

Malaysia: Migrant worker wage cuts to prevent runaways is forced labour

Friday 4 January 2019, by [Collective / Multiple signers](#), [HECTOR Charles](#), [PSM \(Malaysia\)](#) (Date first published: 30 December 2018).

Collective statement of 40+ organisations | We are perturbed by the Human Resources Ministry's proposal for employers to deduct 20 percent of their foreign workers' basic salaries as a means to bond workers to their employers.

Minister M Kulasegaran said the proposal, among others, aimed at preventing foreign workers from [fleeing](#), and to avoid employers from incurring losses on investments to bring the workers in.

Prioritising the needs of corporations over worker rights and human rights is wrong.

Forced and/or bonded labour must be abolished. Mechanisms like keeping of part of workers' wages to prevent them from leaving their employers is wrong, and could be considered forced labour.

According to the International Labour Organization, forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.

According to the ILO Forced Labour Convention - which Malaysia has ratified - forced or compulsory labour is "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily."

Of particular interest here, is voluntariness. The terms "offered voluntarily" refer to the free and informed consent of a worker to take a job and his or her freedom to leave at any time. This is not the case, for example, when an employer or recruiter makes false promises so that a worker takes a job he or she would not otherwise have accepted.

In Malaysia, migrant workers are allowed to work if they are in possession of a work pass, being either the Social Visit (Temporary Employment) Pass or the Employment Pass. The problem now is that the pass allows the worker to work for just one named employer.

This means that even if there is a breach of promise or agreement by the employer - concerning wages, working conditions and/or type of work, or if there is harassment or violation of worker rights - the migrant worker, unlike local workers, have no freedom or choice to leave the employer and seek employment with another.

If the migrant worker leaves the named employer, he or she will also lose the ability to continue to live and work in Malaysia.

The Immigration Department, on being informed by the employer, usually cancels the work pass without according the affected worker the right to be heard.

Restricting movement

The most common way that many employers have ensured continued loyalty is by the wrongful retention of migrant workers' passports and visas.

The inability to produce these identification papers is an offence, which can lead to arrest, detention and even prosecution. The fear of moving around with proper identification papers also restricts one's freedom of movement.

In 2012, the Employment Act 1955 was amended, and now allows the employer the ability to retain part of the wages, possibly as a means of preventing workers leaving their jobs.

Section 19(2) now **reads**, "Wages for work done on a rest day, gazetted public holiday referred to in paragraphs 60D(1)(a) and (b) and overtime referred to in section 60A shall be paid not later than the last day of the next wage period." This allows the employer to retain wages payable for overtime work and work done on a rest day, gazetted public holiday for another month.

Workers can leave their employment, but the usual requirement is that they give one month's notice, and if they want to leave immediately, then they will need to pay one month's wages in lieu of notice.

The reality of most low- or middle-income workers is that the simply will not be able to raise the money to pay the one month's wages in lieu of notice, more so when their new, better or higher paying job requires them to immediately report for work.

As such, many workers will just leave, and their employers have the choice to pursue them for that payment in lieu of notice, although many employers elect not to do this in cases of low- or middle-income workers. After all, since wages are paid after work is done, there is really no loss save the inconvenience.

But, with the new amendment made by the previous government, the worker is not paid for overtime and work done on rest days and/or public holidays at the end of the month, as was the case before. They have to wait for the following month.

It is even more unjust because they receive no any added interest for this part wages that have been delayed. Money paid today, used wisely, can easily generate additional income even after a day or two.

So, not only are workers in Malaysia suffering injustice in the delayed payment of part of their wages - vital in an era where the cost of living is so high and most workers have month loan repayment obligations - but the delay also prevents workers from additional income, which could even be obtained through placement in an interest paying savings account or unit trust.

The object of this amendment seems to be to assist employers, and possibly also another mechanism to deter workers from leaving their employer.

Excessive overtime

Putrajaya, especially the Human Resources Ministry, needs to prioritise the protection and promotion of worker rights, which is a human right.

