decision by the Labour Department of MOHR.
3. The decision of the Labour Department of MOHR should be implemented by Jabatan Imigresen Malaysia (JIM) and JIM should issue the relevant Visa to the affected foreign worker.
4. No employer shall terminate a work permit without the approval from the Labour Department. Any purported termination done without such approvals shall be ineffective.

12. The Independent Committee recommends the Legal Aid Bureau (Biro Bantuan Guaman) and the Yayasan Bantuan Guaman Kebangsaan (YBGK) schemes be made available to foreign workers. The opening of these schemes to FWs will help them to access justice in the administrative and legal system available in Malaysia

6.7 Other issues

Applicable Laws

13. In Peninsular Malaysia, matters about the terms and conditions of work of FWs are regulated by the Employment Act 1955 and the Workmen's Compensation Act 1952, under the administrative jurisdiction of the Labour Department (the equivalent processes applies under Sarawak and Sabah ordinances). Issues regarding relations between employers and foreign workers are covered by the Industrial Relations Act 1967, while labour unions are regulated by the Trade Unions Act 1959. These laws are all overseen and implemented by the Ministry of Human Resources.

Foreign workers right to hold office in trade unions

14. Although the Trade Unions Act 1959 provides that a foreign worker can be a member of a trade union, under the law he/she is prohibited from holding an executive position in trade unions. This prohibition is discriminatory and is in contravention of labour rights.

Foreign workers right to form associations

15. The foreign workers are not allowed to form associations in Malaysia. Associations to represent the interest of foreign workers would play an important role to safeguard the welfare and wellbeing of FWs. It is recommended that foreign workers be allowed to form associations to represent their interest in the country.

CHAPTER 7: NEXT STEPS AND ACTION PLANS.

1. The Independent Committee expects that all the recommendations for a revamp of the national foreign workers management system (NFWMS) will be taken on board by the Government and effectively implemented. The Committee believes the strategic framework underlying the policies to reform the NFWMS is a comprehensive and holistic one. Consequently, the Committee will stress that the government should refrain from an implementation program that is partial in nature, by avoiding or delaying the difficult parts that are likely to face resistance. If undertaken in this manner, the result is likely to be a return to the current directionless and dysfunctional system. The failure to act and demonstrate political will to fully implement the recommended reforms in its entirety is not an option.
2. The Government must secure sufficient buy-ins from stakeholders, manage effectively the stiff resistance and pushback from certain stakeholders and stay the course. From the Committee's interaction with a whole range of stakeholders, we are able to determine that all stakeholders have high expectations that a comprehensive package of policy actions and a new direction is needed for an effective management of foreign workers. The Government is likely to face resistance from powerful vested interests, especially those who have knowingly participated in profiteering, rent seeking, monopolistic and nontransparent administrative arrangements at the expense of government, employers and workers. Resolute actions would be needed to identify any wrong doings and to seek redress.
3. The Independent Committee is aware that a proper set up of the NFWMS to enable it to be fully functional may likely require a protracted period of time. The Committee underlines that immediate steps must be taken to work out an Interim Action Plan so that the current disruptions to the continued and urgent needs of industry for foreign workers may be eased and the production processes of the economy are not adversely affected.
4. Accordingly, immediate steps should be taken to bestow to MOHR sole responsibility for the NFWMS. This will require immediate Cabinet decisions, including the reversal or variations of previous decisions on responsibilities of other agencies in the area of foreign worker policies.
5. It is especially important that a strong implementation team be established by MOHR composed of knowledgeable persons and professionals experienced in foreign worker affairs. As the most complex part of the exercise will be the building of the end-to-end integrated online foreign worker application and approval system, ICT and systems programmers should also be part of the team.
6. The government must provide the needed financial and human resources to launch the new NFWMS which should generate enough momentum and critical mass (the "big push" approach) to propel the accelerated development of the online system. At a later stage, resources will also be needed to enhance enforcement capabilities and procedures.
7. In the interim period, policy measures must also be taken to facilitate the evolution of the NFWMS to its end goal. For example, MOHR should unfreeze the currently frozen service sectors and agree on mechanisms to add sub-sectors where labour shortages are critical, e.g. in old age home care and palliative clinics. MOHR should also begin to establish

processes that will emulate the eventual on line system with the embedded decision algorithms of the multi-tier levy system. This will slowly reduce the functions of the onestop-centre and speed up the application and approval process for foreign workers.

8. The Independent Committee strongly recommends an immediate post-mortem Parliamentary White Paper study on undocumented workers with particular focus on the rehiring vendors abuses, exploitation, and malpractices including illicit collection of fees, appointment of multi-tier brokers, breaches of Immigration and KDN ICT system operations and rampant ministerial approval of quota to non-qualified rent seekers.

