Markets, citizenship and rights: state regulation of labour migration in Malaysia and Spain
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3. MALAYSIA

3.1. INTRODUCTION

Immigration in Malaysia has mainly been explained in economic terms (Kanapathy 2001; 2004; 2006). The severe labour shortage generated by the continuous economic growth of the past three decades in Malaysia and the economic disparities between Malaysia and the countries of origin have been adduced as the main explanatory factors. For instance, between 1987 and 1993, 14 million new jobs were created in Malaysia at a growth rate of 3.9 per cent as compared with a domestic labour force growth rate of 3.1 per cent. Labour shortages were particularly felt in manufacturing and construction with an employment creation growth rate of 9.8 per cent and 9.1 per cent respectively for the same period (Mohd Asri & Moshidi 1996: 12). As for economic disparities, the wage rate in Indonesia is three to ten times lower than in Malaysia (World Bank 1995: 58-62, quoted in Wong & Anwar 2003: 170; Bagoes Mantra 1999: 62). In macro-economic terms, Malaysia presents a gross domestic product per capita ($US10,882) which is twice as high as in the Philippines ($US5,137), almost three times higher than in Indonesia and India ($US3,843 and $US3,452 respectively), four to five times higher than in Pakistan and Bangladesh ($US2,370 and $US2,053) and seven to ten times higher than in Nepal and Myanmar ($US1,550 and $US1,027) (UN Human Development Report 2007/2008: 229-232).

Market factors alone are not enough, however, to explain the actual magnitude, composition and distribution of labour migration to Malaysia. The geographic proximity between Sumatra and Peninsular Malaysia, between Kalimantan and Sarawak or between Western Mindanao and Sabah provides many opportunities for border crossing. From Indonesia or the Philippines it is a mere two- to four-hour boat ride. Other migrants arrive in Malaysia through the rain forests of Kalimantan or the green pastures of the Thai-Malaysian border (see Annex 1, Map 1). These borders are not only geographically contiguous but they have been historically porous. In pre-colonial times, the Malay archipelago (which includes Indonesia and Malaysia) was a free, open migration area with seas, islands and shallow, narrow water ways that facilitated the movement of merchandise and people (Pillai 2005: 69). Migrants from Sumatra and Sulawesi began to settle in what is now Peninsular Malaysia from the mid-seventeenth century onwards. Although at the end of the nineteenth century colonialism divided the archipelago into separate territories (British Malaya and Dutch East Indies), the British coined the category of ‘Malay’ – ‘one who speaks the Malay language, professes Islam and habitually follows Malay customs’ (Andaya & Andaya 1982: 302) – which left the doors of migration open to culturally-similar Indonesians.

This history of migration has also facilitated the making and re-making of close social ties on both sides of the border. Old migrants constitute a very important source of information about availability of job opportunities and assistance for newly-arrived migrants in Malaysia. Friends, acquaintances and fellow-
countrymen provide the new migrants with jobs, housing and other necessities. In this regard, old migrants bring new migrants and returnee migrants encourage prospective migrants. In other words, social networks feed and define the geographies of migration. In Southeast Asia, these social networks are complemented by (and sometimes coincide with) recruitment agencies that formally or informally organise the whole migration process from rural areas in Indonesia, Bangladesh or the Philippines to a household in the Klang Valley, a factory in Penang or a construction site in Malacca. Since the business of these recruitment agencies depends on the number of migrant workers they are able to send to Malaysia, their presence has to be understood not only as a way of channelling migration flows but also as a mechanism that promotes them.

Together with geographic, historical and socio-economic factors, migration to Malaysia must also be understood in the context of the tradition of travel in the Southeast Asian archipelago. Called merantau among the Minang of Sumatra or berjalai among the Iban of Borneo, this tradition encourages young men to travel in search of experience and savings before returning home to get married and settle down (Wong & Anwar 2003: 197). Rantau, which literally means land outside the territory, or foreign country, represents a place where you work hard, seeking knowledge and skills and gaining experience. Your success in rantau would add greatly to your security and happiness and that of your relatives and own home village or country (Wang 1992: 169; quoted in Pillai 2005: 69). Migration to Malaysia has thus to be explained not only as a way of seeking better employment and wages or minimising the risk of poverty for the whole household but also as a necessary rite of passage to adulthood. It is interesting to note how the tradition of travel in Southeast Asia has fed the labour demands produced by early capitalism and, in the last decades, by the relocation of production plants from Western to developing countries. In other words, we could say that the tradition of travel in Southeast Asia both facilitated and was facilitated by the development of capitalist economies in the region.

While all these factors explain migration flows to Malaysia, they hardly take into account the fact that international migration is flowing through gates and that these gates are flanked by high walls (Zolberg 1999: 73). This chapter, like the whole book, focuses on these gates and walls. In particular, it examines how the Malaysian State regulated the huge demand for migrant workers from 1980 to 2007. First, this means analysing how the Malaysian State attempted to reconcile the conflicting demands underlying labour migration. Did the Malaysian State respond exclusively to the demands for foreign labour? What were the main demands for closure and to what extent were they given response? And what was the role of rights? Did Malaysia, as often assumed by Western scholars, succeed in turning migrants into pure labour? Second, as stated in Chapter 1, policies are much more than policy documents. If we take the whole, including policy documents, policy outcomes and policy effects, another question to be considered is whether and to what extent policies were fraught with inconsistencies, contradictions and inefficiencies. In particular, did policies succeed in their stated
With these two questions in mind, this chapter gives, first, an overview of the demand for migrant workers and the consequent growth of the immigrant population in Malaysia from colonial times to the present (Section 3.2). The following section (Section 3.3) describes the main developments in terms of migration policies. Particular attention will be given to the different dilemmas that immigration posed to the Malaysian State. This perspective takes up Wong’s suggestion that any comparative account of contemporary ‘global’ migration would have to begin with the substantive genealogy of the states concerned rather than merely assume the comparability of their abstract territorial forms (Wong 2002: 3). This account of migration policies will also be done from a historical perspective since the continuities and discontinuities with colonial times shed light on the present (Garcés-Mascareñas 2008a). The following four sections analyse the formulation, implementation and effect of entry policies and conditions of stay (Sections 3.4 and 3.5), regularisation programmes (Section 3.6) and deportation campaigns (Section 3.7) from the 1980s onwards. These four sections represent the core of my research and comparative analysis. The final section of this chapter (Section 3.7) draws some preliminary answers to the main research questions of this study.

3.2. EXPORTING GOODS, IMPORTING LABOUR

3.2.1. Colonial times: In the early nineteenth century, before the British gained control (direct or indirect) of the Malay States, the family functioned as the basic unit of a subsistence economy based on rice production, horticulture and fishing. In the late nineteenth and early twentieth centuries, however, British rule introduced monocropping in the form of rubber plantations, along with tin mining, the so-called ‘twin pillars’ of the colonial economy, which served the growing demands of the US and British commercial and industrial interests. In consequence, within the next few decades, Malaya became a producer and exporter of primary products and an importer of manufactured goods (Kaur 1999: 8; Chin 1998: 34). As John Stuart Mill observed, referring to British colonies in general, Malaya became a centre of production within the colonial empire. In parallel with a subsistence, peasant agricultural sector represented by Malays, a foreign-owned, export-oriented sector emerged, directly linked to the metropolis. To quote Mill, ‘Our West India colonies, for example, cannot be regarded as countries, with a productive capital of their own. […] They are] are the place where England finds it convenient to carry on the production of sugar, coffee, and a few other tropical commodities. All the capital employed is English capital; almost all the industry is carried on for English uses; […] The trade with the […] colonies] is therefore hardly to be considered as external trade, but more resembles the traffic between town and country […]’ (Mill 1909).
By the 1890s, however, the British government concluded that the reason the Malay States had not attracted more British capital was the absence of cheap labour (Parmer 1960: 18). The colonial government explained its inability to attract local Malays by referring to their laziness (Emerson 1964: 18) or by arguing that their value system discouraged pursuit of individual gain (Silcock 1965: 183). Most likely, the Malays were economically self-sufficient in the communal (village) settings and hence there was no need for them to work under the strenuous conditions and strict disciplinary regulations of wage employment in mines and plantations (Ramachandran 1994: 42). Unable to attract local Malays to work in the colonial economy, the British turned to migrant labour from China and India. In fact, as early as the eighteenth century, local rulers had already encouraged the immigration of Chinese to overcome labour shortages in their estates. Later on these Chinese pioneered tin and gold mining and the cultivation of several commercial crops, which were worked by newly recruited Chinese workers. The Chinese dominance in mines is illustrated by the fact that in 1911 Chinese workers represented 96.2 per cent of the total mining labour force (Kaur 1999: 8-9).

In order to neutralise the threat posed by an over-concentration of Chinese workers in the early tin mines, in the late nineteenth and early twentieth centuries the colonial administration consciously assisted East Indian (Tamil) immigration into the rapidly expanding rubber plantation sector (Halim 1986: 261). This led to a clear predominance of Indian labour in plantations. Indians also worked on the construction of roads, railways and in the public utilities sector. As a result, in 1937 there were 306,360 Indian workers (compared with 178,501 Chinese workers) employed in plantations, mines, factories and government departments (Parmer 1960: 274). In terms of the total population of Malaya, by 1940 the Chinese represented 42.8 per cent and Indians 13.6 per cent (see Table 1). The proportion of women in the total migration flow has been estimated at less than 20 per cent (Sandhu 1969: 82).

<table>
<thead>
<tr>
<th>Origin</th>
<th>1911</th>
<th>1921</th>
<th>1931</th>
<th>1940</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malays and other</td>
<td>1,416,796 (52.1)</td>
<td>1,651,051 (48.8)</td>
<td>1,962,021 (44.4)</td>
<td>2,286,459 (41.5)</td>
</tr>
<tr>
<td>Chinese</td>
<td>951,883 (34.2)</td>
<td>1,174,777 (35.2)</td>
<td>1,709,392 (39.2)</td>
<td>2,358,335 (42.8)</td>
</tr>
<tr>
<td>Indians</td>
<td>267,159 (10.0)</td>
<td>471,666 (14.2)</td>
<td>624,009 (14.3)</td>
<td>748,829 (13.6)</td>
</tr>
<tr>
<td>Others</td>
<td>72,916 (3.7)</td>
<td>60,560 (1.8)</td>
<td>89,924 (2.1)</td>
<td>112,471 (2.1)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,672,754</strong></td>
<td><strong>3,358,054</strong></td>
<td><strong>4,385,346</strong></td>
<td><strong>5,504,094</strong></td>
</tr>
</tbody>
</table>


**3.2.2. Postcolonial times:** After independence in 1957, the Malaysian economy remained based on primary commodity exports under control of foreign corporations. In terms of migrant presence, the main difference with the past was that those migrants who were long-established in Malaysia yet still seen as foreigners became recognised citizens of the new nation-state and hence settled
definitively in the country. At the same time, in the mid 1960s, the switch from rubber plantations to oil palm and cocoa (which were less labour-intensive) reduced labour requirements in this sector. By the late 1960s these changes had brought about a temporary labour surplus, thereby generating migration flows from old to new plantations and to urban areas (Navamukundan 1988: 217). However, this outflow from rural areas was only a short-lived phenomenon. The ambitious land development schemes embarked upon by the Federal Land Development Authority (FELDA), established in 1956 to provide landless peasants with new land cleared from the jungle, soon created new labour shortages. Two reasons have been adduced in order to explain how these land development schemes produced labour shortages.

First of all, they led the rural population to remain in their own holdings, thus denying their labour to the plantation sector. In other words, people preferred to become landowning farmers rather than agricultural workers (Celliah 1988: 212; Amin 1988: 199). The magnitude of such development schemes may be seen in the fact that, from 1957 to 1987, 1.21 million hectares of jungle were redeveloped into plantation-type agriculture (Wong & Anwar 2003: 173). Second, jungle clearing, planting, maintenance work and the construction of settler homes within these land development schemes could not be done exclusively by settlers and therefore these tasks were soon given to contractors. As Wong and Anwar observe, it was partly in the context of these schemes that ‘the momentous shift from a permanent, settled and captive labour force in the plantation economy (which had been characteristic of an earlier immigrant labour force) to the use of casual contract labour occurred’ (Wong & Anwar 2003: 175). While at the beginning this labour came from the Chinese New Villages and the Malay kampungs (traditional villages), in the mid-1970s labour contractors began to recruit migrant workers (Kassim 1994b: 98). By 1981 it has been estimated that there were about 130,000 Indonesian estate workers in Peninsular Malaysia, which at the time represented about half of the total labour force in the sector (Mehmet 1988).

3.2.3. Developmental period: In the early 1970s the economic inequalities between Malays and Chinese and the consequently exacerbating conflict within and between the two groups led the Malaysian government to implement the New Economic Policy (1971-1990), a development programme designed to eliminate poverty and to restructure society by dismantling the identification of ethnicity with economic function and geographic space. The NEP led to unprecedented economic growth characterised by the shift from an economy based on primary commodity exports to one now based on the export of manufactured goods. For instance, while the figures for agriculture and other raw materials dropped from 50 per cent in 1970 to 11.3 per cent of the total national exports in 1990, manufactured goods increased from 6.5 per cent to 54.2 per cent in the same period (Chin 1998: 44).

11 For example, in 1970 Malays, even though they represented about 50 percent of the population, owned less than 2.5 percent of share capital. Other Malaysians (mainly Chinese and Indians) owned 32.3 percent and foreigners 63.3 percent (Chin 1998: 56).
This economic shift was facilitated by the transnationalisation of capital and the relocation of production plants from Western to developing countries (Froebel, Kreye & Heinrichs 1980, quoted in Chin 1997: 358), together with the rise of commodity and oil prices (Chin 2000: 1043).

