



*Permanent Representative of Malaysia
Geneva*

28 May 2024

Ms. Beatriz Balbin
Chief
Special Procedure Branch, OHCHR

Dear Ms. Balbin,

Subject: Joint Communication from Special Procedures

I refer to your letter dated 28 March 2024, referenced AL MYS 1/2024, regarding the fraudulent recruitment of migrant workers and related human rights concerns in Malaysia. I appreciate the detailed information and concerns you have shared and assure you of our commitment to address these issues comprehensively.

Please find attached the reply to the questions from the Joint Communication from Special Procedures in ANNEX I as attached. We urge that our responses be duly taken into account.

We assure you that Malaysia remains committed to protecting the rights and well-being of migrant workers.

Thank you for your attention to this matter.


DATO' NADZIRAH OSMAN

Request for Response - Joint Communication (JC) on the fraudulent recruitment of migrant workers by criminal networks operating in Malaysia and in countries of origin, with the example of Bangladeshi migrant workers

‘Migrant workers are deceived, recruited by fake companies and obliged to pay exorbitant recruitment fees which pushes them into debt bondage. Many migrants find on arrival in Malaysia that they do not have a job as they had been promised and are forced into overstaying their visa. Consequently, they risk arrest, detention, ill treatment and deportation. They also risk further exploitation and many have become destitute, facing an alarming humanitarian situation.’

NO.	KEY QUESTIONS AND INPUTS SOUGHT	INPUTS BY MALAYSIA
1.	Please provide any additional information and any comment you may have on the above-mentioned allegations	<p>The Government of Malaysia strongly opposes and does not condone any exploitation practices by unscrupulous parties resulting in the suffering and abuse of migrant workers in Malaysia. The Ministry of Human Resources of Malaysia (MOHR), together with the Ministry of Home Affairs (MOHA), as the custodian agency for the governance of migrant workers in Malaysia, is committed to upholding and protecting the rights of migrant workers in accordance with current domestic policies, legislation, and laws.</p> <p>The Department of Labour Peninsular Malaysia (DOL) has received complaints regarding 733 Bangladesh workers in Johor who have been exploited by their employers where the employers failed to provide work, salary and conducive accommodation. In response to this issue, actions taken by MOHR are as follows:</p> <ul style="list-style-type: none"> i. a discussion with MOHA to discuss the issue of exploitation of foreign workers and to craft improvements to the management of foreign workers to ensure that such issues can be dealt thoroughly and holistically;

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		<ul style="list-style-type: none"> ii. a joint media statement was also issued by MOHR and MOHA on 6 January 2024 which agreed that several actions including improving existing acts and policies should be implemented immediately to empower the management of foreign workers with a focus on rights and welfare of employee; iii. settling claims on unpaid wages for 733 Bangladesh workers amounting to RM1,035,557.50 which must be paid within 45 days from 5 February 2024 based on a mutual agreement reached following proceedings carried out by DOL (if employer fails to pay the salary within the time period, the employer will be prosecuted for an offense under Section 69 of Employment Act 1955); iv. employer's application of foreign workers under Section 60K of the Employment Act 1955 will not be considered and immediately suspend or blacklist the remaining quotas of the companies including the renewal of Temporary Employment Visit Pass (PLKS) for existing foreign workers; v. extended the name of the company to Construction Industry Development Board (CIDB) for further action; and vi. conducted redeployment of workers to new employers who have been identified, possess a clean record, and still have a quota available for employing foreign workers. <p>The Government of Malaysia takes note of the United Nations Human Rights Special Procedures report regarding allegations of exploitation destitution, and</p>

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		<p>criminalization against foreign workers from Bangladesh dated 17 April 2024. The Government views this matter seriously and will not compromise with any parties involved in cases of exploiting foreign workers, which lead to forced labor and human trafficking. MOHA is committed to manage detainees in immigration detention centres as per accordance of immigration regulations and procedures that are in line with the international standard.</p> <p>In formulating the national foreign worker management policy, MOHA is guided by four (4) main components, namely to reduce the migration costs of foreign workers, expedite the entry process of foreign workers, protect their welfare, and safeguard the employers' rights.</p> <p>In Malaysia's foreign worker management ecosystem, MOHA through the Immigration Department of Malaysia (JIM) is responsible for immigration aspects while foreign worker quota management falls under the purview of MOHR. JIM, as the enforcement agency, is responsible for implementing the laws under the Immigration Act 1959/63, Passport Act 1966, and Immigration Regulations 1963.</p> <p>In this regard, MOHA in cooperation with MOHR and all relevant ministries, has taken comprehensive and holistic approach in improving foreign worker management as well as addressing all the issues as follows:</p> <ul style="list-style-type: none"> i. Restricting transactions related to employers involved in negligence issues such as levy payments and visa applications with reference in the immigration system; ii. Blacklisting employers based on recommendations from the DOL;