9. The government must immediately halt all Operation Mega 3.0 activities. The focus should be on facilitative repatriation activities, a reversal of stringent immigration penalties to be replaced by an amnesty incentive for an appropriate period of time.

10. As another facet of interim measures, MOHR in coordination with other agencies will need to review, examine, evaluate or rectify the contractual agreements with outsourced service providers and concessionaires. The main objectives of the exercise here would be to either re-integrate such functions into the online system to be performed by government or build upon those digitalised functions that are considered to be effective.

11. The Independent Committee recommends that an immediate Transition Committee be formed to begin the process of transferring the management of foreign workers recruitment, retention, and repatriation from MOHA and other ministries and agencies to MOHR. The One Stop Centre (OSC) should be immediately transferred to MOHR.

12. The Independent Committee strongly advocates the development of a rigorous feedback and whistleblower protection mechanism within the FWMS. This would include the workers complaints system. But more importantly, it must involve a formal periodical procedure, to be undertaken by an independent party, to evaluate the effectiveness and impact of the policy measures and administrative measures taken. The findings of this evaluation and recommendations for associated policy adjustments to be made, must be disclosed and disseminated.

13. The Independent Committee strongly recommends that this Report in full should be made public.

APPENDIX I

TERMS OF REFERENCE OF THE INDEPENDENT COMMITTEE

1. **Mandate**

1.1 The Special Task Force on Foreign Workers' Management in Malaysia, in a meeting on 14 August 2018 chaired by YAB the Prime Minister, agreed to set up an Independent Committee on the Management of Foreign Workers (the Independent Committee). The Independent Committee would be headed by a former judge or a high level government officer (e.g. a former Secretary General). The Institute of Labour Market Information and Analysis (ILMIA), Ministry of Human Resources is to be the Secretariat to the Independent Committee. The task of the Independent Committee is to examine the overall policy and management of foreign workers in the country and to make appropriate recommendations to the Government.

1.2 On 29 August 2018, the Cabinet Committee agreed with the decisions made by the Special Task Force on Foreign Workers' Management on 14 August 2018 to form an Independent Committee headed by a former Judge or a former high level government officer with ILMIA acting as the Secretariat.

1.3 The Cabinet Committee, on 19 September 2018, agreed that the Independent Committee will need to review the overall policy and management of foreign workers and that the Committee be given until November 2018 to complete the research and to present its Report, which shall contain its findings and recommendations for improvement, for the consideration of the Cabinet Committee.

2. **Composition**

2.1 The Independent Committee shall consist of twelve (12) members, including the Chairman.

2.2 The membership of the Independent Committee shall consists of a former Judge, academic representatives, the Human Rights Commission (SUHAKAM), the Bar Council, Civil Society Organizations (CSO) and competent individuals.

2.3 The Committee will be headed by the Chairman and Deputy Chairman.

3. **Responsibilities and Duties**

The responsibilities and duties of the Independent Committee are:

3.1 To study and review all policies and procedures related to foreign workers management in Malaysia;

3.2 To prepare and submit proposals and recommendations to the Joint Committee formed by the Minister of Home Affairs and the Minister of Human Resources on the policy and management of foreign workers in Malaysia (the Joint Committee).

4. Operating Procedures

Meetings

4.1 Meetings will be held as and when necessary and to be held confidentially. The quorum of the meeting shall consists of at least three (3) members including the Chairman or Deputy Chairman.

4.2 All meetings are to be chaired by the Chairman.

4.3 In the absence of the Chairman, the Deputy Chairman will act as the Substitute Chairman.

Secretariat

4.4 The Secretariat to the Independent Committee will be the Institute of Labour Market Information and Analysis (ILMIA), Ministry of Human Resources.

Reporting

4.5 The Committee will submit its report to the Joint Committee. Thereafter the Joint Committee shall forward the Report to the Cabinet.

Minutes of the Meeting

4.6 Minutes of meetings will be prepared by the Secretariat and distributed to all Committee members within three (3) working days for their review and to be approved in the next meeting.

Advice on Policy and Law

4.7 The Independent Committee Members may seek information and advice in writing on policy and legislation on any matter relevant to its task from all relevant Ministries including the Legal Advisers of the Ministries.

5. Reports

5.1 The report prepared by the Independent Committee should take into account the views and proposals from employers, employees, employers' unions, trade unions, academics and the public involved during the town hall sessions including views and suggestions submitted via email.