While the NEP promoted economic growth, it also had contradictory effects in the country’s labour market. On the one hand, the emphasis on urbanisation and industrialisation promoted Malays to a better position within the labour market. For instance, while Malays represented 30.8 per cent and 37.9 per cent of the total labour force in the secondary and tertiary sectors in 1970, after the NEP these percentages increased to 48.0 and 51.0 per cent respectively (Chin 1998: 56). On the other hand, in contrast with South Korea and Taiwan, economic growth depended on foreign investment that was attracted by emphasising low labour costs (Jomo 2003: 203). In short, urbanisation and employment policies sought to, and indeed did improve, the socio-economic position of Malaysian citizens regardless of ethnicity but economic growth continued to depend on a continuous supply of cheap labour. In this context, the employment of legal and illegal migrant workers from neighbouring countries was quickly perceived as necessary for economic growth and prosperity.

As local labour entered the emerging manufacturing and service sectors, labour shortages in agriculture became even more severe. A survey by the United Planting Association of Malaysia (UPAM) established that in 1985 its member estates lost an average of 21.8 per cent of their workforce and that about 24,000 additional workers would be needed between 1988 and 1992 (Amin 1988: 200-206). While employers have always attributed these labour shortages to the fact that locals were ‘too choosy’, the trade unions have always argued that these labour shortages resulted from low wages and poor labour conditions. If we analyse the situation in plantations, we soon realise that wages and working conditions had stagnated or declined. For example, though output per worker in the rubber plantation sector increased 2.25 times between 1960 and 1981, real wages of rubber tappers declined from 3.40RM to 3.37RM in the same period. What is more significant is that wage differentials between rubber tappers and factory workers widened from 1.90 to 2.92 between 1967 and 1981 (Mehmet 1988: 22-24; quoted in Pillai 1992: 8). In this regard, together with Pillai (1992: 8), we could indeed conclude that labour shortages in plantations resulted from poor wages and work conditions.

The construction boom of the late 1970s and early 1980s (with an average annual growth rate of 8 per cent) also gave rise to a huge labour shortage in this sector. Again, rather than raising wages in response, employers resorted to using immigrant workers mainly from Indonesia. Migrants who went into construction consisted of those who moved from the plantation sector as well as newcomers (Pillai 1999: 2). By 1984 the Ministry of Human Resources estimated that there were over 500,000 migrant workers (Ministry of Human Resources 1987-88), almost all in plantations and construction. The construction of government-sponsored projects like the new airport, the Petronas Twin Towers and the building
of new cities like Putrajaya and Cyberjaya in the 1990s – all symbols of the much-vaulted ‘progress and wealth’ of the country – led to exceptional growth in the sector (with an average annual growth rate of 15 per cent) and, once again, the hiring of migrant workers was the main response. The Economic Report of 2003 and 2004 estimated that there were 794,600 workers in the construction sector, of which 70 per cent (556,200 workers) were believed to be immigrants (Narayanan & Lay 2005: 37).

By the late 1980s, the sustained economic growth also drew Malaysian women into the workforce. This increased female participation in the labour force, together with the expansion of the middle class, led to an immediately heightened demand for foreign domestic workers. While in the 1970s there were a few hundred Filipino and Indonesian female domestic workers, by 1994 there were approximately 70,000 and, by 2006, there were 319,383 (The New Straits Times, 17 March 2006). Their presence has been fundamental for economic growth since, first, it permitted and sustained the participation of Malaysian women in the more productive sectors of the economy and, second, it delayed political pressure on the State elite to provide public child care centres or to encourage Malaysian employers to arrange privately owned child care (Chin 1998: 109; Chin 1997: 369). As Chin observes, the importation of female domestic labour has been part and parcel of the Malaysian developing plan: ‘Today, the service and servitude of foreign female domestic workers results from, and contribute to, the modernity project of nurturing the continued growth of the Malaysian middle class’ (Chin 1998: 16).

3.2.4. From the 1990s onwards: After 1990, as economic growth continued with rates averaging 8 per cent from 1987 to 1996, the demand for migrant labour became generalised, with shortages reported for the first time in the manufacturing and, later, in the services sector. This led migrant workers to move from their former concentration in agriculture, construction and domestic service to being more or less equally represented in the four major sectors by the late 1990s: manufacturing (31 per cent), construction (20 per cent), plantations (25.9 per cent) and services (20.4 per cent, of which 9.3 per cent were in domestic service). The opening up of jobs for migrants in the manufacturing and services sectors gave rise to two new developments. First, was long-distance migration with, for instance, Bangladeshi migrants (who represented 27.5 per cent of all migrants in 1999) entering the manufacturing and services sectors (see Rudnick 2009). Second, was the feminisation of immigration in Malaysia with Indonesian and Filipino female migrants, not only in domestic employment but also in the services and manufacturing sectors (Pillai 1999: 3). In 1994 Kassim estimated that female migrant workers represented 29 per cent of the total number of migrant workers in the country.12 (Kassim 1994a: 5).

12 It is difficult to give data regarding gender since it is one of the variables missing both in the academic literature and official statistics. First, when the academic literature focuses on
Table 2: Legal migrant workers in Malaysia by economic sector ('000)

<table>
<thead>
<tr>
<th>Year</th>
<th>Agriculture</th>
<th>Manufacturing</th>
<th>Mining</th>
<th>Construction</th>
<th>Services</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>126.5</td>
<td>38.9</td>
<td>1.9</td>
<td>42.1</td>
<td>86.2</td>
<td>295.6</td>
</tr>
<tr>
<td>1992</td>
<td>137.2</td>
<td>54.1</td>
<td>2.3</td>
<td>59.1</td>
<td>96.5</td>
<td>349.2</td>
</tr>
<tr>
<td>1993</td>
<td>176.1</td>
<td>103.9</td>
<td>2.1</td>
<td>51.4</td>
<td>107.5</td>
<td>441.0</td>
</tr>
<tr>
<td>1994</td>
<td>179.5</td>
<td>109.8</td>
<td>2.0</td>
<td>58.1</td>
<td>110.9</td>
<td>460.3</td>
</tr>
<tr>
<td>1995</td>
<td>173.0</td>
<td>115.7</td>
<td>1.8</td>
<td>64.8</td>
<td>124.0</td>
<td>479.3</td>
</tr>
<tr>
<td>1996</td>
<td>271.6</td>
<td>264.8</td>
<td>3.5</td>
<td>131.2</td>
<td>229.0</td>
<td>900.1</td>
</tr>
<tr>
<td>1997</td>
<td>265.2</td>
<td>283.0</td>
<td>6.1</td>
<td>150.1</td>
<td>240.9</td>
<td>945.3</td>
</tr>
<tr>
<td>1998</td>
<td>317.6</td>
<td>250.1</td>
<td>2.6</td>
<td>151.4</td>
<td>278.0</td>
<td>999.7</td>
</tr>
<tr>
<td>1999</td>
<td>363.6</td>
<td>250.6</td>
<td>6.0</td>
<td>131.1</td>
<td>301.9</td>
<td>1053.7</td>
</tr>
<tr>
<td>2000</td>
<td>415.4</td>
<td>262.5</td>
<td>2.9</td>
<td>163.5</td>
<td>326.7</td>
<td>1171.0</td>
</tr>
<tr>
<td>2001</td>
<td>281.4</td>
<td>213.0</td>
<td>2.1</td>
<td>99.0</td>
<td>265.6</td>
<td>861.1</td>
</tr>
<tr>
<td>2005*</td>
<td>412.0</td>
<td>614.0</td>
<td>n.a.</td>
<td>101.0</td>
<td>160.0</td>
<td>1,800</td>
</tr>
</tbody>
</table>

Source: Report on the Impact of Foreign Workers on the Malaysian Economy, 2004: 36 *
For this year data have been obtained from the New Straits Times, July 19th, 2006.

Despite the State attempts to reduce the migrant worker population and the consequent increasing emphasis on high-tech and less labour-intensive industries, there has been an unabated increase in the inflow of migrant workers since the 1990s (see Table 2). In 1995 there were about 1.2 million migrant workers (of which 500,000 -700,000 were estimated to be illegal) and, in 2000, about 1.6 million (1.2 million legal and about 800,000 illegal) (Wong & Anwar 2003: 172; Jones, 2000: 54). In 2005 and 2008 the numbers of legal migrant workers rose to 1.8 million and 2.1 million respectively (Kassim 2008b), plus an estimated 500,000 to 1,000,000 illegal migrant workers (Syed Shahir 2006). In terms of economic sectors, most legal migrants worked in manufacturing, plantations, construction, domestic service, services and agriculture (see Table 2). If one included illegal migrants, the proportion of migrant workers would be far higher in construction but with a significant presence also in plantations, domestic service and manufacturing (Wong & Anwar 2003: 174-175). In terms of nationality, most legal migrants come from Indonesia, Nepal, India, Myanmar, Vietnam, Bangladesh, the Philippines and Pakistan (for developments over the years, see Table 3). Most regularised illegal migrants came from Indonesia (88.1 per cent in the regularisation programme of 1998), Thailand (6 per cent), Bangladesh (5 per cent), Myanmar (2.5 per cent), India (1.9 per cent) and Pakistan (0.8 per cent) (Wong & Anwar 2003: 174-175).

Table 3: Distribution of migrant workers by Country of Origin (%)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>50.4</td>
<td>53.3</td>
<td>65.7</td>
<td>69.4</td>
<td>68.4</td>
<td>64.7</td>
<td>67.5</td>
</tr>
</tbody>
</table>

gender, it is mainly on women alone rather than comparing women and men and, in most cases, it refers to domestic workers or trafficked women. Second, official statistics and reports systematically ignore gender as a variable. For instance, the government report on the Impact of Foreign Workers in the Malaysian Economy (2004) assesses the number of legal and illegal migrant workers, their nationality, occupational categories, location, skill levels and duration of employment but gives no data regarding the number and work characteristics of female and male migrant workers.
Bangladesh  |  39.4  |  37.1  |  27.0  |  24.6  |  17.1  |  9.7   |  3.2  
India      |  3.1   |  3.6   |  3.2   |  3.0   |  4.0   |  4.6   |  7.7  
Myanmar    |  2.2   |  1.3   |  0.9   |  0.5   |  1.0   |  3.3   |  5.1  
Thailand   |  0.5   |  0.7   |  0.5   |  0.4   |  0.4   |  2.4   |  0.4  
Philippines|  2.7   |  2.7   |  1.8   |  1.2   |  1.0   |  0.8   |  1.2  
Pakistan   |  1.7   |  1.0   |  0.6   |  0.5   |  0.4   |  0.2   |  0.8  
Nepal      |  0.0   |  0.1   |  0.1   |  0.1   |  7.3   |  9.7   |  11.1 
Others     |  0.0   |  0.2   |  0.2   |  0.3   |  0.4   |  4.6   |  5.5  


In general terms, we can conclude that economic growth in Malaysia, which has been related with an export-oriented economy since colonial times, has always been achieved by relying on immigrant labour. In other words, the export of goods and the import of migrant labour have been, and still are, closely entwined concepts in Malaysia. While in colonial times the exportation of tin and rubber within the increasingly connected world economy was made possible by the importation of Chinese and Indian labour, in the last decades the country’s exportation of manufactured goods within an increasingly globalised economy has been based on the importation of migrant labour from Indonesia, Bangladesh, the Philippines and other Asian countries. At the same time, while sustaining growth, immigration has contributed to the consolidation of a dual labour market that in turn has intensified Malaysian reliance on migrant labour. In colonial times, labour in the foreign-owned, export-oriented tin and rubber sectors was mainly performed by immigrants. In recent decades, migrant labour has not remained limited to export-oriented sectors but has been present in those jobs perceived by local workers as dirty, degrading and dangerous. This explains why, despite the recession and growing unemployment of 1985, 1997 and 2002, employers’ complaints of labour shortages persisted.

### 3.3. TOWARDS A GUESTWORKER POLICY

#### 3.3.1. Colonial times:
By the time British metropolitan interests had begun to seek large supplies of cheap labour, Chinese workers had become a relatively freer labour force. They were perceived as ‘very closely knit, self-governing communities, homogeneous, united in aim, if often mutually antagonistic, and, by virtue of their secret society or guild organization, with strong internal and discipline and stability to present a united front to outsiders’ (Jackson 1961: 57). In short, the early colonial, metropolitan-protected plantation industry found Chinese labour too organised and expensive. The colonial economy, tied to the ups and downs of the capitalist world trade cycle, required an alternative (cheap, stable and continuing) supply of foreign labour. The British colonial authorities therefore turned their attention to Indian workers.
Unlike Chinese workers, South Indians were perceived as a ‘peaceable and easily governed race’. There was general consensus that South Indian Tamils were reliable and ideal for plantation work as they were supposed to have all the ‘required qualities’ such as humility, loyalty, docility, submissiveness, malleability and scant self-reliance (Summugam a/l Rengasamy 2006: 265). Most came from landless, untouchable and vassal groups, for example the paraiyan, chakiliyan and pallan castes, and were therefore well-accommodated to being in thralldom to the upper castes and subject to the paternalism of the British Raj (Selvaratnam 1980: 9). Poverty in South India itself also played an important role. In particular, the agrarian crisis in the Madras Presidency and the further pauperisation of peasants due to British imperial policy spurred on their readiness to migrate (Stenson 1980: 17; quoted in Ramachandran 1994: 53). Apart from being perceived as a cheap, docile labour force, the employment of Indian labour was also meant to counterbalance the growing Chinese population in Malaya, as is reflected in the statement of Sir Fredrick Weld, Governor of the Straits Settlements, who noted in 1887, ‘I am anxious for political reasons that the great preponderance of the Chinese over any other races in these settlements, and to a less marked degree in some of the Native States under our administration, should be counterbalanced as much as possible by the influx of Indian and other nationalities’ (quoted in Parmer 1960: 19).