In Malaysia, the right to work only eight hours a day (or 48 hours per week) and thus having eight hours for rest and another eight for leisure and social life is also not sufficiently protected. There are simply too many ways under the law whereby an employer can compel a worker into working longer hours.

Worse still is the fact that Malaysia at present has a draconian overtime limit, as **contained** in Employment (Limitation Of Overtime Work) Regulations 1980. It stipulates that the limit of overtime work shall be a total of 104 hours in any one month.

Note that working on rest days and/or public holidays are not considered overtime. Hence, in Malaysia a worker can end up working 12 hours every working day.

Theoretically, worker's consent is required if a worker is to work overtime, on rest days and/or on public holidays, but the reality is that most workers just do not have the choice to refuse the employer's request.

The risk of being discriminated against when it comes to wage increases, promotions or even termination is feared by most workers. Short-term contract workers, who hope for a future extension of their contract, or even a new contract of employment, are even more fearful of refusing to do what an employer wants.

The previous government's solution to low wages was simply suggesting that workers work more overtime or just take on a second job. That suggestion itself is an affront to a worker's right to work an eight hour day.

Some employers now even have the audacity to suggest that it is the workers who want to work overtime and on rest days/public holidays, so they are being compassionate in acceding to worker's request.

When a human right is acknowledged by the state, which usually also affirms it in law, the employer and/or the employee no longer has the right to break the law or violate that right. After slavery was abolished, slavery cannot continue even if the slave wants it.

Hours of Work is the first International Labour Organisation Convention, but alas, this has not been ratified by Malaysia. That 1919 convention stated that workers will have to work no more than eight hours per day or not more than 48 hours a week.

The limit may "be exceeded in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, subject to the condition that the working hours shall not exceed fifty-six in the week on the average."

Even in exceptional cases, where there is an agreement between worker and employer for the limit placed on hours of work to be exceeded, it is clearly stated that "The average number of hours worked per week, over the number of weeks covered by any such agreement, shall not exceed forty-eight."

Since then, international standards are moving towards even shorter hours of work. As an example, there is the [Forty-Hour Week Convention](#).

Malaysia's limit of overtime work being 104 hours in any one month is draconian. As pointed out, the ILO maximum is not more than 18 hours a week, but on average, a worker should not be made to work more than 48 hours per week. Overtime is only permitted in exceptional situations, and such situations are also stipulated in Malaysian law.

As a comparison, Indonesia has an overtime limit of 14 hours a week. China has a monthly limit of 36 hours. In France, they can work 10-12 hours a day, but workers should not be made to work more than 48 hours a week.

Investigate alleged violations

Earlier this month, *The Guardian* [highlighted](#) violations of worker rights including excessive overtime in a Malaysian company.

The report stated, amongst others, that "...The Top Glove workers - eight from Nepal and eight from Bangladesh - alleged that their factory was 'mental torture' where they had to work seven days a week, at least 12 hours a day, with only one day off a month... Payslips seen by *The Guardian* seemed to indicate workers often worked between 120 and 160 hours' overtime a month, exceeding the 104 hours allowed by Malaysian law."

Kulasegaran was [reported](#) the following day stating that the "allegations of worker mistreatment at the company are mostly false." He even suggested that the allegations "could be the work of industry rivals out to beat the country's rubber gloves manufacturer."

It was also disappointing to see that a press conference was held together [with the representatives](#) of the company concerned.

It must be stressed that when workers and/or human rights defenders highlight alleged human and worker rights violations, the state must speedily conduct an independent investigation, and certainly not come in defence of the alleged perpetrator, or make allegations against worker complainants and human rights defenders, which includes the media.

With regard to overtime, it not simply the question of exceeding the overtime limits, but also whether there are exceptional situations which allowed workers to be asked to do overtime.

If it happens week after week, month after month, then it may no longer be legally permitted overtime. Section 60A(2) of the Employment Act states that "the director-general shall have the power to inquire into and decide whether or not the employer is justified in calling upon the employee to work" overtime and on rest days.

To ensure the livelihood of the worker and their families, workers should earn sufficient income working no more than 8 hours per day or 48 hours a week. This is an obligation of the state.