MEMBERS OF THE INDEPENDENT COMMITTEE

The following members of the Independent Committee were appointed by the Prime Minister following the suggestions of the Minister of Human Resources in coordination with the Minister of Home Affairs:

1. Chairman

YBhg. Dato' Seri Mohd Hishamuddin bin Md Yunus
Former Court of Appeal Judge

2. Deputy Chairman

YBhg. Dato' Noor Farida Binti Ariffin
Former Malaysian Ambassador to the Netherlands

3. Members:

i. Dr. Azizah Binti Kassim
Former Professor, Universiti Kebangsaan Malaysia and
Researcher for ISIS

ii. Mr Selvaraja a/l Chinniah
Advocate and Solicitor specialised in Immigration Cases

iii. YBhg. Dato' Sri M Ramachelvan
Bar Council

iv. YBhg. Tan Sri Datuk Seri Panglima Sukarti bin Wakiman
Former State Secretary of Sabah

v. YBhg. Datu Haji Salleh Sulaiman
Former Deputy State Secretary of Sarawak

vi. Mr. Jerald Joseph
Commissioner of SUHAKAM

vii. Mr. Alex Ong Kiang Yen
Founder of Migrant Care Foundation

viii. Mdm. Jenny Ooi
Consultant, Jenny Ooi & Associates

ix. Dr. Vimalaswari K. Ramasamy
Managing Director, HIS Markit

4. Secretary

Mr. Wan Zulkfli Wan Setapa
Director, Institute of Labour Market Information and Analysis (ILMIA)

APPENDIX II

The Single Online Integrated Modules of the Foreign Worker Management System (FWMS)

I. Overall Online System

1. The integrated online system will have separate modules covering PLKS workers, undocumented workers, foreign domestic workers, expatriates, foreign spouses, refugees and students/interns. The online PLKS worker system will be the largest component of the NFWMS.

2. All these online modules will automatically feed all relevant information and data concerning foreign workers into a central database. This database will have the capability of generating “real time” Management reports “on demand” covering all aspects of development and evolution of foreign workers in Malaysia as well as the labour market information concerning foreign workers. This will allow a comprehensive monitoring of the contribution of foreign workers to the economy.

3. Urgent attention and sufficient financial and human resources must be allocated to construct the single online foreign worker management system incorporating the required modules and linked to a centralised data warehouse accessible nationwide for management and monitoring foreign workers (starting with PLKS workers with extension progressively to cover other types of foreign workers). This online system is to be housed in and manage by MOHR.

II. The PLKS Online System

4. The integrated PLKS module will have interlinked segments covering:

- The Application segment:
All eligible legitimate employers who want to employ foreign workers must be registered in this single online application and approval segment and must complete the standardised *online registration form* associated with this system. Standardised information will include especially the number of employees who are Malaysians and those who are non-Malaysians. Employers will be assigned a unique ID number. Employers shall make a standardised Statutory Declaration that they comply with all Malaysian employment and other applicable laws, regulations, guidelines and international norms.
- The Approval segment:
The *Multi-Tier Levy System* agreed Dependency Ratio (DR) formulae will be the primary driver of the approval process. OSCs will be made redundant. Discretion for decision making will be replaced by the online DR decision algorithm. The aim is to provide approvals within 48 hours or earlier.

- **The Pre-Arrival segment:**
Upon approval the online pre-arrival procedures will be activated for hiring of the FW from the source country. This segment will also have capability for handling FW who are already in Malaysia. The system will grant authorised access to the online system at the Malaysian embassy or High Commission Labour Attaché in the source country. Documentation and findings for pre-arrival health screening, associated biometrics to establish the identity of the FW and other requirements will be in digitalized standardised form and uploaded into the single online system and stored in the centralise database.
- **The Arrival segment:**
Upon PLKS FW arrival the online in-country procedures segment will kick in, involving in-country medical check, the issue of the PLKS itself upon payment of the appropriate multi-tier levy and the generation and issuance of a digital and physical Smart ID card. The aim is to have the PLKS issued in digital form and linked to the Smart ID, so that there is no need for a paper stamp in the worker's passport. The Smart ID must be recognised by all enforcement agencies, who shall be provided with the apparatus for reading the Smart ID to access all required enforcement information.
- **The Monitoring segment and database:**
During the stay of the PLKS FW, any changes in documentation information and findings for arrival health screening and subsequent periodical health screening will be uploaded into the single online system and stored in the centralise database.

Biometric information and all the socio economic details of the foreign worker from the previous online segments will be uploaded automatically to the database in a standardised format. This will include the expiry date of the PLKS and the associated date for the next scheduled health screening so that a reminder to employers may be generated by the on-line system.
- **The Renewal and Replacement segments:**
There will be online renewal of PLKS segment and the online replacement segment will be closely linked to the application and approval segments. Online capability will enable all renewal or replacement procedures to be undertaken in a timely and integrated end-to-end manner.
- **The Absconding FWs segment:**
There will be an online segment for reporting and managing workers that run away or abscond. All relevant enforcement agencies like the Police will be provided access or otherwise informed.
- **The Repatriation segment:**
This online segment will facilitate the process to send FWs home who are no longer needed or whose contract have expired or who choose to go home or who have become deceased. The check-out memo will be replaced by this on-line process.