Unlike Chinese immigration, Indian immigration was planned and supervised by the colonial authorities so as to suit themselves and British employers. The fact that India was under the rule of the same colonial empire paved the way for the Malayan government’s importing and exporting of Indian labour according to its requirements in Malaya. When labour was in demand, the Malayan government issued licenses to recruiters so that ‘fresh workers’ could be brought into the country. When the rubber market was depressed, the government shared expenses with the Indian Immigration Fund – based partly on a levy imposed on all planters who used Indian labour (on a per capita basis) – for the repatriation of Indian workers back to their homes (Beeman 1985: 264; Ramachandran 1994: 106). By regulating migration, employers were able to exploit to best advantage the productive capacities of their estates. They were immune from the danger of wage increases caused by labour shortage. By using repatriation as an unemployment policy, the State was able to avoid the costs of unemployment such as public-works programmes and welfare facilities. Although the tactic was opposed by employers who feared future labour shortages, the colonial authorities preferred repatriation to maintaining the unemployed (Beeman 1985: 264).

It is important to make clear that Indian migrants were only expected to return home in case of unemployment and health problems. The rest could stay in colonial Malaya as long as they were required. In fact, to ensure a stable supply of low-wage labour and the stability of the Indian migrant community, the colonial government had encouraged entire Indian families to migrate. This policy was manifested by an increase in the percentage of Indian women living in Malaya (from 26.1 per cent in 1911 to 39.9 per cent in 1931) and resulted in the settlement
of many Indian migrants. However, they could only settle as ‘eternal foreigners’. As perceived ‘birds of passage’, Indian and Chinese migrants were not granted nationality status or full rights for this would have been at odds with the stated policy of ‘ruling’ Malaya for the Malays or, in other words, of considering only Malays as ‘sons of the soil’ (Kaur 2004: 4; Selvaratnam 1980: 11). As stated in the *Malaya Tribune*, ‘[A]n Indian or a Chinese after settling down in Malaya under British colonization and British protection may become a British subject or British protected subject according to the English law, but it is not right to identify such a man as a subject of the Malay rulers, unless he adopts the Malay religion, according to the custom’ (quoted in Selvaratnam 1980: 11).

3.3.2. Postcolonial times: By Independence in 1957 the Malays represented 49.8 per cent, the Chinese 37.2 per cent and the Indians 11.1 per cent of the total population (Chin 2002: 44). These ethnic categories had in fact acquired real or imagined attributes such as language, customs or religion under colonial rule. While the Malays had previously been divided into sub-ethnic categories such as Javanese, Bugis or Minangkabau, the Indians into social castes and the Chinese into dialect groups, the official idiom of the colonial government, together with a series of policies and legislation, had now merged all these differences into three ethnic categories (Shamsul 1998: 136). As I have noted, the term ‘*Melayu*’ became the term exclusively used to refer to all those who ‘speak the Malay language, profess Islam and habitually follow Malay customs’. Moreover, Malay, Chinese and Indian identities were constructed and segregated according to employment and geographic space. While Malays had been encouraged to remain as predominantly peasants in rural areas, the Indians had been channelled to plantations and infrastructural projects and the Chinese had managed tin mines and small businesses in emerging urban areas (Chin 2000: 1053).

The new Malaysian State was thus constructed on the basis of these three groups. The tricky question of acknowledging non-Malay presence and demands without negatively affecting Malay claims to political and cultural dominance was resolved with the so-called Bargain of 57 according to which Chinese and Indians were granted citizenship and, in return, these two minority groups accepted Malay as the national language, Islam as the national religion and an electoral system that ensured Malay political dominance by favouring the rural districts in elections (Spaan, van Naerssen & Kohl 2002: 163). This led to the new government being organised on an ethnically ‘consociational’ basis, in which each political party

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13 The proponents of the concept of consociationalism argue that it represents the only effective way of organising democracy in an ethnically plural society. At the same time, it is commonly accepted that the kind of democratic institutions it generates have certain features that are intrinsically anti-democratic. For instance, decision-making is by secret negotiations within the grand coalition. This means that consociational democracy contains significant elements of elite control since political decisions are monopolised by an elite coalition (Lijphart 1969: 213). This leads Brown to argue that the ethnically consociational state should be rather understood in terms of class: ‘[T]he postcolonial Malaysian state was the result of the alliance between bourgeois class fractions through the political institutions
represented one racially-based communal segment of the society. Ever since then the Malaysian government has been ruled by an alliance of the three major ethnic parties: United Malay National Organisation (UMNO), Malayan Chinese Association (MCA) and Malayan Indian Congress (MIC).

One of the first pieces of legislation passed by the new nation-state was an Immigration Act (1959) to regulate the entry and movement of foreigners into Malaysian territory. The new legislation was designed to restrict entry of family members of local residents and, in so doing, it claimed to be safeguarding the employment and livelihood of established residents as well as bringing about further assimilation in the country (Kaur 2004: 15). The Immigration Act was followed by an Employment Restriction Act (1968) which made access to the labour market for foreigners contingent upon possession of a work permit. As Wong has observed, the institution of the new nation-state was thus made legally coterminous with that of a closed labour market. While citizenship conferred the right of residence within the bounds of a nationally-defined territory and gave right of entry to its labour market, foreigners were exempted from both (Wong 2002: 4). However, there was an additional important nuance. Although the legislation referred to citizenship, in practice it had a notable ethnic component.

On the one hand, the Immigration Act and the Employment Restriction Act affected primarily Chinese and Indians. In particular, those who had not taken out citizenship, some of whom had been resident in the country for all or most of their lives, were compelled to leave or were repatriated. Moreover, further tightening of migration rules made it even more difficult for Chinese and Indian migrants to enter the country and join their family members (Kaur 2004: 15). On the other hand, immigrants from the neighbouring islands of the archipelago, such as Sumatra and Java, did not fall under the legal category of ‘aliens’ and hence did enjoy free entry to Malaysia and its labour market (Wong 2002: 5). In this regard, we can conclude that the application of the first migration policies in Malaysia was based on two (sometimes contradictory) principles: citizenship and ethnicity. In other words, the border was drawn not only between citizens and non-citizens but also (or at the same time) between Malays (including Indonesians) and non-Malays.

This double border continued to operate in practice until the late 1980s. Until then, the presence of thousands of Indonesians working illegally in rubber and oil palm plantations and on construction sites did not attract much public attention. They were perceived as temporary (even seasonal) workers and as similar to Malays. The border became even more blurred when, as Pillai has shown (2005: 169-170), most illegal Indonesian migrants received their permanent residence status within two or three years of entry and some even within months. Some of them obtained of an alliance between racial groups, in which subordinate racial class fractions were persuaded to ally with dominant racial class fractions within patronage parties structured on avowedly ethnic communal lines’ (Brown 2002: 214).
these documents legally, others illegally or with the connivance of State officials. The main result of this (selective) border permeability was that most Indonesians who arrived before the late 1980s could settle in Malaysia. This had a spin-off effect: their offspring could become citizens of Malaysia and hence be qualified as Malays under the affirmative action programmes designed to bring the Malay community into socioeconomic parity with the Chinese and Indian communities.\textsuperscript{14}

3.3.3. From the late 1980s onwards: As Indonesian migrants started to move to urban areas and particularly to those economic sectors reserved for local workers, their presence started to be seen as challenging the NEP employment policy. In other words, they were deemed to be competing with local workers in the labour market and particularly as challenging the preordained redistribution of wealth and employment among the different ethnic groups. For instance, in the mid- and late 1980s Malay petty traders in the major cities staged vociferous protests against illegal Indonesian workers as they feared being economically displaced. Moreover, non-Malay communities accused the State of turning a blind eye to the inflow of Indonesian migrants and hence surreptitiously increasing the Malay share of the overall population. Although Dorall argues that ethnic politics correlate with migration politics (Dorall 1989), this view needs to be nuanced since the main importers (including recruiting agencies) and employers of migrant workers have been non-Malays and particularly the Chinese (Kassim 1997: 23).

My main argument is that the reaction to illegal (Indonesian) migration in the late 1980s should be understood not only in ethnic terms but also and, above all, from a social class perspective: it was the urban lower-class Chinese (mainly represented by the Democratic Action Party) who, like their Malay correlates, felt threatened by migrants’ presence. In this regard, although the association of ethnicity with economic function still characterises union membership to a certain degree,\textsuperscript{15} it is not surprising that, since the mid-1980s, Malaysian trade unions have opposed the presence of migrant workers. As argued repeatedly by the Malaysian Trade Union Congress (which claims to be the only mass multiracial organisation in Malaysia), trade unions have seen migrant workers as obstacles to their efforts to fight for better wages and work conditions. When employers asked for migrant workers on grounds of alleged labour shortages, trade unions have always replied that there was a shortage of cheap labour but not of labour \textit{per se}.

\textsuperscript{14} These programs were launched by the NEP as a way of restructuring society by dismantling the identification of ethnicity with economic function and geographic space. For instance, they included the introduction of quotas for public and private employment of Malays or the creation of the Bumiputera Commercial and Industrial Community (BCIC). Bumiputera literally means 'Sons of the Soil', a category that encompasses Malays and other indigenous peoples of Malaysia.

\textsuperscript{15} Although it has gradually changed as a consequence of the employment quotas implemented under the NEP, Malays still dominate public-sector unions such as those pertaining to civil defence and agriculture. The percentage of non-Malays is higher in private-sector unions in the banking and several service sectors. Indians dominate union membership in the plantation sector (Chin 2000: 1045).
The need to protect the national labour market finally displaced ethnicity as a key component of (the implementation of) migration policies, thereby setting up citizenship as the undisputed barrier or border for free entry to the labour market. This gradual closure and delimitation of Malaysian borders gave rise to a twofold phenomenon: the gradual exclusion of illegal migrants and the development of a temporary labour migrant system to ‘manage’ the entry, stay and repatriation of the foreign labour force that was in demand yet not wanted. In fact, as I shall show in the next sections, both phenomena are interrelated: while the exclusion of illegal migrants finally led the government to organise labour migration flows to Malaysia, the rigidities of the migrant labour system created new illegal immigrants as well as other kinds of illegality.

As an issue of national significance, illegal migration was first raised in Parliament in 1976 by members of the opposition Democratic Action Party (DAP). This was followed by the introduction of the term pendatang haram (illegal migrant) or the more politically correct pendatang tanpa izin (migrant without permission) into the Malaysian public vocabulary shortly thereafter (Wong & Anwar 2003: 169). While at first it referred to the Vietnamese refugees (‘boat people’) who arrived in Malaysia in the late 1970s, in less than a decade it would become almost synonymous with illegal Indonesian migrant. This shift came hand-in-hand with new connotations that associated illegality with contagious diseases, begging, prostitution, ‘deviant’ religious teaching, urban squatters, criminality and subversive political activities. These negative images have contributed to what Fernandez (1997) has called ‘migrant bashing’, literally and figuratively, in society.

As noted by Chin, the question is not whether some migrant workers engage in unlawful activities but rather that such negative representations became ‘a key management strategy of migrant workers’ public identity as outsiders or ‘illegals’ whose movement in society must be surveilled, if not overtly contained’ (Chin 2002: 33).

This process has barely been challenged by Malaysian NGOs. In fact, only a few organisations (such as Tenaganita and Suaram) work for the defence of (legal and illegal) migrant workers’ rights in Malaysia.16 Multiple reasons have been given by way of explaining this lack of response. First of all, human rights arguments often end up disempowering activists who risk being branded as pawns of the West by a government that frequently professes Asian values17 (such as loyalty, hard work...
and docility) as opposed to Western-derived human rights norms (Gurowitz 2000: 864). Secondly, many activists and NGOs, frequently ‘leftist’ in orientation and potential allies of immigrants, are non-Malay. This might explain their limited role in the defence of (mainly Indonesian) migrant workers (Gurowitz 2000: 875). Finally and probably above all, as illustrated by the arrest and trial of Irene Fernandez (head of the NGO Tenaganita) for publishing a report that denounced abuses in detention camps, laws such as the Internal Security Act (a preventive detention law in force since 1960) and the Printing Presses and Publication Act (a law on dissemination of information, in force since 1984) have been used to suppress open debate and check opposition from civil society.

In parallel with its policy of excluding the illegal migrant, the Malaysian State introduced in 1991 a set of measures to regulate the recruitment, employment and return of migrant workers. In general, these measures sought to determine age, gender, nationality, employment sector, location and duration of residence and employment of foreign workers in Malaysia. The idea behind these specifications was to adapt labour migration to the requirements of a set of preconceived factors such as the level of economic activity and rate of unemployment, sectorial labour market imbalances, the numbers of undocumented workers, national security, diplomatic relations and the pressure of particular interest groups (Kanapathy, 2004: 382). Most Malaysian scholars have argued that migration policies have been inconsistent, changing and ad hoc (Pillai 1999, 2000, 2005; Kassim 1993a, 1994b, 1995, 1997, 1998; Chin 2002; Kanapathy 2004). However, as I shall argue in the next section, what has been defined as ad hoc could be understood as part of a guestworker policy aiming at maintaining high levels of labour migration while at the same time working towards the closure of national borders.