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		<p>iii. Holding a Joint Meeting between MOHA and MOHR on Foreign Worker Management on 16 January 2024, specifically to discuss issues of management and neglect of foreign workers and propose steps to improve the governance of foreign worker in the country;</p> <p>iv. Improving the overall process of hiring foreign workers by reducing processing time and eliminating overlapping processes. The improvements comprise quota application for the arrival of foreign workers in Malaysia. The entire process will be shortened from 29 months and 13 days to 15 months and 7 days, with a significant reduction up to 46%. Among the improvements made in the process are:</p> <ul style="list-style-type: none"> a) Levy payment period reduced from 30 days to 15 days without extension; b) Conditional Approval Letter period reduced from 18 months to 12 months without extension; c) Validity period of Visa with Reference set equal to the validity date of the Visa Approval Letter with Reference, which is for three months; and d) Temporary Work Visit Pass issuance period for the first year set no later than 15 days for complete applications; and e) Establishing a One Stop Centre - OSC led by the MOHA which will operate once the foreign worker employment quota application

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		<p>commence again.</p> <p>v. Cancelling the remaining quota balance of employers that has not yet been issued with Visa with Reference (VDR) until 21 April 2024, with the remaining quota levy returned to employers; and</p> <p>vi. Restricting the entry of foreign workers in the formal sector until 31 May 2024, to close exploitation loopholes and allow the Government to reassess the country's foreign worker needs.</p> <p>MOHA is constantly exploring opportunities to improve the governance of foreign workers throughout the freezing of foreign worker employment quota applications. All actions and efforts are in line with the Government's commitment to ensure that issues related to foreign worker employment are handled without compromising the sovereignty of the country's laws.</p>
2.	<p>Please provide information on the current situation of the Bangladeshi migrants mentioned above, indicating what types of assistance (regarding access to housing, health services, food, legal and socio- social support, and access to justice and effective remedies, etc.) they have received;</p>	<p>The Government of Malaysia through DOL has undertaken Redeployment (Special) to rescue and relocate foreign workers who have been exploited by not given a proper job, receive salary and as well as conducive accommodation by the employer.</p> <p>In 2023, DOL has relocated 1,664 foreign workers to new employers and in 2024 (as of April 2024), 910 foreign workers have been relocated to new employers.</p>
3.	<p>Please explain if an individual assessment is made to determine if individuals are victims of trafficking in</p>	<p>Each rescued person will be screened by enforcement agencies using the National Guidelines on Human Trafficking Indicators (NGHTI 2.0) to identify whether the persons meet the trafficking indicators.</p>

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	<p>persons. Please clarify on which grounds the victims of Cheras were not recognized as victims of trafficking in persons and of other forms of exploitation;</p>	<p>With regard to the Cheras' cases, the rescued workers were not recognized as victims of trafficking in persons as they do not meet the requirement of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) as below:</p> <ul style="list-style-type: none"> i. There are no elements of labour exploitation as they still have not commenced their work; ii. There is no element of violence by the employer; and iii. The rescued workers are free to move in and out from the accommodation premise. <p>Further investigations revealed that the workers were not getting any salary since they were not provided any proper jobs. Although, their passports were sent to JIM Selangor for the issuance of Work Permits, JIM could not proceed since the workers have no employer. At the same time, although the workers were not classified as TIP victims under the ATIPSOM Act, protection was accorded to the workers.</p>
<p>4.</p>	<p>Please provide details, and where available the results, of any investigations, prosecution or criminal charges against Government officials, employers or other actors in relation to the allegations, including as related to corruption;</p>	<p>NIL</p>
<p>5.</p>	<p>Please indicate what types of assistance (regarding access to health services including mental health services, food, employment, legal and socio-social support, etc.) victims of trafficking and labour exploitation are</p>	<p>DOL will visit the location where the workers were reported stranded to assist them in filing labour cases regarding non-payment of wages.</p> <p>In the event that the workers are found to be placed in uncondusive accommodation, DOL will instruct the employer to shift all the workers to certified</p>