- **FW Complaints segment:**

It is strongly recommended that a formal online complaints segment be established within the single online PLKS Application and Approval System. Filing of complaints through this online mechanism will ensure that confidentiality of the worker or other stakeholders reporting any grievance will be protected. At the same time, the online standardised complaint form would be simple but detailed enough to ensure that sufficient information is provided to assess the veracity of the complaint without disclosing the identity of the petitioner.

- **Levy Payments:**

All levy payments are to be made online via online banking arrangements for deposit to an account to be established by the Treasury of the Ministry of Finance. There will be options to make upfront full payments or quarterly payments. Any claims for reimbursements of levy will also be accomplished online. Confirmations of payment of levy associated with each PLKS worker will be linked to issuance or renewal of the corresponding PLKS.

- **Other Fees and Service payments:**

Online banking arrangements and information for confirmation of payments may also be developed for related services e.g. health screening, PLKS renewal fees, insurance, etc. Payment confirmation will be uploaded online using a standardised format into the database.

- **Existing Systems:**

This comprehensive integrated online system may be developed by building upon components of the existing computerised systems. All current concession contracts with outsourced service providers have to be reviewed to ascertain that they comply with correct procurement practices. If not, they should be renegotiated and retendered based on a single platform solution where the multiple MOHA agencies database and biometric security software may be integrated to support the NFWMS.

- **Selected advantages of this single integrated online system:**

- ▶ Remove inefficiency and bureaucratic unnecessary procedures of the current mix of manual, face-to-face, multiple electronic and discretionary procedures.
- ▶ Allow easy tracking and monitoring of the employment of foreign workers by MOHR, MOHA and all other enforcement agencies authorised for access.
- ▶ Reduce unnecessary cost currently borne by employers and foreign workers.
- ▶ Produce real time management indicators to develop evidence based policy responses to issues and problems that may emerge.
- ▶ Diminish the need for special ministerial approval that give rise to inconsistencies in policy implementation.
- ▶ Increase timeliness, reliability and consistency of information and statistics on foreign workers.

- ▶ Removal of discretion in decision making by the online decision algorithm will eliminate corrupt practices and delays in the approval process.
- ▶ Integration and digitalization of currently outsourced processes and procedures will remove opportunities for corruption, rent seeking, monopoly and market capture from preferential appointment of service providers, and reduce the incidence of cascading and unnecessary increases in fees and charges.

5. The online PLKS system may include the establishment of a portal as the repository of information on the laws, rules, regulations and policies of employment to cover all categories of foreign workers in Malaysia. This portal could serve as the one-stop information centre for all interested parties to access any information regarding foreign workers.

6. The real time database will be managed by MOHR agencies for monitoring and management of foreign workers and their employers.

III. The Undocumented FW Online System

7. The Independent Committee recommends that a new far-reaching comprehensive amnesty program for regularization of undocumented workers be introduced and be integrated as a separate module into the single online foreign worker application and approval system and database within the comprehensive foreign workers management framework. This new amnesty program (CLEAR2019) will be open for the participation of undocumented workers for regularization over a 12-18 month period following the effective operating date.

8. There will be an online segment for integrating selected undocumented workers into the PLKS framework of the online system.

IV. The Expatriate Online System

9. MOHR working with relevant stakeholders in a subcommittee administering the expatriate program, must design a module for management of expatriates to be integrated into the single online application and approval system. Information from the expatriate module will feed into the central database of the system.

10. With the online system the SOP of all agencies with oversight and regulatory roles will be standardised. An algorithm for approval including the use of a dependency ratio quota mechanism (similar to the PLKS worker multi-tier levy system) will be developed and built into the module to remove as much as possible discretion in the decision making process for approvals. In particular, the criteria for determination of the need for the expatriate and the strategic importance of the industry asking for such skilled professionals within the government's growth objectives will need to be identified and quantified within the decision algorithm.

11. The various employment passes to be issued to expatriates will be in a digital form and transmitted online. The renewal, extension and repatriation processes of the employment passes will also be undertaken online.

12. The online expatriate module will have the capability to issue a standard digitalized ID card specific for expatriates, including virtual Smart online IDs sourced from biometric information and the unique ID number for each expatriate stored in the online database. All enforcement officers must give recognition to this expatriate Smart ID cards. Enforcement authorities must no longer demand sight of hardcopy IDs like passports whose absence currently constitute an offense.

V. The Foreign Domestic Worker System

13. MOHR and other stakeholders, through a subcommittee governance structure, are to develop a module for the Foreign Domestic Worker (FDW) process to be integrated into the online application and approval system and database.