3.4. LETTING THEM IN...

3.4.1. Defining numbers: By regulating migration flows, the State aims to define the number of migrants allowed to enter and work in the country. In the Malaysian case, this has been determined by two contradictory demands. On the one hand, as just noted, migrant workers were perceived as necessary in order to ease labour shortages in critical sectors such as plantations, construction, manufacturing and services. Since economic growth has depended on foreign investments that were attracted by emphasising low labour costs, the availability of cheap foreign labour was seen as essential. On the other hand, migrant workers were also perceived as a threat to what was deemed to be the proper redistribution of wealth and employment among the different ethnic groups (Malay, Chinese and Indian). As we

acceptance of wide-ranging and thoroughgoing state and bureaucratic intervention in social and economic affairs; concern for socioeconomic well-being instead of civil liberties and human rights; and preference for the welfare and collective food security of the community over individual rights.
have seen, trade unions have systematically opposed the entry of migrant workers. This dilemma between contradictory demands has been solved by letting in only those migrant workers perceived as ‘needed’ for economic growth and only in those economic sectors or occupations were nationals did not work. While this policy is common to most nation-states, what remains to be considered is how the Malaysian State defined this ‘necessity’ for migrant workers or, in other words, how many migrants were perceived by the State as ‘needed’.

Although this process is not defined in any published document, it is general knowledge that employers are required to advertise their vacancies in local newspapers and through the Electronic Human Exchange System of the Human Resources Department. If no national workers are available, employers should submit an application for the recruitment of migrant workers to the Ministry of Home Affairs. These applications, according to an official of the Immigration Department, are sent to a specific technical committee that defines whether the application is ‘genuine’ or not (interview 6 October 2006, Kuala Lumpur). This means considering whether there are national workers available; whether the request complies with the quota established for each economic sector (for instance, in 2006, this quota was one migrant worker for every three local workers in manufacturing; but three for every one in construction); or whether applicants are direct employers or recruitment agencies, in which case applications would be rejected. Other factors that may be taken into account are the volume and duration of the project, whether the employer is a subcontractor or the main contractor and the jobs for which migrant workers are required. As the representative of the CIDB (Construction Industry Development Board Malaysia) observed, ‘For specific tasks – the most difficult, dangerous and dirty tasks – employers can bring as many foreign workers as they want. I mean, for these tasks, there is no ratio between locals and foreigners’ (interview 10 October 2006, Kuala Lumpur).

Trade unions complain that this process should be more transparent. As the representative of the Malaysian Trade Union Congress said, ‘The government should establish which sectors need foreign workers and how many’ (interview 31 October 2006, Kuala Lumpur). Similarly, the representative of the Malaysian Employers Federation denounced this as ‘[…] a cumbersome procedure. It depends a lot whether you know somebody there. If you are close to officials from the Immigration Department, you get it. If not, you can keep waiting for months and months, just going around from one person to another’ (interview 13 September 2006, Kuala Lumpur). In fact, apart from the requirements mentioned above, applications can be revised case by case. This means that having good contacts within the Immigration Department can indeed facilitate and speed up the whole recruitment process. These contacts can be direct between employers and government officials or via the so-called recruitment agencies, which often mediate between employers and the Malaysian government. Despite such limitations in the procedures, between 400,000 and 700,000 migrant workers enter Malaysia every year. These numbers would seem to suggest that the ‘necessity’ for migrant workers is defined in broad terms. As the representative of the Malaysian
Agricultural Producers' Association (MAPA) remarks, it seems that, ‘For employers it's not a problem to get foreign workers’ (interview 14 September 2006, Kuala Lumpur).

Apart from this case-by-case evaluation of foreign labour demands, the Ministry of Home Affairs has regularly enforced a series of bans (in 1993-1994, 1997, 2001, 2002, 2005) on different categories of migrant workers. In 1997 this was justified by the Prime Minister Dr. Mahathir Mohamed who argued that, ‘The country cannot go on depending on foreign workers. We have 20 million people and 1.7 million foreign workers. If we allow this to go on we would risk losing control of our country’ (Bulletin Imigresen, 1997; quoted in Wong & Anwar 2003: 181). While, here, the Prime Minister referred to security reasons, on other occasions the freeze on employment of migrant workers was justified by the need to protect national workers, to prevent social problems or to reduce the amount of remittances sent by migrants to their countries of origin. Despite all these arguments, employers’ complaints about the persistence of labour shortages and their negative consequences on economic growth (affecting national and multinational companies as well as government-constructed megaprojects) led on each occasion to an immediate lifting of the ban. For instance, in 1997 the prohibition on fresh labour recruitment meant that out of the employers’ requests for 225,275 work permits in 1998, only 2,876 were granted (Wong & Anwar 2003: 181). However, as it was revealed that RM 2 billion had been lost in 1997-1998 because of labour shortages, by mid-1998 the government had announced that permission would be given to foreign exchange sectors (such as plantations) to employ ‘fresh’ migrant workers as well as to redeploy migrant workers from other economic sectors. In early 1999 the freeze on the importation of foreign labour was lifted in the construction, manufacturing and service sectors.

These constant shifts in terms of allowing, restricting and banning migrant entry have been interpreted by most Malaysian scholars as outstanding examples of the ad hoc, stop-go character of Malaysian migration policies. From a historical perspective, it becomes clear that these shifts resulted from the dilemmas and contradictions underlying the State’s decisions in the field of migration. As the Human Resources Ministry once said, ‘The government was seeking to strike a balance between ensuring there is no labour shortage and employers not taking advantage of the situation at the expense of local workers’ (New Straits Times, 28 November 1991). This balance, however, was sometimes difficult to attain. Despite the recurrent introduction of temporary bans on the employment of migrant workers, the Malaysian State did always re-open the ‘gates’ in the end. We can thus conclude that employers’ demands were systematically attended to. This was the case not only because employers succeeded in imposing their interests but also because economic growth and development was one of the main concerns of the Malaysian State itself.

3.4.2. Regulating migrants’ origins: State regulation of migration flows has sought to determine not only the number of migrant workers allowed to enter in the
country but also their origins. As in the colonial past, the State aimed to create a docile and malleable labour force by diversifying migrants’ origins. This has meant, in particular, countering the power of a specific sending state or the dominance of a specific national group within Malaysian national territory. The best illustration of the former is the case of the Philippines. When, in 1997, the Filipino State asked for an increase in the wages of Filipino domestic workers in Malaysia (from RM500 to RM750\(^ {18} \)), the Malaysian State reacted by banning their employment. An illustration of the latter is the case of Indonesian migrants. In 2002, following several riots in work places and detention camps, the government announced a ‘Hire Indonesians Last’ policy, that is, effectively putting a stop to the recruitment of Indonesian migrants. The official argument, as expressed by Prime Minister Mahathir, was that it was time for Indonesian workers in Malaysia to be ‘replaced’ by workers of other nationalities. As in the past when Indian labour was promoted by the colonial authorities to counterbalance Chinese presence in Malaysia, labour migration from countries such as Vietnam or Myanmar started to be encouraged after 2000 in order to reduce Malaysian reliance on Indonesian labour.

But to what extent could the Malaysian State determine the origin of the Malaysian migrant labour force? In fact, here too, the markets countered any policy that did not fit their demands. For instance, the ban on Filipino domestic workers was followed by an immediate reaction from employers. ‘Consumers’ of this specific kind of labour, which is to say families that were set on having Filipino domestic workers, protested by arguing that they should have the right and the freedom to choose the characteristics of their own domestic workers. Interestingly, their arguments were exclusively in terms of market demand. For instance, an employer protested in a local newspaper, ‘Since Indonesian maids are Muslims, it is not proper to ask them to cook certain food. To hire an Indonesian maid would only cause inconvenience to us and the maid. [...] We are comfortable with Filipino maids because they can speak English and are hardworking. [...] If we can afford to pay, why not let us hire them since it is our money?’\(^ {19} \) (New Straits Times, 8

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\(^{18}\)The present exchange rate for the Malaysian Ringgit (RM) (December 2009) is 1 USD = 3.39850 RM and has ranged from approximately 3.8 RM to 3.5 RM in the last 10 years. The family average income is 3,000 RM per month. Although Malaysia has no comprehensive law on minimum wage, in 2009 some 30,000 plantation workers nationwide received a minimum wage of RM500-RM600 per month (The Malaysian Insider, 6 June 2009).

\(^{19}\)Few years later, in 2003, the Malaysian government attempted to restrict the employment of domestic workers to households in which both parties shared the same religious beliefs. In particular, the aim of this regulation was to restrict employment of Muslim domestic workers only to Muslim households. As said in a local newspapers, the purpose was ‘Muslim maids for Muslim households’ (The Sun, 15 April 2003). However, and again following employers’ protests, this ‘same-religion rule’ was withdrawn immediately after its announcement. The main employers’ concern, as observed by Tokunaga (2005), was that it could diminish their choices – at the moment about 90 percent of all legal domestic workers were Indonesian and most of them Muslim – for the purchase of care services. There also existed concerns that this new regulation could threaten the ‘multi-racial society’ of Malaysia and its goals for pluralistic integration.
September 1997). Similarly, a group of employers protested in an open letter to another newspaper, ‘Please do not tell us that we can settle for other nationalities. We have our preference. Isn’t Malaysia a democratic society?’ (Business Times, 11 September 1998). Once again, following such protests, the ban was immediately lifted.

Partly thanks to employers’ demands, the Filipino State succeeded in imposing its own conditions beyond its national borders. This State transnationalism, or transnationalism from above, resulted in fact from the commodification of Filipino domestic workers (see Ezquerra & Garcés-Mascareñas 2008). Indeed, only by envisaging them as luxury goods or consumption goods with added value, or as the ‘Mercedes Benz of domestic workers’, could the Filipino State impose higher wages for its domestic workers in Malaysia. In fact, in 1995 the Indonesian government had tried to do the same thing but without success. In this case, employers’ protests were substantially different. For instance, one employer argued, ‘With RM1000 a month [the wage demanded by the Indonesian State], it is better for me to hire two Filipino maids who are better trained and understand English since my current Indonesian maid does not even know what a refrigerator is’ (New Straits Times, 28 February 1995). Independently of ‘the market value’ of its domestic workers, Indonesia’s demands were rejected on the basis of two main arguments. First, Malaysia is the main destination country for Indonesian migrants. In this regard, in contrast with the Philippines, the argument was that ‘they had no other alternative but to accept our conditions’. Second, Indonesian domestic workers are mainly employed by the Malaysian middle-class who cannot afford to pay more.

While the Indonesian government could not impose its wage conditions within Malaysian national territory, neither could the Malaysian government impose a ban on the recruitment of Indonesian migrant workers. The ‘Hire Indonesians Last’ policy, which was meant to stop Indonesian labour migration to Malaysia, clashed with the structural significance of Indonesian workers in the Malaysian economy. For instance, as 70 per cent of all construction workers were Indonesians, this halt was followed by the overnight reduction of construction output by some 40 per cent. It was also estimated that because the ‘disappearance’ of Indonesian harvest workers, vegetable prices would rise as much as 30 per cent (Liow 2004: 22). In consequence, the policy was quickly recognised as unviable and abruptly rescinded after two weeks. The executive director of the Malaysian Employers Federation argued the impossibility of renouncing Indonesian workers in the following terms, ‘Based on employers’ experience, the Indonesian workers are more suitable to work in this country due to several reasons. Firstly, the Indonesians have no problems in adjusting to the Malaysian culture in terms of language, social, food and religion. Secondly, the working environment in Indonesia is similar to Malaysia and they have the necessary skills required in Malaysia. Language is also an important factor to be considered as the Indonesians have similar mother tongue as Malaysians and thus facilitate communication and training [sic]. Thirdly, employers have positive views on the work culture and attitude of
Indonesian foreign workers who are willing to work extra hours to increase their productivity' (New Straits Times, 14 February 2002).

While in the cases of the Philippines and Indonesia the State regulation of migrants’ origins was opposed by employers’ demands, in other cases it could be implemented without much conflict and protest. In 1997, for instance, a freeze on the recruitment of Bangladeshi workers was imposed arguing, first, that Bangladeshi migrants caused social unrest, particularly as a consequence of the alleged popularity of Bangladeshi men among Malaysian women. Second, the Malaysian government justified the halt by referring to the abuses committed by Bangladeshi recruitment agencies. As described by an Immigration Officer, ‘Bangladeshi agencies charged at that time around 10,000 to 15,000 RM per worker. The workers themselves had to pay it. This was a lot and led to exploitation. So in 1996 we said: before recruiting more Bangladeshi workers, solve first your problem at home!’ (interview 6 October 2006, Putrajaya). As a result of this halt, the presence of Bangladeshi workers decreased from representing 39.9 per cent of all migrant workers in Malaysia in 1997 to just 3.2 per cent in 2006. While reducing the number of Bangladeshi migrants in Malaysia, this same policy led to rising numbers of workers from new emigration countries such as Myanmar (from 2.2 per cent in 1997 to 5.1 per cent in 2006), Nepal (from 0 to 11.1 per cent) and Vietnam (from 0 to 4 per cent) (see Table 3).