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	<p>provided by your Excellency's Government;</p> <p>i.e shelter for victim, victims support assistance, legal assistance etc</p>	<p>accommodation approved under the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 [Act 446] or centralised labour quarters (CLQ).</p> <p>The Government of Malaysia provides care and protection of trafficked victims according to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670). To date, there are eight (8) government shelter homes (1 shelter for men, 5 shelters for women and 2 shelters for children) and two (2) shelters operated by NGOs.</p> <p>A wide range of services and assistances are available for the trafficked victim such as shelter, food, psycho-social support, income generation program, language and vocational training, phone call services and clothes.</p> <p>Besides, in collaboration with NGOs, various services to the victims are available to the victims such as medical counselling, therapy, motivational talks, entertainment activities, religious and spiritual talks, sports activities, linguistic as well as art and creativity. NGOs are also playing a major role in providing care and protection to trafficked victims.</p>
<p>6.</p>	<p>Please provide information on existing channels/protocols for reporting human rights violations in Malaysia and how your Excellency's Government is ensuring that complaints can be submitted safely and, in a language, migrant workers speak/understand, without fear of retaliation;</p>	<p>MOHR has launched mobile online application Working for Workers (WFW). The WFW serves as a complaint mechanism that allow any employee to file a report against the employer for noncompliance and voice concerns without fear of punishment or retribution of employer under 17 categories of labour issues which correspond to the ILO indicators of forced labour. Therefore, it will help an employee to file a complaint related to labour issues directly and immediately.</p> <p>Subsequently, complainants may lodge complaints by walking into any nearest DOL offices throughout the country, including Sabah and Sarawak, calling the</p>

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		<p>hotline, or writing an email to DOL office via email (jtksm@mohr.gov.my) or through any medium of communication including by letter, complaint forwarded by any other agencies/NGO or through social media on any issue on non-compliance of labour laws/ regulations.</p> <p>For trafficking in persons cases, there are several channels that may be used by any persons including migrant workers to submit any potential trafficking in persons reports such as:</p> <ul style="list-style-type: none"> i. Reports to the enforcements such as Royal Malaysia Police and JIM; ii. NSO MAPO at the hotline of 03-8000 8000; iii. Report via social media of Facebook’s Messenger called Chatbot; and iv. Inform the NGOs such as SHUT and Tenaganita. <p>The informants will also be protected under the section 26 (Protection of Informers) of ATIPSOM Act.</p>
7.	<p>Please provide information on the measures being taken to ensure compliance with the State’s obligation of human rights due diligence to prevent trafficking of migrant workers, and to ensure early identification and effective access to protection, and access to effectives remedies, including to compensation;</p>	<p>The Government of Malaysia has been cooperating with the International Labour Organization (ILO) under the Decent Work Country Programme (DWCP) since 2021 until 2025. Among the projects under DWCP being conducted to ensure compliance with domestic human rights obligations due diligence are:</p> <ul style="list-style-type: none"> a. A Bridge to Global Action on Forced Labour (BRIDGE) Training for Trainers (ToT) to train the potential labour inspector trainers on how to deliver the course using the Facilitator’s Manual on the Training for the Malaysian Labour Inspectors on Forced Labour, Gild Labour, and

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		<p>Gender-Based Discrimination, Violence and Harassment in the Workplace.</p> <p>b. The Advancing Workers’ Rights in the Palm Oil Sector in Indonesia and Malaysia ILO</p> <p>The project provides capacity building training for the officers from DOL Sabah in conducting statutory inspections focusing on the palm oil sector in Malaysia and Indonesia on areas of forced labour, child labour and gender-based violence and harassment in the workplace.</p> <p>The Government has also conducted regular inspectorate activities on employers who have brought in foreign workers through the Foreign Worker Employment Relaxation Plan, as well as increasing enforcement under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.</p>
8.	<p>Please highlight the steps that your Excellency’s Government has taken, or is considering taking, to fulfil its obligations to protect migrant workers against human rights abuses by businesses which operate and/or domiciled in Malaysia and what steps are taken to ensure that these business enterprises respect human rights throughout their operations, including by carrying out human rights due diligence in line with the UN Guiding</p>	<p>To ensure that businesses fulfil their obligation to protect migrant workers against human rights abuses, MOHR conducts regular inspections of businesses to ensure compliance with the Employment Act 1955, specifically section 24D, as well as the regulations under the Employees’ Minimum Standards of Housing, Accommodations, and Amenities Act 1990 [Act 446].</p> <p>DOL also conducts statutory inspections at workplaces and accommodations to ensure compliance with all labour laws. Non-compliance with any provision will result in actions being taken against business owners/companies, along with measures to recover any owed money to affected workers. Additionally, investigations of complaints are conducted to ensure compliance with the respective labour laws.</p>