14. All the FDW processes should be undertaken on line, to reduce and even eliminate the need for the services of employment agencies in the source country and in Malaysia.

15. The online FDW module must have similar capability (like for other PLKS workers) to issue standard digitalized ID cards specific to FDWs, including virtual Smart online IDs sourced from the biometric information and the unique ID number for each FDWs stored in the online database. All enforcement officers must give recognition to this FDW Smart ID card. Enforcement authorities must no longer demand sight of hardcopy IDs like passports whose absence currently constitutes an offense.

VI. The Refugees System

16. MOHR working in coordination with JIM, UNHCR and other concerned stakeholders in refugees matter, through a subcommittee governance structure, are to develop a module for incorporating the right to work process of identified refugees into the online application and approval system and database.

17. The online refugee module will have links to UNHCR and must have the capability to issue standard digitalized ID cards specific to registered refugees, including virtual Smart online IDs sourced from biometric information and the UNHCR registered refugee unique ID number stored in the online database. All enforcement officers must give recognition to this refugee Smart ID cards. Enforcement authorities must no longer demand sight of hardcopy IDs like passports whose absence currently constitutes an offense.

18. Employers must accept the refugee Smart ID card, following verification, as equivalent to a foreign worker employment pass to allow the refugee to be formally employed. Refugees in possession of this Smart ID card may work in any occupation and sector for which they are qualified or may be offered a job position, in accordance with the Malaysian employment and other applicable laws, regulations, guidelines and good practices.

VII. The Foreign Spouses System

19. Approval for the employment of foreign spouses will be vested in MOHR. The approval process will be incorporated into a segment of the online application and approval system. The online system will cater for both foreign spouses of Malaysians and foreign spouses of expatriates. The online system will include a statutory declaration attesting that the official documentation of marriage has been registered with the relevant Malaysian authorities and meet the conditions and requirements for employment application. These conditions and requirement will be provided in the online system.

20. The approval for employment will be provided by the online system within the process duration period establish. Upon approval with a unique identifier the online system will notify the Immigration Department. The approval for employment will be open ended and will not be linked to the validity of the LTSVP or Expatriate Spouse Employment Pass.

21. A foreign spouse must record any change in status through the online system. For LTSVP this involves a change in status to widow or divorcee that meets the conditions and requirements for continued employment. For a foreign spouse of expatriates, a change in status to widow or divorcee will result in the employment approval becoming invalid. In any case, the employment approval will become invalid if the change in status involves the foreign spouse leaving Malaysia permanently.

22. In the future, upon meeting all the conditions and requirements as established for residing in Malaysia, the Immigration Department is to issue a LTSVP or the Expatriate Spouse Employment Pass only with the following endorsements: "Employment Permitted Upon Official Authorization" The duration and renewal of these residential permits will follow the established guidelines. The LTSVP is to be in digital form and issued on line.

23. The online foreign spouse module will have the capability to issue standard digitalized ID cards specific to a foreign spouse, including virtual Smart online IDs sourced from biometric information and the registered foreign spouse unique ID number stored in the online database. All enforcement officers must give recognition to this foreign spouse Smart ID card. Enforcement authorities must no longer demand sight of hardcopy IDs like passports whose absence currently constitute an offense.

VIII. The Foreign Internship System

24. MOHR working with the current agencies involved and MOHA through a subcommittee will manage the foreign internships program. A module will be designed for management of foreign interns to be integrated into the single online application and approval system. Information from the foreign intern module will feed into the central database of the system.

25. With the online system the SOP of all agencies with oversight and regulatory roles will be standardised. An algorithm for approval, including the use of a dependency ratio quota mechanism (similar to the PLKS worker multi-tier levy system) will be developed and built into the module to remove as much as possible discretion in the decision making process

for approvals. In particular, the criteria for determination of whether a firm (e.g. hotel) is qualified to take part in a structured internship program for interns and the strategic importance of the industry taking interns for prioritised skilled occupations will need to be identified and quantified within the decision algorithm.

26. Similar information to confirm the qualifying course of studies and foreign educational institutions of the foreign intern applicant will be collated and codified in the module.

27. The PVP to be issued to qualifying foreign interns or trainees will be in a digital form and transmitted online. The online module will have the capability to issue a standard digitalized Smart ID card specific for such foreign interns from the biometric information and the unique ID number for each intern stored in the online database. All enforcement officers must give recognition to this foreign intern Smart ID card. Enforcement authorities must no longer demand sight of hardcopy IDs like passports whose absence currently constitutes an offense.