Employers too should never prioritise profits over the wellbeing of workers and their families.

Therefore, we call on the government to:

- Abandon the idea of retaining part of the wages of workers "as a means to bond workers to the

employer”;

- Repeal the provision in law that delays the payment of overtime, work on rest day and public holidays by a month. Workers should be paid promptly at the end of the month for overtime and work on rest days/public holidays;
 - Take action against employers that retain passports and/or visas/work passes of their workers, something used, amongst others, to prevent workers the freedom to leave employers,
 - Reduce the overtime limit of 104 hours in compliance with international standards, which should not be more than 48 hours a week generally;
 - Investigate independently allegations of human rights violations, and not make allegations or take retaliatory actions against human rights defenders, including media, that highlights such allegations;
 - Take prompt action against employers that violate worker rights, irrespective whether the violation is ongoing or happened in the past. Penalties in law for violation of worker rights need to be increased to deter the violation of worker rights;
 - Ratify Hours of Work (Industry) Convention, and preferably also the Forty-Hour Week Convention;
 - Ratify the Abolition of Forced Labour Convention. Malaysia, who ratified the convention in 1958 denounced it in 1990;
 - Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
 - Ratify all fundamental ILO and UN conventions;
 - Promote and protect human rights defenders, and enact legislation to prevent retaliatory actions against human rights defenders that highlight alleged human rights violations; and
 - Respect and promote worker and trade union rights in Malaysia.
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CHARLES HECTOR has written the above on behalf of 49 organisations, trade unions and groups listed below.

- Aliran
- Asociación de Trabajadoras del Hogar a Domicilio y de Maquila-Atrahdom, Guatemala
- Association of Maybank Executives
- Bangladesh Group, The Netherlands
- Banglar Manabadhikar Suraksha Mancha (MASUM), India
- Burmese Worker"s Circle, Fort Wayne Indiana, US
- Center for Alliance of Labor and Human Rights (CENTRAL), Cambodia
- Centre for Independent Journalism
- Center for Migrant Advocacy, Philippines
- Christian Development Alternative (CDA), Bangladesh
- Clean Clothes Campaign
- Electrical Industry Workers' Union (EIWU)
- Electronics Industry Employees Union Southern Region Peninsular Malaysia (EIEUSR)
- Globalization Monitor, Hong Kong
- Global Women's Strike, UK
- Global Women's Strike, US
- Institute for Development of Alternative Living (Ideal)
- International Labor Rights Forum, US
- Kesatuan Eksekutif Airod
- Kesatuan Pekerja-Pekerja Perusahaan Otomobil Nasional Sdn Bhd (KPP Proton)
- Legal Action for Women, UK

- MADPET(Malaysians Against Death Penalty and Torture)
- Malaysian Physicians for Social Responsibility (MPSR)
- MAP (Migrant Assistance Program) Foundation, Thailand
- National Garments Workers Federation, Bangladesh
- National Union of Flight Attendants Malaysia
- National Union of Journalist (NUJ) Utusan
- National Union of Transport Equipment & Allied Industries Workers (NUTEAIW)
- North South Initiative (NSI)
- ODHIKAR, Bangladesh
- Parti Sosialis Malaysia (PSM)
- Payday Men's Network, United Kingdom
- Persatuan Komuniti Prihatin Selangor, KL and Perak (Prihatin)
- Persatuan Sahabat Wanita, Sgor (PSWS)
- PetPositive
- Philippine Knowledge and Activity Centre in the Netherlands
- Plantation Resource Centre (PRC)
- Programme Against Custodial Torture & Impunity (Pacti), India
- Radanar Ayar Association
- Sarawak Dayak Iban Association
- Sahabat Rakyat □□□□
- Suaram
- Tenaga Nasional Junior Officers Union (TNBJOU)
- The Trade Union Solidarity Centre of Finland SASK
- York Psychotherapy Centre, UK
- Women of Colour in the Global Women's Strike, UK
- Women on Color/GWS, US
- Workers Assistance Center, Inc (WAC), Philippines
- Workers Hub For Change (WH4C)

Charles Hector

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