3.4.3. Privatisation of recruitment: In contrast to European guestworker programmes, in Malaysia the recruitment of migrant workers has always been managed by private agencies. Dubbed manpower suppliers or more recently labour outsourcing companies, these private agencies organise the whole migration process from the small village in Indonesia, Bangladesh or Nepal to the factory, plantation, construction site or household in Malaysia. Following employers’ requests, recruitment agencies in Malaysia contact their counterparts in the country of origin. These counterparts recruit migrants in the villages (often through other agents) and send the required information to the Malaysian agency. Once employers agree on the characteristics of the migrant workers proposed, both the agency in the country of origin and the one in Malaysia initiate the legal procedures to send and receive them in Malaysia. Recruitment agencies in Malaysia organise not only the whole registration process but also the renewal of the work permit and the annual payment of medical check-ups, insurance and levy.

Employers have often defended the presence of recruitment agencies by stressing their role as coordinators of the recruitment process as well as in the deployment of migrant labour from completed jobs to new ones. From this perspective, recruitment agencies have often been presented as necessary ‘managers’ or ‘guardians’ of a migrant labour system that does not work alone or, in other words, that needs ‘someone in the middle’ to cope with the distance between labour supply and demand, deal with legal procedures, re-distribute migrant labour and return immigrants to their countries of origin after the prescribed period of time. This is how recruitment agencies present themselves as well. The president of the
Malaysian Association of Foreign Maid Agencies went still further, stating on several occasions that recruitment agencies are the only entities that can control employers and mediate between them and migrant workers: ‘If you come without an agency, who controls the employer? I told the government that foreign workers should always come through an agency. The agency makes sure that employers pay. The agency also makes sure that employers send their workers back to their countries of origin after the termination of their contracts’ (interview 26 September 2006, Kuala Lumpur).

At the same time, recruitment agencies have often been portrayed as ‘unscrupulous people’ who overcharge migrant workers and ‘cheat’ them. The Malaysian newspapers are full of such cases. For instance, cases of migrant workers who have been given false promises in terms of salary and work conditions are reported almost every week. There are also cases of migrant workers who are abandoned on arrival in Malaysia after having paid huge amounts of money to their recruitment agencies. Without proper documentation or without a real employer behind their work passes, they immediately become ‘illegal’ and therefore may be deported to their countries of origin just after arriving in Malaysia. In fact, this is not so unlike the abuses committed by Indian recruiters (kanganies) in the late nineteenth century. Then, as now, it was regularly denounced that recruiters used bribery to encourage workers to migrate, promised young people a guaranteed good future, exploited family quarrels to induce people to migrate and gave false information about wages and living conditions in Malaya (Sandhu 1969: 100; Parmer 1960: 58; Ramachandran 1994: 60-61). In this regard, one contractor reported to a Commission of Enquiry in 1890, ‘I can confidently assert that not one single coolie who leaves India knows the real value of the rupee in this country, nor the cost of living here. The recruiters are scoundrels to a man; they not only make gross misrepresentations to the intending emigrants, but even employ force to bring them over’ (quoted in Netto 1961: 24).

Employers, trade unions, NGOs and the government itself have coincided in denouncing recruitment agencies, accusing them of charging exorbitant fees and practising a great number of irregularities. On the one hand, employers and government officials have underlined how these irregularities make the whole recruitment process more problematic and inefficient. For instance, companies often complain that agencies are providing them with ‘[…] the wrong types of foreign workers and this mismatch costs them time and resources’ (Business Times, 26 September 1992). As a representative of the Malaysian Agricultural Producers’ Association stated, ‘We don’t take workers from the agency here, because we would receive rubbish’ (interview 14 September 2006, Kuala Lumpur). Employers and the Malaysian government have also complained that exorbitant fees increase the numbers of cases of absconding or running away. As the Rural Development Minister Senator put it in 1994, ‘[I]f the foreign workers are required to make high repayment because of the high costs, the Government fears that they will abscond to seek other jobs’ (New Straits Times, 7 July 1994). On the other hand, NGOs and trade unions have been more concerned with migrant workers’ welfare. Their main
argument has been that the presence of recruitment agencies, along with their regular and irregular practices, have increased the vulnerability of migrant workers in Malaysia.

The ongoing tension between the demand for private agents to manage the recruitment and employment of migrant workers, on the one hand, and rejection of their abusive practices, on the other, is manifest in the formulation of migration policies. In 1992 the Human Resources Ministry amended the Private Employment Agencies Act 1981 in order to require the use of private agents in the recruitment of foreign labour. This change arose from the perceived need for a more ‘orderly process.’ Since these agencies were familiar with the required procedures, it was thought that their involvement would help to expedite the intake of workers (*Business Times*, 26 September 1992). Three years later, however, the recruitment of migrant workers (all but domestic workers) became the exclusive responsibility of the Home Ministry’s Foreign Workers Task Force. This shift was then explained by the need to circumvent this middleman’s course and establish a centralised apparatus that would ensure quicker and tidier processing of workers’ recruitment (*New Sunday Times*, 20 August 1995). Nevertheless, this attempt to centralise recruitment was doomed to fail. Although recruitment agencies were formally proscribed, employers never stopped using their services.

As the representative of one recruitment agency declared, ‘We have always helped them. But then we were not recognised. We did all the procedures, all the papers, but under their name’ (interview 20 September 2006, Kuala Lumpur). In fact, this was known and tolerated by the government. The Immigration Department repeatedly requested to deal directly with the employers but did not intervene in what employers did before and after getting the work permit (interview with an officer of the Immigration Department, 6 October 2006, Putrajaya). At the same time, this lack of recognition left recruitment agencies in a kind of legal limbo that made it even more difficult for the government to control them. This is one of the reasons why the government decided to re-legalise recruitment agencies in January 2006. From then on they have been called ‘outsourcing companies’ and have been recognised as the legal employers of migrant workers. As ‘legal’ employers, they are responsible for the recruitment and stay of migrant workers in Malaysia. As recruiters, they supply or ‘outsource’ their foreign labour to ‘real’ employers. Again, this does not differ very much from the past. In the late nineteenth and early twentieth centuries, the kangany not only recruited but also supervised and organised the migrant labour force within the estates. For this service, as presently occurs with the outsourcing companies, the kangany was paid ‘head money’, usually two cents a day for every worker who appeared for work (Parmer 1960: 68).

Employers had been asking for the creation of outsourcing companies since the early 2000s. The Malaysian Employers Federation, the Federation of Malaysian Manufacturers and the Master Builders Association Malaysia conceived outsourcing companies as a way of facilitating the mobility of workers. Since work
permits are only given on the basis of a two-year contract, employers proposed that these companies should work not only as recruiters but also as redistributors of migrant workers (on a temporary basis) within the Malaysian labour market. However, as all employers consistently pointed out, outsourcing companies have not fulfilled this role. In particular, the agencies do very little to advance the mobility of migrant workers since most of them try to impose on employers a one-year contract at least. The reason, according to outsourcing companies, is to avoid the risk of unemployment. In other words, if migrant workers are not employed as outsourced labour the whole of their stay, these companies become responsible for their salaries, accommodation and fees, and are thus faced with rapidly increasing costs.

What the outsourcing companies do accomplish is facilitating the recruitment and employment of migrant workers. Freed of the complex tasks of organising the recruitment, applying for work permits and renewals or being responsible for migrant workers’ stay in Malaysia, employers only have to pay a fixed sum (in September 2006 it was RM 62 per day and worker) for such services. Moreover, according to trade unions and NGOs, this system of labour outsourcing offers many opportunities for employers to get around legal obligations and escape payment. First of all, it undermines the conditions and wages established in collective agreements since outsourcing companies are not employers working in a particular economic sector and therefore are not bound to their specific obligations. Second, it blurs the legal contours of the employer and his or her responsibility vis-à-vis migrant workers. As a member of the NGO Tenaganita wondered, ‘Lots of employers prefer outsourcing because they are not liable. Who is the employer? Some people say that the employer is the one who pays the salary. But sometimes the salary is paid through the outsourcing company. Some people say that the employer is the one who coordinates. It is not clear. The problem then is: who is responsible before the law?’ (interview 4 October 2006, Kuala Lumpur).

In terms of migration flows, the privatisation and commercialisation of recruitment but also employment of migrant workers in Malaysia has had a twofold effect. First, it has increased the costs of legal migration. A comparison of the cost involved is very instructive. While in 2005 recruitment fees via regular agencies rose from RM 2,000 to RM 3,000, transport to Malaysia via the jalur belakang or back door (mostly by boat) costed from RM 100 to 2,200 (Kejser 2006: 10). Other studies have documented the same. In 2002, for instance, the recruitment fee from Aceh and Lombok (Indonesia) rose to RM 1,000 and RM 1,200 respectively compared with RM 500 and RM 450 for a boat passage to Malaysia (Wong & Anwar 2003: 198). In 2007, the fee paid to recruiters of Indonesian domestic workers could range between RM 1,000 to RM 2,000 (ISIS 2007). If we add to this other expenses such as the passport, induction courses, medical checks and levies, it is not difficult to understand why one of the main reasons given by migrants (particularly from Indonesia) for not coming through the official channel of contract work is the cost of legal entry (Wong & Anwar 2003: 198). In other words, given geographic contiguity, the existence of alternative social networks and, in
recent years, the possibility for ASEAN citizens to enter the country with a visa being issued on arrival (since January 2007), the legal channel with its extra costs often becomes dispensable if not downright undesirable.

Second, the presence of recruitment agencies explains, too, why many legal migrants fall into illegality once in Malaysia. In some cases, migrants were recruited without having a real employer behind their work permits. This means that either they were abandoned once in Malaysia or they were asked to work with a different employer, which meant they were working illegally. In other cases, migrants were brought into Malaysia under forged permits. This is often done in order to speed up the procedures and lower the costs. In practice, it meant that migrants entered and stayed illegally, often without being aware of it. Finally, in other cases, the mismatch between the debts incurred in order to get to Malaysia and the salaries obtained once there led migrant workers to the almost intolerable situation of having to work for years just to pay back the initial debt. This situation, which is not very different from that of the nineteenth-century indentured workers, has induced many migrants to run away from their employers. By absconding from employers, migrants escaped from debts and bondages. However, since work permits are tied to a particular employer, this meant immediately falling into illegality.

The story of Shahjahan Babu, a Bangladeshi migrant who arrived in Malaysia in 1993, is very illustrative in this regard. Babu was recruited by the Bangladeshi recruitment agency Paradise International. He was told, ‘If you work abroad, you will be able to bring back money. The more you pay, the more you will earn’. However, the situation in Malaysia turned to be very different. When he landed in Malaysia, the hotel work he had been promised turned out to be labour on a construction site. The next revelation was that his passport was forged, so that, to add insult to injury, he was illegal too. His own words, recorded in a tape he sent back home, say it all ‘I spent so much to come here as a legal worker. And now to serve their interest [recruiters], they’ve made us illegal. What are their intentions? Of us five Bangalees, they’ve separated us all... and put us at different sites, one here, another there. Promising us hotel-work, they put us in construction, heavy loads to lift, such hard work... yet I didn't tell you, from 7 in the morning till 12 midnight, no wages, nothing. Finally, after a lot of pleading, they fixed our wages at 300 RM. Do we feed ourselves or send money home? Yet, to survive, we’d have stayed. (...) We called our agency. They said ‘get out’! We’ve nothing to do with you. (...) Who will be held accountable for this? Who?’ (from the documentary My Migrant Soul, directed by Yasmin Kabir).

3.5. ... BUT ONLY AS FOREIGNERS

The need to protect the national labour market led to the gradual closure and delimitation of Malaysian borders. However, while the limits of the nation-state
became clearer, as did the distinction between citizens and non-citizens, the
demand for foreign labour continued to grow in Malaysia. The borders of the
nation-state became thus more and more delimited while at the same time more and
more migrant workers were required. The solution was an institutionalised,
government-regulated temporary labour migration system. Like any guestworker
programme (see Garcés-Mascareñas 2004), this system sought to let in migrant
workers but only in those places where they were needed and only for as long as
they were needed. In the Malaysian case, this has been accomplished on the basis
of three main principles: immobilisation, taxation and temporality of migrant
labour.

3.5.1. Immobilisation of migrant labour: Migrant labour in Malaysia has always
been restricted to particular economic sectors. While in the late 1980s its presence
was exclusively permitted in plantations and domestic services, during the 1990s
permission was extended to the construction, manufacturing and service sectors.
The idea behind these limitations has been to restrict the employment of migrant
labour to those jobs rejected by local workers. While both employers and trade
unions have agreed about the fact that local workers should be given priority in the
labour market, they have disagreed when identifying the demand for migrant
workers. On the one hand, employers have always insisted that locals were ‘too
choosy’ to work in plantations, construction, manufacturing and particular services
and hence that foreign labour was required to cover labour shortages in these
sectors. On the other hand, trade unions have denounced the fact that these labour
shortages were not the result of a ‘genuine’ lack of manpower but of poor wages
and work conditions. The result has been a changing migration policy that has
opened up these sectors to migrant workers in periods of economic growth while
closing them during economic slowdowns such as in 1997-98 and 2002.