APPENDIX III

Summary of the Multi-Tier Levy System

1. The Multi-Tier Levy System (MTLS) will be applied in the six approved economic sectors and subsectors in which foreign workers may be employed. These are the economic sectors covering: Agriculture, Plantation, Manufacturing, Mining & Quarrying, Construction and Services. For the Services sector, based on current policies, only the sub-sectors set out in Box A are authorized to employ foreign workers.

Box A: Approved Subsectors within the Services Sector

- Retail & Wholesale Trades*
- Restaurants
- Hotels
- Cleaning and Sanitation
- Cargo Handling (Ports, Airports & Warehouses *)
- Metal, Scrap and Used Items Trades*
- Textile Trades*
- Welfare Homes*
- Theme Parks
- Resort Islands
- Dobby*
- Goldsmiths*
- Barbering*
- Reflexology
- Spas
- Golf Caddies (only men allowed)

* Denotes that as at January 2019 this services subsector is frozen for new admissions of foreign workers

2. A Cabinet Committee decision in February 2017 directed MOHR to develop the MTLS. The application of the MTLS was also contemplated in Strategy 8: Labour Market of the 11th Malaysia Plan.

Objectives of the Multi-Tier Levy System

3. The overall objective is to create a better system for reducing reliance on and regulating the amount of foreign workers employed in Malaysia. For this purpose, a new mechanism which combines the utilization of a quantitative method as well as a pricing structure to regulate and manage the employment of foreign workers would need to be designed.

Main elements of MTLS

4. MOHR has studied and benchmarked the experience of several countries operating a foreign workers management system (Singapore, Hong Kong, South Korea, Thailand, Taiwan

and Australia) in developing the MTLs. After due consideration and taking into account the situation in Malaysia, a system that combines a standardised quota system together with a multi-tier pricing mechanism was designed and adopted.

Quota System

5. The centrepiece of the quota system is the development of the Dependency Ratio Ceiling (DRC). The DRC will take the place of the multiple and disparate system used for approving the number of foreign workers in the sectors where foreign workers are allowed to be employed (as described in the “Red Book”).¹¹

6. The dependency ratio was based on evidence from the Labour Force Survey and information from consultations with concerned stakeholders on the use of foreign workers in their businesses. In general, where available the DRC is derived from the previous five year averages in the use of foreign labour within the approved sectors. The following formula was used in the derivation of the DRC:

$$\text{DRC} = \frac{\text{FOREIGN WORKERS}}{\text{TOTAL WORKERS}}$$

7. This formula meets the objective of having a standardised method for deriving the DRC and takes the place of the multiple and disparate system underlying the previous “Red Book” methods. The application of the DRC does away with discretion and inexplicable decisions in determining approvals for the number of foreign workers allowed to be employed in business activities. This will assist strongly in reducing the risks for corrupt practices and preferential treatment.

8. With the DRC, it is anticipated that any registered business in the approved sectors and subsectors will be able to secure a decision for hiring foreign workers without undue delays and upon clear and transparent criteria. The criteria in the DRC calls for the registered business to show formally the total contingent of workers on the firm’s payroll and the total number of these workers who are documented foreign workers. Each business must make a Statutory Declaration on the accuracy of the workforce information submitted and that the business complies with all relevant employment and other applicable laws, regulations, guidelines and norms or practices, especially those applicable to foreign workers.

9. Due to the different operating environments of the approved sectors, three separate models for application of the DRC was designed. A summary of the three models is set out in Tables 1 to 3. Except for the manufacturing sector and a variation applicable to the construction sector, the DRC contemplates three tiers in the approval of the amount of foreign workers permitted to be deployed by a business. The manufacturing sector has four tiers. The construction sector has two subcomponents for foreign workers: those that are

¹¹ The “Red Book” refers to the criteria and rules summarized in the Buku Panduan Dasar, Prosedur Dan Syarat-Syarat Penggajian Pekerja Asing Di Malaysia, Jabatan Tenaga Kerja Semenanjung Malaysia, 2011.

skilled and those with low skills. The skill levels of construction workers are determined by the Construction Industry Development Board (CIDB) and regulated by them accordingly.

10. The DRC and the associated tier levels were discussed and agreed upon with all stakeholders in consultations undertaken throughout 2017 and 2018 during the design stages and before the adoption of the MTLs. The DRC sets absolute limits in the employment of foreign workers within each firm and in effect for each of the approved sectors. This absolute limit is not permanent and has in-built flexibility. At any time, if a firm is at its absolute quota limit, it will be able to hire additional foreign workers so long as it adds additional Malaysian workers to its payroll.

The Multi-Tier Levy

11. The multi-tier DRCs agreed with stakeholders will determine the levy to be paid by each employer for each foreign worker taken into the firm's payroll. A separate amount of the levy to be paid has been determined for each tier of the DRC quota. Except for the manufacturing and construction sectors, in general there will thus be three tiers of levy associated with the DRC quota. The manufacturing sector has four tiers. The construction sector has a variation of the levy depending on the skill level of the worker at each DRC quota level. The amount of this multi-level levy is also shown in Tables 1 to 3 alongside the DRC to be applied for each tier.