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	<p>Principles on Business and Human Rights.</p> <p>In this context, please indicate if businesses hiring migrant workers are subject to labour inspections and if so, if any employers have been held accountable for the exploitation of workers and for fraudulent recruitment practices;</p>	<p>Subsequently, MOHR has cooperated with the British High Commission and the Gangmasters and Labour Abuse Authority (GLAA) on training for the labour inspectors. Separately, MOHR has collaborated with the Responsible Business Alliance (RBA) to engage industries in raising awareness about forced labour. RBA launched the Responsible Glove Alliance (RGA), a collaborative initiative established to prevent, identify, and remediate conditions that contribute to forced labour in the medical supplies industry. MOHR has also engaged with certain industries to collaborate on due diligence, such as the oil and gas sector.</p>
<p>9.</p>	<p>Please provide information on measures taken to strengthen cooperation between the Government of Bangladesh and your Excellency's Government to effectively combat criminal networks, facilitate fair and ethical recruitment, and enhance consular cooperation with the aim of strengthening consular protection of and assistance to migrants;</p>	<p>The recruitment and employment of migrant workers in Malaysia is arranged and provided under the framework stipulated in the memorandum of understanding (MoU) between Malaysia and the source countries. The MoUs signed with source countries outlines workers' recruitment, placement, employment, and repatriation procedures. This is consistent with international labour standards and fair recruitment principle to reduce costs, fight exploitative and abusive recruitment practices and improve transparency in recruitment practices. The content of the MoUs incorporates fair and ethical recruitment practices such the 'employer pay principle' (recruitment cost should not be borne by workers), standard and transparent employment contract, prohibition on withholding of workers' passport and personal documents, access to grievance procedures, social security protection, access health/medical services, standard housing and accommodation.</p> <p>The Government has also conducted Joint Working Group (JWG) meetings between the governments of Malaysia and Bangladesh, primarily as a platform to</p>

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		<p>strengthen the protection of Bangladeshi workers in Malaysia. Malaysia is currently arranging for the next JWG meeting, scheduled to be held in the third quarter of the year to enhance cooperation and update the particulars of the MoU.</p> <p>There is already a mechanism, i.e. bilateral meeting between Malaysia and Bangladesh which provides a periodic platform for both Ministries of Foreign Affairs to engage and discuss consular matters. Among others, the Ministry of Foreign Affairs has conveyed the latest decision from the Labour Court (obtained from JIM) regarding the case of 733 stranded Bangladeshi workers, during a meeting with the High Commissioner of Bangladesh on 14 February 2024. During the meeting, the Consular Division of the Ministry of Foreign Affairs also conveyed that the Government of Malaysia would review the MoU on foreign workers to better protect the workers.</p>
10.	<p>Please indicate if your Excellency’s Government is planning to reform the temporary labour migration program which is currently in place;</p>	<p>MoU Between the Government of Malaysia and the Government of Bangladesh on the Employment of Workers was signed between the two countries on 19 December 2021. The MoU aims to establish a framework for facilitating the processes of recruitment, employment, and repatriation of foreign workers based on the policies, regulations, and laws of both countries.</p> <p>The MoU also outlines the responsibilities of employers who are given the option to deal directly with any recruitment agency or through the Bangladesh Recruitment Agency in matters related to the recruitment, employment, and repatriation of Bangladeshi foreign workers.</p> <p>Approval of foreign worker quotas is granted entirely based on assessments made</p>

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		<p>by MOHR and the relevant ministries according to the sectors of employment of foreign workers allowed. Meanwhile, the role of MOHA and JIM is to ensure that the entry of foreign workers into the country is based on immigration policies, regulations, and laws in force.</p>
11.	<p>Please indicate how private recruitment agencies are regulated by your Excellency's Government and what measures are taken to address and dismantle exploitative networks. Please also clarify if any measures are taken to stop bogus companies from issuing permits to migrant workers, generating large sums of money through such illegal practices. Please provide details on how accountability is ensured and if any perpetrators who are actively involved in this business or condoning it have been held accountable.</p>	<p>Private employment agencies (APS) in Malaysia are regulated by the Private Employment Agencies Act 1981 [Act 246]. This Act requires anyone undertaking recruiting activities to be licenced as an APS and all recruiting activities are to be carried out in manners determined by relevant laws and regulations.</p> <p>Any person who conducts any recruitment activity without possessing a valid license under Act 246 commits an offense under section 7 of the Act. Upon receipt of any issues concerning illegal recruiters, DOL will proceed with investigation and prosecute the illegal recruiter. If the issue is more severe and may result in forced labour and exploitation, a screening process will be conducted to determine whether the individuals are victims to be protected under the Anti-Trafficking in Persons and Anti-Migrants Act 2011 [Act 670]. If the answer is affirmative, the victims will be rescued as soon as possible, and further investigation will be carried out.</p>