In order to restrict the presence of migrant workers to specific economic sectors,
their inflow has been regulated by work permits (instead of residential status) that
are issued for a specific economic sector and tied to a particular employer. This
policy has had the backing of the main interest groups. First of all, for employers,
the immobilisation of migrant workers has meant the reduction of migrant-labour
turnover, particularly in those sectors with lower wages and poorer working
conditions. In other words, it prevented migrant workers from leaving their initial
employment to seek better job opportunities. Their immobilisation is, moreover,
the only legal guarantee whereby employers can recover their initial investments in
terms of recruitment fees, medical check ups and annual levies. Second, trade
unions have also been in favour of this policy since it prevents migrants from
displacing local workers in the labour market. Third and finally, with this policy the
Malaysian State has sought to hold employers responsible for the presence of
migrant workers in Malaysia as well as for their return to their countries of origin.
This responsibility was reinforced by the introduction in 1992 of a mandatory
security bond (between 250 to 5,000 RM according to nationality and economic
sector) that is only refunded to the employer once the migrant worker has left the
country. The immobilisation of migrant workers has been denounced by most Malaysian and international NGOs. Although migrant workers (except domestic workers) are protected under the Employment Act, their reliance on a particular employer effectively prevents them from seeking redress in the labour or industrial court. Since the Immigration Act clearly states that a migrant worker is only allowed to be employed and to stay in the country within the premises of the enterprise stated in the work permit, if the migrant worker wants to discontinue his or her employment due to abuse or exploitative work conditions, or the work permit is cancelled by the employer after having being brought to court, the migrant worker has to return home. Sometimes a special pass visa is issued in the latter circumstance but it has to be renewed monthly and does not give permission to work. Since court cases can take months or even years, this means that, in practice, most migrant workers are forced to return home before the end of the trial (Tenaganita 2005: 26-34).

In practice the immobilisation of legal migrant workers seems to lead in many cases to a situation of ‘sanctioned bondage’ (see Kassim 1995). As their mobility is restricted by the work permit, legal migrants have to accept the terms and conditions of their contracts, they do not have the freedom to move from job to job and, as we just saw, their labour rights are restricted since their legal presence in the country depends on their employers. In this regard, Kassim concludes that having legal status accentuates rather than diminishes exploitation of migrant workers by their employers or, in other words, that legal employment can be counterproductive for the workers (Kassim 1995: 1). In contrast, illegal migrants are not tied to their employer as there is no agreement signed and they can leave if and when they want. This is evidenced by the high rate of job mobility among illegal migrants (Wong & Anwar 2003: 220). In this particular aspect, illegality would seem thus to be an advantage to the migrant worker rather than a disadvantage.

At this point it is instructive to refer to some more specific situations. Kassim offers two particular examples to illustrate the difference between legal and illegal migrant workers. The first example refers to domestic workers. Most legal domestic workers live with their employers. In many cases, they do not have a day off and they work many more hours than stipulated in their contracts. At the end of the month, they are paid a fixed salary that, in most cases, does not correspond to the long hours they have been working. In contrast, many illegal domestic workers do not live with their employers. Instead they live in rented accommodation in

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20 According to the public relations officer of the Immigration Department, the security bond can only be refunded to the employers after showing proof that their workers have left the country. In the case of ‘running away’, ‘[T]he employer must lodge a police report and a copy of the report must be filed with the department for its enforcement officers to try and locate the worker’. The money collected through the security bond ‘[…] will finance the cost of deporting any worker who fails to adhere to the conditions stipulated in his temporary employment pass’ (New Sunday Times, 15 November 1992).
cheap neighbourhoods such as squatter areas. They work for six or eight households, they are paid by the hour and can rest at night and on weekends. The second example refers to legal factory workers. While they are tied to their employers and cannot negotiate or improve their wages and working conditions, illegal workers at petrol pump stations, restaurants and construction sites seem to be relatively better off. Their salaries are higher, they have more contact with people outside the workplace and they can leave if they find better employment (for instance, in sectors with huge labour shortages) whenever they want (Kassim 1995: 12-15).

Given these differences and the impossibility of improving their working conditions by legal means, many legal migrant workers leave their employers and therefore become illegal. This is what is daily described in the Malaysian newspapers as cases of ‘absconding’ or ‘running away’. Although there are no data on the total number of absconders, there is a general perception that this is a common phenomenon. For instance, in 1997 an immigration official declared to a Malaysian newspaper that most illegal migrant workers working at the new international airport had run away from plantations in search of better wages (The Malay Mail, 12 June 1997). A member of the Malaysian Palm Oil Plantation observed along similar lines that plantation workers run away as soon as they have a friend working in the construction sector (interview 21 September 2006, Kuala Lumpur). Rudnick (2009: 181) estimates that 20 per cent of the Bangladeshi women employed in factories and an undetermined higher percentage of Bangladeshi men absconded from their initial jobs. When official data about cases of ‘running away’ are given, they refer exclusively to domestic workers. In 2005, 19,406 cases of running away were denounced to the Immigration Department compared to 18,358 in 2004 and 17,131 in 2003 (New Sunday Times, 2 July 2006). According to a representative of the NGO Migrant Care, there were 30,000 cases of running away in 2007, which represented approximately 10 per cent of all legal migrant domestic workers in Malaysia (interview 11 January 2008, Kuala Lumpur).

On the basis of these data, many recruitment agents and even government officials suggest that employers should not give migrant domestic workers a day off each week. Agents and politicians commonly argue that domestic workers ‘easily fall in love’ or they are ‘easily manipulated’. However, if we take into account that their situation is even more fragile than that of the other legal migrants, we might well conclude that ‘absconding’ is the only real alternative they have if they are to improve their situation. Domestic workers are not included in the Employment Act and neither are minimum wages or minimum working conditions specified for them. As alleged ‘family members’ and ‘non workers’, their bargaining capacity is even more limited. What can they do if they are not paid? Or if they have to work 20 hours a day or cannot have any day off? Or if they are paid much less than promised? In many cases, they run away. As Beeman argued (1985: 173), regarding Indian workers in colonial Malaya in the late nineteenth and early twentieth centuries, since they do not have any means of bargaining, ‘running away’ or
‘absconding’ may have become an individualistic way of trying to improve their situation.

In the practice of absconding, past and present once again mirror one another. From 1912 to 1922, for instance, almost one third of the total of Indian workers deserted from the plantations (Beeman 1985: 174). However, there is major difference too. In the past, with the legally-sanctioned end of the indentured servitude, absconding seemed hardly germane since migrant workers were free to leave and join an employer who offered higher wages or better conditions. Although employers continuously asked the colonial authorities to immobilise migrant workers by law, their claims went unheeded. As the High commissioner said in 1915, ‘We should have no indentured labour, and I would prefer to go the other way, and that is to tell the labourer he is not tied for a month and can go off any day’ (quoted in Parmer 1960: 149). Of course, law does not always make reality. Despite this legislation, labour bondage continued in practice. Unable to obtain favourable legislation, individual plantation employers devised their own strategies to keep workers on the estates. For instance, a labourer who had a month’s or more wages due was deemed unlikely to quit or abscond from the estate (Parmer 1960: 150). The main difference between past and present is that, in the past, this bondage was not sanctioned and reinforced by law. Migrant workers were not tied to their employers either by contract or by their work permits. Moreover, in case of absconding, they did not become illegal, which is to say they were not susceptible to being prosecuted and deported by colonial authorities for the simple reason of their labour mobility.

3.5.2. Taxation of migrant labour: Together with the immobilisation of migrant workers, taxation seeks to control immigrant presence in Malaysia. Following the example of Singapore, a levy was imposed in 1992 to reduce the employers’ reliance on migrant workers. As stated by the Human Resource Minister in 1991, the levy aimed to ‘[…] control the influx of cheap and unskilled labour into the country’ and to ‘[…] keep a close check on the workers’ (New Straits Times, 16 May 1991). This was done by imposing an annual tax per migrant worker according to the economic sector and skills (see figure 4). The logic behind this variation was to impose a higher levy in those sectors where local workers could still be found and a lower one in those sectors where foreign workers were really in demand.

<table>
<thead>
<tr>
<th>Year</th>
<th>Sector</th>
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<tr>
<td></td>
<td>Plantation</td>
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<tr>
<td>1992</td>
<td>369</td>
</tr>
<tr>
<td>2006</td>
<td>540</td>
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Source: Pillai 1992: 60; data for 2006 has been obtained directly from an immigration officer (interview 6 October 2006, Putrajaya).
As with all migration policies in Malaysia, the levy on foreign workers has been adapted to the different and changing requirements of the labour market: in periods of higher unemployment the levy has been raised in order to protect national workers while in periods of lower unemployment it has been reduced. This flexibility, however, is not exempt of contradictions. In particular, protection of the national labour market has not always coincided with economic requirements. For instance, in January 1998 the levy was increased to ‘[…] discourage the influx of foreign workers in the country and to reduce foreign labour dependence’ during the economic downturn that followed the Southeast Asian financial crisis of 1997 (New Straits Times, 2 January 1998). However, in December of the same year and once again in tune with Singaporean migration policies, the levy was reduced in some sectors (particularly in the export industries) to ‘[…] ease the burden on employers’ and promote economic recovery (New Straits Times, 28 December 1998). This contradiction is also manifested within the government itself. While, in 1992, the Labour Department was in favour of the levy in order to protect local workers, the Primary Industries Minister expressed his doubts: ‘The plantation sector must ultimately be able to make use of foreign labour to its advantage. While remuneration of foreign labour should not be such that it would displace the use of local labour, it would certainly not be in Malaysia’s advantage if foreign labour turned out to be more expensive than local labour’ (New Straits Times, 27 May 1992).

The same conflict of interests regarding the introduction of the levy also arose between the employers’ organisations and trade unions. On the one hand, employers’ organisations complained that the levy was too high and would cut profits and, therefore, reduce general economic growth. As stated by the president of the United Planting Association of Malaysia: ‘The plantation sector is plagued by numerous problems, threatening its very existence. The labour shortage and escalating production costs against a backdrop of poor commodity prices are only some of the problems the plantation sector cannot hope to resolve on its own. This is why we continue to appeal to the government to be more sympathetic and sensitive to the plight of the agricultural sector as and when it reviews the various policies affecting plantation companies so that their continued growth can be ensured. For instance, the proposed levy on foreign workers will further aggravate the problems facing the sector’ (Business Times, 23 May 1991). On the other hand, trade unions welcomed the introduction of the levy as a first step towards the protection of national workers. However, from 1992 onwards, in its efforts to overcome for once and for all the displacement of national workers in the labour market, the Malaysian Trade Union Congress (MTUC) has put pressure on the government to raise the levy and impose a minimum national wage. The official response has always been the same: both options would be detrimental for economic growth.

If we look at how the levy was imposed and justified, we might conclude that it indeed resulted from a compromise between the protection of national workers and the promotion of economic growth. In particular, the official message was that the
levy was needed to protect local workers but it should be kept as moderate as possible so as not to disrupt the Malaysian economy. In practice, however, the compromise was difficult to maintain. As we have seen for other policy measures, the device of the levy ended up giving priority to the demands of employers. This came about as a consequence of a double (interconnected) change. First of all, employers started to deduce the levy from workers’ monthly wages. In 1993, just one year after the introduction of the levy, the government officially recognised the employers’ right to transfer the burden of the levy to migrant workers. Second, and partly as a consequence of this, the levy shifted from being a tax imposed on those employers that relied on foreign labour to being an income tax paid by migrant workers. The very day that the Immigration Department started to consider the possibility of allowing the deduction of the levy from migrant workers’ wages, its objective was re-defined. As an officer from the Immigration Department stated, ‘[T]he levy is to ensure that foreign workers make financial contributions, just like local workers, for the development of public facilities and social amenities that they enjoy or use while working in Malaysia’ (New Straits Times, 2 January 1993).

This shift in the practice and meaning of the levy appeared very clearly in my interviews. For instance, as the president of the Master Builders Association Malaysia said, ‘The levy is paid by the employer and then deducted from wages. Why should the employer pay the levy? It wouldn’t be fair. If the worker earns RM 1,200 a month, he can pay RM 100 a month, can’t he? It’s not a burden for the worker. Moreover, it is a way of putting foreign workers on an equal footing with locals, who pay income taxes’ (interview 22 September 2006, Kuala Lumpur). An officer of the Immigration Department described this process of transformation as follows, ‘The levy was first introduced to discourage employers from taking on foreign workers. Now it works in this sense only for the service sector. We have recently increased the levy to 1,800 RM. But for the other sectors it’s different. When we introduced the levy, the employers turned it round to work in another way. They started to deduct it from the workers. How to control this? It is impossible’ (interview 6 October 2006, Putrajaya). Although this immigration officer was very conscious of the employers’ misuse of the levy, he immediately accepted the shift, stating, ‘Now the levy is a kind of tax for foreign workers. It also functions as a security bond for the government. […] Every week we send back a few hundred illegal migrants: to Indonesia, normally by ferry; to Thailand, by road; to the Philippines, by plane. So all this is very expensive. The levy is used partly to cover all these expenses’ (interview 6 October 2006, Putrajaya)\(^2\).

\(^2\) As stated by the Immigration Department almost annually, the money collected by the levy has often exceeded all these costs. For instance, while in 1994 the government collected RM276 million from levies imposed on migrant workers, the expenditure of the Immigration Department totalled only RM 77 million (New Sunday Times, 6 February 1994). In 1998 the money obtained through levies on migrant workers came to RM 415 million (Department of Immigration Annual Report, 1998). Referring to these amounts, a lawyer from the Bar Council was of the opinion that ‘The levy is just government revenue and they make a lot of money with it’ (interview 11 October 2006, Kuala Lumpur).
In contrast to what the employer quoted above believed, the non-governmental organisation Tenaganita has systematically denounced the fact that the levy imposes a great burden on migrant workers. One of its members observed that, ‘Sometimes foreign workers get a very low salary and then the levy is deducted from it as well as the food. At the end of the month, they sometimes only get RM75 or RM150 and, of course, they don’t want to keep working for nothing. But if you go to the Immigration Department, they tell you that they have to work until they pay all their expenses in terms of insurance, annual levy, etc.’ (interview 4 October 2006, Kuala Lumpur). The payment of the levy led many migrant workers (mainly Indonesians) to strike in protest against their employers. As on other occasions, the government responded to these protests by arguing (with an implicit threat) that migrants should ‘[…] forward their grievances through proper channels’, ‘they should learn to respect the Malaysian laws’ and ‘if they are not disciplined, their work permits will be revoked and they will be deported’ (New Straits Times, 10 May 1996; 12 September 1996).