12. Within the MTLs, the formula for calculating the levy was also derived as follows:

$$\text{Levy Rate} = \text{Foreign Workers Median Wage} \times \text{Annual Contribution of Employer's Share of Worker Safety Net Outlays}$$

However, during the discussions with stakeholders it was agreed that the MTLs will be initiated using the current level of levies. There will be two base levies. One at RM640 a year per foreign worker in the agriculture and plantation sectors and another at RM1,850 for the other approved sectors. The construction sector will have a variation with a RM2,000 base levy to be applied to an unskilled foreign worker.

The change to the base levy when the DRC quota thresholds are exceeded will trigger a higher level of levy to be paid by employers for each current or each additional foreign worker. These different levy levels were also discussed and agreed with stakeholders during the consultations with industry. A transition period for application of the MTLs will be agreed upon.

Table 1: Model I of Multi-Tier Levy System

Sectors	Dependency Ratio Ceiling	Levy Rate (RM)
Agriculture and Plantations	Tier 1 : $\leq 45\%$	640
	Tier 2 : $> 45\%$ to $\leq 65\%$	1,200
	Tier 3 : $> 65\%$ to $\leq 81.8\%$	1,950
	Absolute Quota : 81.8%	

Table 2: Model II of Multi-Tier Levy System

Sectors	Dependency Ratio Ceiling	Levy Rate (RM)
Mining and Quarrying	Tier 1 : $\leq 20\%$	1,850
	Tier 2 : $> 20\%$ to $\leq 35\%$	2,200
	Tier 3 : $> 35\%$ to $\leq 50\%$	2,550
	Absolute Quota : 50%	

Sector	Dependency Ratio Ceiling	Levy Rate (RM)
Services	Tier 1 : $\leq 25\%$	1,850
	Tier 2 : $> 25\%$ to $\leq 40\%$	2,200
	Tier 3 : $> 40\%$ to $\leq 50\%$	2,550
	Absolute Quota : 50%	

Sector	Dependency Ratio Ceiling	Levy Rate (RM)
Manufacturing	Tier 1 : $\leq 35\%$	1,850
	Tier 2 : $> 35\%$ to $\leq 60\%$	2,100
	Tier 3 : $> 60\%$ to $\leq 75\%$	2,400
	Tier 4 : $> 75\%$ (above quota)	4,800
	Absolute Quota : May exceed 75%	

Table 3: Model III of Multi-Tier Levy System

Sector	Dependency Ratio Ceiling	Levy Rate (RM) Skilled	Levy Rate (RM) Low Skilled
Construction	Tier 1 : $\leq 35\%$	1,850	2,000
	Tier 2 : $> 35\%$ to $\leq 60\%$	2,050	2,200
	Tier 3 : $> 60\%$ to $\leq 80\%$	2,300	2,500
	Absolute Quota : 80%		
Approval based on project with 1000 persons workforce			
15% of the foreign workforce must be skilled as accredited by CIDB			

Additional considerations

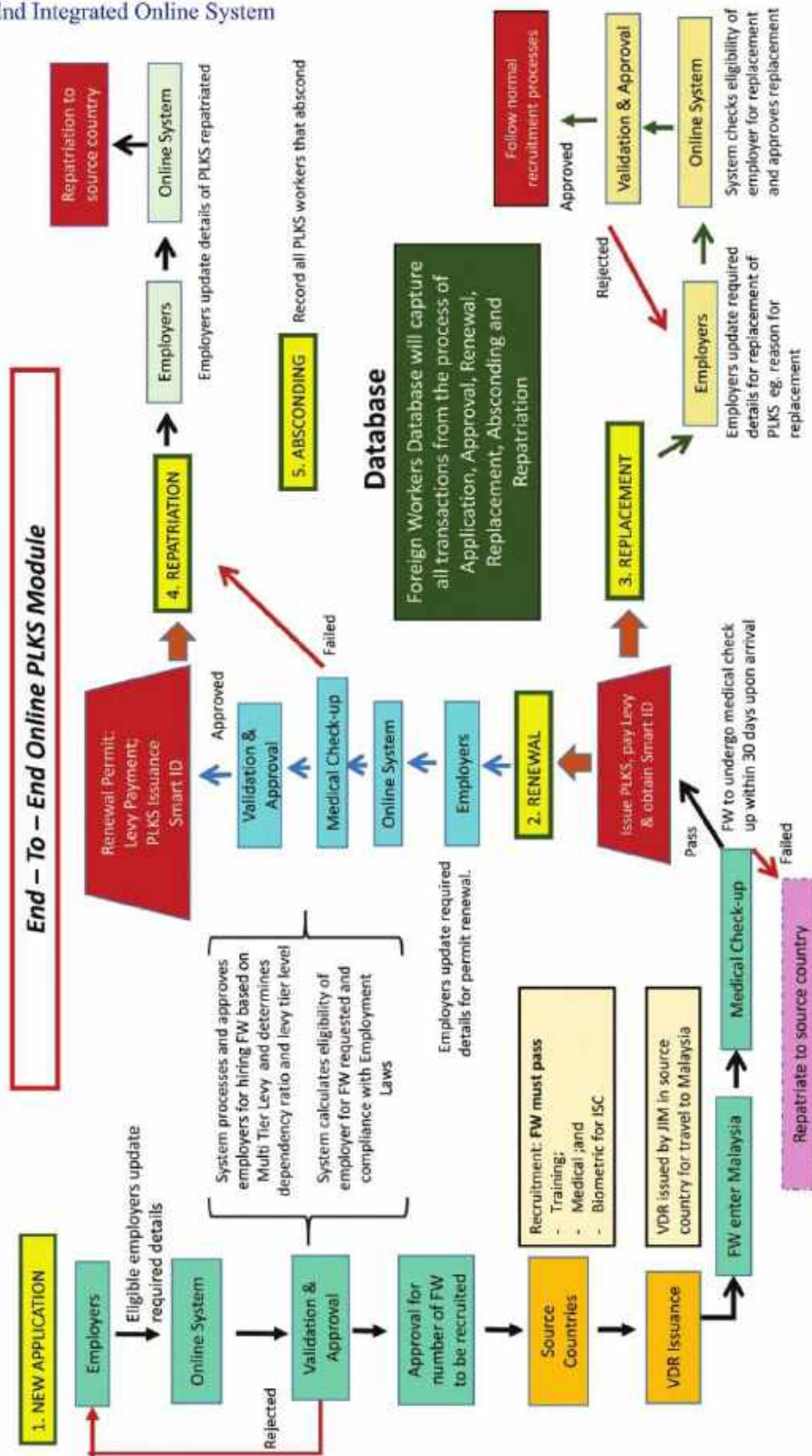
13. It is contemplated that the DRC and the levy rates will be subject to review every two years to incorporate both strategic and operational changes experienced by businesses (e.g. changes in employment structures, minimum wages and government incentives or programs).

14. The MTLs will be able to generate real time information for generating labour market indicators to better monitor and manage foreign labour issues in Malaysia.

15. The MTLs will allow sufficient time for businesses to institute plans for switching to less labour intensive processes (e.g. industrial upgrading, mechanization, automation and product innovation).

APPENDIX IV

End-to-End Integrated Online System



END-TO-END SINGLE INTEGRATED ONLINE NATIONAL FOREIGN WORKERS MANAGEMENT SYSTEM (NFWMS)

PLKS MODULE

UNDOCUMENTED
WORKERS MODULE

EXPATRIATES MODULE

FOREIGN DOMESTIC
WORKERS MODULE

FOREIGN SPOUSES
MODULE

REFUGEES, ASYLUM
SEEKERS MODULE

FOREIGN INTERN
MODULE

STATELESS MODULE

DATABASE

FOREIGN WORKERS DATABASE WILL CAPTURE ALL
TRANSACTIONS FROM THE MODULES OF THE
INTEGRATED ONLINE SYSTEM.

APPENDIX V

SECRETARIAT MEMBERS

1. Mr. Lee Chee Sung
2. Mr. Mohd Azmi Muhammad
3. Mr. Mohd Nizar Zakaria
4. Mr. Ahmad Badri Jaafar @ Ismail
5. Mr. Baharuddin Mamat
6. Mrs. Zuraini Abu Kassim
7. Mrs. Maslina Mohd Basir
8. Dr. Balasubramaniam a/l A. Tarumaraja
9. Ms. Yasmin Ramli
10. Mr. Alfariz Mohd Mustafa
11. Ms. Ratana Sarimin
12. Dr. Sivanes Pari a/p Ramiah
13. Ms. Zurina Ahmad Taib
14. Mr. Mohd Zulfikri Omar
15. Dr. Norshamshida Razak
16. Mr. Kumaresan a/l Manikam
17. Mrs. Nor Wahidah Nor Azelan
18. Mrs. Noraffizan Abdullah
19. Mrs. Rozeihan Razalli
20. Mrs. Siti Aishah Nordin
21. Ms. Siti Zainab Abd Wahab
22. Mrs. Aziyanti Saimon
23. Mr. Mahadir A. Halim
24. Mr. Sayed Amirul Hazri Sayed Mohamad



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