In practice, the introduction of the levy has had a twofold effect on migrant workers’ lives. The first is that it has increased their dependence on employers since now their bondage is not only defined by the conditions of the work permit (as described above) but also established in practice through the debt that re-starts every year when the employer advances the payment of the levy and then deducts it monthly from the migrant workers’ wages. To be more precise, if migrant workers leave their jobs, the employer loses the amount of levy that remains to be deducted from their monthly wages. This has led employers to retain foreign workers’ papers in order to prevent them from running away. Although this practice is clearly not permitted by the Immigration Act, once again it has been accepted by the Immigration Department. In the words of the president of one trade union (National Union of Plantation Workers), ‘Foreign workers are tied to their employers. Why? Because employers pay in advance for the costs (levy, insurance, etc.), so they consider that they have the right of ownership’ (interview 9 October 2006, Kuala Lumpur). The second effect is that, once again, the levy pushes up the price of legality. In short, it is more expensive to be a legal than an illegal migrant. Most Malaysian scholars have pointed out this difference as one of the main reasons why migrants prefer to remain or become illegal (Battistella 2002: 363; Pillai 2000: 142; Hugo 1995: 277; Ruppert 1999: 33; Kassim 1993a: 5-6; 1993b: 6; 1994b: 3-4; 1995: 7; 1996: 2; 1997: 5; Bagoes Mantra 1999: 63; Wong & Anwar 2003: 192-198). This was also one of the main reasons given by the illegal migrants themselves in a survey done on the basis of 100 respondents in Peninsular Malaysia (see Wong & Anwar 2003).

3.5.3. Temporality of migrant labour: There is general consensus that migrant workers should remain only temporarily in Malaysia. As stated many times by employers, trade unionists and government officials, they are ‘temporary workers but not migrants’ or ‘they came here to work, not to get the permanent residence permit’ (interviews 13 September 2006 and 20 October 2006, Kuala Lumpur). As in the past, they are still considered ‘birds of passage’. Their temporality is,
however, of a different nature. While, in the late nineteenth and early twentieth centuries, migrants were only deported in case of unemployment or health problems, since the late 1980s migrant workers have come to Malaysia with short-term contracts that may be extended for a maximum period of five to seven years. The temporality of contemporary migrants seeks not only to reduce social security costs but also to prevent their incorporation into Malaysian society (see Garcés Mascareñas 2008a). We might say, then, that the presence of migrant workers in Malaysia has been governed by different types of temporality.

The first type is defined, as in the past, according to labour demands. While in periods of economic growth new migrant workers are recruited and those already in Malaysia are allowed to stay, in times of economic downturn new recruitments are frozen and migrant workers in the hardest-hit sectors have to leave. By repatriating them, the Malaysian government seeks to reduce the costs of unemployment and, at the same time, give priority to employing local workers. Perfectly illustrating this logic are the mass repatriation programmes that followed the financial crisis of 1997. While, in the early 1990s, the number of migrant workers increased in keeping with labour demands, in 1998 the Malaysian government immediately halted the issuance of renewals. In particular, it was announced that 200,000 migrants, mostly working in construction, would probably be laid-off (New Straits Times, 6 December 1997) and that work permits for 700,000 migrants in the construction and service sectors (except domestic workers) would not be renewed on expiry (New Straits Times, 9 January 1998). Apart from exceptions made for some categories, work permits which expired in August 1998 were not renewed, which meant that 159,135 migrant workers had to leave the country (Wong & Anwar 2003: 181). As happened with the bans on entry, this freeze was lifted few months later. Once again, the measure was justified by the need to safeguard economic growth.

The on-going tension between, on the one hand, protecting local workers and, on the other, promoting economic growth through the importation of migrant labour has never been resolved. The strains on the system appeared yet again when local unemployment rose from 3.1 per cent in 2000 to 3.7 per cent in 2001 (Kanapathy 2004: 395). In response to this increase and following pressure from trade unions, the Malaysian Parliament passed legislation that set a maximum of three years for the period in which a migrant might hold a work permit. This changed the status of many migrant workers from ‘legal’ to ‘illegal’ practically overnight. With the implementation of this policy, those workers who had been covered by work permits for more than three years were immediately deemed ‘illegal’ and repatriated at three months’ notice. However, even while thousands of migrant workers were being repatriated to their countries of origin, the government continued to allow new recruitments in the agriculture sector (New Straits Times, 5 November 2001). The old argument was trotted out yet again: labour shortages in these sectors could not be covered by local workers and production could not be stopped without affecting the whole national economy.
A second type of temporality is linked to migrant workers’ health. In contrast with that defined by labour demands, this second type is applied at the individual level by repatriating any migrant workers who are deemed ‘medically unfit’. Being ‘medically unfit’ means having such diseases as Hepatitis B, Tuberculosis, Syphilis or HIV/AIDS and, for female migrant workers, being pregnant. As in the past, this policy seeks to reduce social costs (both in terms of the social security system as well as regarding the spread of particular diseases) while maximising the foreign labour force by keeping in the country only the fittest workers who are deemed best able to work. In the case of pregnant women, the policy aims to avoid reproduction costs as well as the settlement of migrant workers in the country. In contrast with other kinds of data, there is a great deal of information available about the number and characteristics of ‘unfit’ migrant workers. This may be related with social perceptions and the political will to associate migrant workers with diseases and other ‘social problems’. To be more specific, 18,154 cases of ‘medically unfit’ migrants (or 3.6 per cent of the total foreign labour force) were reported in 1998, 7,276 in 1999, 6,914 in 2000, 9,284 in 2001 and 8,827 in 2002 (Kanapathy 2004: 399). In 2004, the highest number was found in the agriculture sector, with 6,500 cases or 35.2 per cent of all migrant workers employed in this sector (The Malay Mail, 9 December 2004).

Finally, migrant workers are not allowed to stay in Malaysia for more than five to seven years. This third type of temporality is also implemented at the individual level and again aims to prevent migrant workers’ settlement in the country. The logic is to ensure that migrant workers come only to work or that they remain as just ‘pure labour’ without becoming settled migrants. This results in a migrant labour system that is constantly renewing its labour force. As described by the president of the Malaysian Employers Federation, ‘Foreign workers are only allowed to work. They come to work and, once they finish, they have to go back. They come and go, they come and go, all the time’ (interview 13 September 2006, Kuala Lumpur). While assuring a flexible, external labour supply, this constant influx and outflow of migrant workers seems to militate against productivity. As this interviewee went on to explain, every year about 400,000 or 500,000 ‘fresh’ migrant workers enter Malaysia. Employers then have to train them over and over again without being able to retain their skills for the company’s benefit. Following employers’ complaints, ‘certified skilled workers’ are exceptionally allowed to stay for ten years. However, in the end, the result is the same: they always have to leave. Despite its impact on productivity, this is accepted by all parties. As the president of the Malaysian Employers Federation puts it, ‘We are not supposed to have these people here for ever, are we?’ (interview 13 September 2006, Kuala Lumpur).

The only migrant workers who are not required to leave Malaysia after five, seven or ten years are domestic workers. According to the government guidelines for foreign domestic workers, they can keep renewing their work permits until they are 45 years old. However, as many interviewees informed me, they can stay in Malaysia as long as they want since their birth certificates can easily be falsified at
Domestic workers are thus the only migrant workers who can stay in Malaysia (almost) permanently. This does not mean, however, that they can officially settle in the country and get a permanent residence permit. As an interviewee from a recruitment agency specialising in domestic workers states, ‘The government is not obliged to give you permanent residence. It depends on what you have done. What is your contribution to the nation as a maid? I don’t see any reason for giving them permanent residence. This is for engineers’ (interview 16 September 2006, Kuala Lumpur). Hence, domestic workers, unlike other migrant workers, can be eternal temporary migrants in Malaysia.

In practical terms, these three forms of temporality have had a triple effect. First of all, as I have noted above, they have brought about a continuous labour turnover that may disrupt productivity. Some employers, however, did not see this as a problem since most migrant workers have low-skilled jobs. Moreover, as one recruitment agent remarked, new labour is cheap labour. ‘We don’t like to depend on them. If they become skilled workers, they can ask for more money. Unskilled new workers are much cheaper’ (interview 29 September 2006, Kuala Lumpur).

Second, it has increased the costs of the whole labour migrant system since old migrant workers have to be sent back to their countries of origin while new ones have to be recruited and brought in. Third and finally, this temporality introduces a factor of unpredictability into the supply of migrant labour. Employers can hardly plan the number of migrant workers they will be allowed to have in the future when their presence in Malaysia depends on the general economic performance.

Naturally, this unpredictability affects migrant workers, too, as they can be required to leave at any moment. This is particularly hard on the migrant if we take into account the fact that many have paid considerable sums of money to get to Malaysia. What happens to those migrant workers who have sold their properties back home or incurred debts in order to migrate to Malaysia when they are suddenly ordered to go back because they are no longer required, or because they are ill or pregnant? Among my interviewees there was general agreement that, in many cases, they decide to stay in Malaysia even if this entails becoming ‘illegal’ (see as well Rudnick 2009: 177). This is also shown in the cases of many interviewees in Wong’s and Anwar’s survey of illegal migrants, for example a 24 year-old, unmarried woman from a rural district in Aceh. After she had worked three years in a factory, her work contract was not renewed and she was supposed to go back home, but she ran away and sought refuge in her sister’s home in a suburb of Kuala Lumpur (Wong & Anwar 2003: 192). Unfortunately, although this response is frequently observed, there are little or no data to illustrate it, possible owing to the political will to underscore certain aspects of the situation (such as the incidence of particular diseases among migrant workers) while obscuring others (such as the number of legal migrants that move into illegality).
3.6. TURNING ILLEGAL MIGRANTS INTO GUESTWORKERS

The illegality of migrants in Malaysia challenges the core principals of its guestworker policy, which is to say, the recruitment of migrant workers in their countries of origin in keeping with the numbers and places determined by the State and, once they are in Malaysia, the immobilisation, taxation and temporality of migrant labour. Indeed, in contrast with legal migrant workers, illegal migrant workers are recruited inside Malaysia, they can and do move from one job to another, they do not pay taxes and it is much more difficult to make them leave the country at a moment’s notice. In short, illegal migration is not as malleable, manageable and controllable as legal migration. This seems to pose a double problem to the State. First, the presence of illegal migrant workers blurs the borders of the national labour market. Second, illegal migration is perceived as a security threat portrayed in terms of crime, diseases, political and religious activities, and ethnic and cultural hermeticism that sows the seeds of discord. In more general terms, it has been seen as an ‘infiltration’ of ‘aliens’ or ‘uninvited guests’ within the territorial borders of the nation-state. In this context, different regularisation programmes were implemented (in 1989, 1991-92 and 1996) so as to (re-)include within the State-regulated labour system those migrants who had entered illegally or had become illegal. The official argument has always been that regularisation programmes ‘[…] enable the government to keep track of their number, location and origin besides giving them an opportunity to obtain protection under the labour laws’ (Business Times, 25 July 1996).

3.6.1. First regularisation programme: In January 1989 a first regularisation programme was launched to legalise Indonesian workers in the plantation sector. This programme followed concerns that an increasing number of illegal migrants was having an impact on crime, housing, diseases, family formation and permanent settlement. Moreover, the Malaysian Trade Union Congress (MTUC) and the Chinese opposition Democratic Action Party (DAP) haddecried the fact that local workers were being displaced by (mainly Indonesian) illegal migrants. In contrast, employers argued that labour shortages in plantations could not be covered by local workers. In response to these claims, the Malaysian government sent directives to employers in the plantation sector obliging them to register and regularise their illegal migrant workers. Both the MTUC and the DAP lost no time in accusing the government of recognising ‘illegal migrants’ and thus violating its own immigration laws. Furthermore, they claimed that wages and benefits for local workers could be ‘suppressed’ if illegal migrants were allowed to carry on working in the estates (The Star, 5 January 1989; 7 January 1989). For the Indonesian government, this regularisation programme was interpreted as the end of the exploitation of Indonesian workers by ‘unscrupulous employers’ in Malaysia (Tempo, 16 July 1988).

Under this first regularisation programme, employers were required to submit to the Labour Ministry the names of the illegal migrant workers they employed. The Labour Ministry then determined if the list submitted was acceptable and whether
the shortage was ‘genuine’. Once its approval was given, the list was submitted to the Indonesian embassy to ensure that they were bona fide Indonesian citizens without any criminal record. Finally, illegal migrants were to be sent to the port city of Malacca, to be returned to Sumatra (Indonesia), where they were to be issued with valid Indonesian travel documents and the Malaysian work permit, after which they were to be returned to Malaysia as legal migrant workers. The trip to Indonesia took six days, and the fee, payable to the Indonesian embassy, for administrative costs and round-trip travel, was RM 250 (Tempo, 16 July 1988). Although the estimates of the numbers of illegal migrants were much higher, no more than 20,000 Indonesian workers were legalised under this programme. In the state of Pahang in Peninsular Malaysia, it was estimated that over 40 per cent of the illegal migrants working in plantations had not been legalised in May 1990 (The Star, 18 May 1990). These figures were corroborated by officials of the Malaysian Agricultural Planters Association who confirmed that many plantation employers did not regularise their migrant workers (Kassim 1994b: 104).

The reasons for such limited results are said to be multiple. First of all, many employers ignored the programme because they were not willing to incur the expenses involved in the legalisation exercise (Kassim 1994b: 104). In addition to the expenses to be paid to the Indonesian embassy (RM 250), employers were also expected to pay another RM 275 for a bank guarantee as well as the costs of acquiring a work permit. Second, the legalisation process took about a week during which time production at the plantations would be adversely affected by the absence of migrant workers (Kassim 1993a: 7; 1993b: 8). Third and finally, it has been observed that the Indonesian immigration officials were completely unprepared for the volume of requests for documentation. While, at the beginning, procedures could be carried out in Malaysia through a private agency, the common use of fake identities led Indonesian authorities to require migrant workers to travel personally to Indonesia. The result was chaos, not only affecting the regular ferry lines between Malaysia and Indonesia but also the special centres set up in Indonesia to deal with the issuance of such documents (Jones 2000: 20-21).

3.6.2. Second regularisation programme: Despite these limited results, a second regularisation programme was announced in November 1991. Initially, it was directed only at domestic workers who were given a month to acquire legal status. The response was so positive that the government extended the programme to 30 June 1992 to cover illegal migrant workers in the construction and plantation sectors as well. Following mounting pressure from employers, in April 1992 illegal workers in the manufacturing and service sectors were also allowed to register under the programme. The official argument for launching this second regularisation was that it would bring illegal migrants’ salaries and work conditions into parity with those of local workers, thereby making it possible to protect local workers from unfair competition within the labour market: ‘[T]he objectives are clear. Malaysians must not be deprived of any available jobs in the country; the flow of illegal workers must be stopped; and illegals already working in the country need to be legalised and regulated so that those who are really needed are
allowed to stay and those who are not will be asked to leave' (Business Times, 11 January 1992). Despite these arguments, trade unions yet again opposed the regularisation programme. According to them, it opened the door to labour migration into Malaysia.

This time, the procedures were greatly simplified. Employers had to register their workers at 30 registration centres set up by the Immigration Department in Malaysia. The illegal migrant then had to apply for a temporary travel document in the Indonesian embassy in Kuala Lumpur and, after a medical check-up, temporary work permits were issued by the Immigration Department. This time the demand was overwhelming. When the registration period ended on June 1992, 442,276 workers had registered. Of these, 50 per cent were in the construction sector, 20 per cent in the plantation sector, 9.7 per cent in the domestic sector, 8.5 per cent in manufacturing, 2.6 per cent in restaurants and 4.6 per cent in trading. The largest number was from Indonesia (83.2 per cent) but there were also registered migrants from Myanmar (6 per cent), Bangladesh (5 per cent), the Philippines (2.5 per cent) and India (2.2 per cent). Over 45 per cent of these workers were employed in the Klang Valley in the state of Selangor and Kuala Lumpur, one of the country's most industrialised areas (Kassim 1994a: 4).

Despite this initial overwhelming response, by the end of 1992 only about 20 per cent of those who registered eventually applied for work permits (The Star, 26 October 1992). Hence, 80 per cent of the 442,276 registered migrant workers remained technically illegal as they did not obtain the work permit. Again, the reasons for this seem to be diverse. First of all, in addition to the initial costs to be paid for the issuance of the work permit (RM 48) and security bond (RM 250), employers were expected to pay an annual levy (introduced some months before) of RM 420 for each plantation worker, RM 500 for each construction worker and RM 360 for each domestic worker. The payment of the levy was required to obtain the work permit. Moreover, from 1991 on, legal migrant workers enjoyed the same wages and benefits as local workers. In consequence, this increased the costs associated with legal employment (Jones 2000: 23; Hugo 1993: 62). As for the regularisation programme of 1989, it seems that many employers did not cooperate due to the economic costs associated with the legalisation of their migrant workers (Jones 2000: 23; Hugo 1993: 62).

Second, for the registration of workers and acquisition of travel documents, the Indonesian embassy authorised first twelve and eventually twenty Malaysian labour recruitment agencies to register workers and obtain their travel documents. These agencies were authorised to charge RM 180, a sum that dropped, in the wake of protests by employers, to RM 135 and RM 115. In addition to pushing up the costs of regularisation, in many cases these agencies did not process travel documents on time, thus rendering thousands of Indonesian migrants illegal once again. The functioning of these agencies gave rise to many complaints among employers. Several stated that they were not given details of the payment and that some agencies had claimed that the Indonesian embassy collected RM 180 (instead
of the required RM 60) to issue the travel document and for other expenses. Other employers said that they had no choice but to deal with the agencies which they felt had obtained the monopoly in this sphere: ‘I was told I will not be entertained if I were to go to the Indonesian embassy myself to apply for the identification papers for my Indonesian workers. Neither would my employees be entertained if they were to go there themselves. Just imagine the amount of money these agencies will collect based on recent estimates that there are between 300,000 and 500,000 illegal workers in the peninsula alone’ (quoted in Business Times, 23 December 1991).

Third and finally, there were also indications that the Malaysian government was trying to reduce the number of ‘legalised’ migrant workers. For instance, in July 1992, just after the deadline for registration, the Home Minister declared that 30 per cent of all those who registered were found to be HIV-positive. Since a certificate of good health was required to get the work permit, such figures jeopardised the final regularisation of many migrants. As observed by Jones (2000: 24), ‘the statistically impossible rate of HIV infection announced by the Home Ministry seemed suspiciously like a pretext for denying legal status to over 100,000 workers and thus both keeping their numbers down and reinforcing the negative image of Indonesian workers in the public at large’. However, after being challenged by the World Health Organisation, these statistics were immediately corrected (Jakarta Post, 29 July 1992). Accordingly, the Health Minister told employers not to panic over the statement of the Home Minister and clarified that only 148 HIV positive cases had been found among all registered migrant workers. However, although these cases represented a very small proportion of all migrant workers in Malaysia, the Health Minister advised employers ‘[…] to take their maids for medical tests immediately to ensure that they are free of diseases’ (The Malay Mail, 31 July 1992). His alarmist warning clearly shows how control over migrant workers includes strict monitoring of their very bodies and that this control systematically intensifies when applied to migrant women’s bodies (see Ong 1991: 291).

3.6.3. Regularising from detention camps: From 1993 to 1996 no particular regularisation campaign was launched. However, the government pushed for recruitment of illegal migrants from detention camps. By freezing the recruitment of new migrant workers and therefore forcing employers to recruit from detention camps – where arrested illegal migrants were awaiting deportation – the idea was to absorb those approximately 200,000 registered migrant workers that had not obtained the work permit after the regularisation drive of 1992 (Business Times, 14 April 1993). In addition, this policy sought to cut costs of deportation as illegal migrants would be re-deployed without having to go back to their countries of origin. The procedures, this time, were quite simple. Potential employers could go to detention camps to select the workers they wanted, after which they had to go to the nearest immigration office, present the necessary documents, settle the required payments and apply for work permits. However, of the 54,155 detained migrants in 1992-1993, in March 1994 only 27,353 had been released after being offered jobs
(The Malay Mail, 1 March 1994). In subsequent years, the proportion of migrant workers recruited in detention camps was much lower. For instance, in 1996, of the 37,000 illegal migrants in camps who were available for employers, only 3,000 migrant workers were hired (New Straits Times, 10 October 1996).

The reasons offered to explain these limited results were once again similar to those adduced for the regularisation programmes of 1989-1990 and 1991-1992. Generally speaking, neither employers nor recruitment agencies were in favour of such policy. In fact, they had a long list of complaints. Employers claimed that the costs of recruitment from detention camps were higher than those entailed in recruiting new migrant workers in their countries of origin. Apart from the levy, they were required to pay RM 500 for the deposit or security bond, RM 60 for a visit pass, RM 20 for a visa, RM 200 for a passport, RM 300 in compound, RM 200 in agent fees and RM 120 in medical bills (New Straits Times, 18 June 1993; New Straits Times, 29 June 1996). Moreover, both employers and recruitment agencies argued that migrant workers recruited from detention camps were much more mobile than ‘fresh’ migrant workers since they were familiar with the Malaysian labour market and therefore often absconded in search of better jobs (Business Times, 13 April 1993). At the end of 1993 the Deputy Home Minister recognised that nine out of ten Indonesian migrants who had been caught and then released from detention camps to work for specific employers ran away within three months. In his own words, ‘These immigrants usually have extensive networks of friends and even relatives locally to help them merge into the woodwork’ (New Straits Times, 23 November 1993).

Employers in the manufacturing sector also complained that migrant workers in detention camps did not possess the required skills to work in manufacturing (Business Times, 9 July 1994). They argued in particular that female workers were especially needed in the electronics and garment industries while most illegal migrants in detention camps were men (New Sunday Times, 2 May 1993). Another claim by employers and recruitment agencies was that most migrant workers found in detention camps were not eligible for employment as they did not fulfil the Immigration Department’s conditions. For instance, in many cases they did not have valid passports. One employer then reacted by wondering, ‘What’s the point of asking us to go to detention centres to look for foreign workers when there are not enough eligible ones to go round in the first place?’ (The Malay Mail, 12 July 1994). Finally, the Minister for International Trade and Industry argued that recruiting agents gave ‘wrong’ reports to the heads of the companies on their books so that migrant workers would be sourced through employment agencies rather than being hired from among the detainees in immigration camps (Business Times, 10 October 1996). The reason, given by one agent, was purely economic, ‘We will not want to handle the matter unless we can charge a service fee. This is because payment is usually made by the foreign worker when he leaves his country of origin. Workers detained here in Malaysia may not be able to pay any fee’ (New Straits Times, 29 April 1993).
3.6.4. Third regularisation programme: In a new attempt both to control migration as well as to meet escalating demands for migrant labour, a third registration effort began in 1996 to register and legalise illegal migrant workers from Indonesia, Thailand, the Philippines, Bangladesh and Pakistan. Under this new programme, employers in the agricultural or plantation sector and eventually in the manufacturing, construction and service sectors were assigned the period from July 10 until December 31 to register and legalise their illegal migrant workers. An extended ‘amnesty’ allowed workers who had failed to register by the deadline and had been caught by police, to leave the country without prosecution and, after having paid a fine and obtained the stipulated documentation from their home country, to return to Malaysia as legal migrant workers. At the same time, as in previous years, a freeze on hiring new migrant workers was imposed as a way of pushing employers to legalise their workers or re-employ those who had returned to their countries of origin. By January 1997, when the registration drive was completed in Peninsular Malaysia (Sabah conducted a similar exercise during the first half of 1997), 423,180 illegal migrant workers had registered (New Straits Times, 3 January 1997). The highest number was in the construction sector, followed by manufacturing, domestic work, services and plantations (New Straits Times, 2 January 1997).

Despite the lack of data regarding the number of registered migrant workers who obtained the work permit, there are indications of major red-tape problems within the Immigration Department. For instance, in July 1997 employers denounced the fact that many workers had not received approval notification cards and therefore could not apply for their work permits. As regularisation programmes were always followed by periods of intensified police raids, employers were particularly concerned because their migrant workers, who remained technically ‘illegal’, could be detained and deported (The Malay Mail, 23 June 1997). Again, in September 1997 the state of Selangor reported that employers of more than 7,000 migrant workers, whose passports had been submitted for registration, had not collected them (New Straits Times, 27 September 1997). If we take into account the fact that 28,000 migrant workers had been registered in this state, the number of uncollected passports is a good indicator of the proportion of registered migrant workers that might not have been regularised in the end.

Although the number of ‘registered’ migrant workers was as high as in the previous regularisation exercise (423,180 in 1996 in comparison with 442,276 in 1991-1992), this time the government was particularly disappointed with the results since, after the regularisation programme came to an end, it estimated that there were still more than one million illegal migrants in the country (The Malay Mail, 27 January 1997). In fact, even prior to this disappointment, the government had stated that it would not be carrying out any more campaigns to legalise migrants. In other words, this regularisation campaign was seen as ‘[…] the end of the relative leniency, law-wise, towards the problem of illegal migrants’ (Business Times, 7 January 1997). Thenceforth, higher penalties for illegal migrants as well as for people-smugglers and employers (through the amendments of the Immigration Act
in 1997 and 2002), mass deportation and ‘voluntary return’ campaigns, became the central policy instruments for cutting down illegal migration in Malaysia. In short, the regularisation programme of 1996 represented the swansong of legal recruitment of illegal migrant workers in Malaysia (see Wong 2006).

3.6.5. From regularisation to deportation: As we shall see in the next section, this policy shift was not contradiction-free. On the one hand, the gradual criminalisation of illegal migration and its being whipped up into a security issue led the government to stop recognising, registering and legalising illegal migrants, who then had no other option but to return to their countries of origin. In exceptional cases, as with the so called ‘amnesties’ (to go home) from 1998 on, they could leave the country without being fined or prosecuted. Here, the government seemed to be accepting precisely what trade unions and opposition parties had denounced during earlier regularisation campaigns: regularising illegal migrants entailed ‘going against the law’. On the other hand, mass deportation campaigns (voluntary or not) led to huge labour shortages that were not easily covered by local workers or freshly recruited migrant workers. As soon as one ‘security’ issue was dealt with, another real problem of state security reared its head. These labour shortages were seen as the cause of serious economic losses and hence as a danger to the whole national economy.

In 2005 the on-going tension between the imperative of deporting illegal migrants and economic dependence on their work pressed the Malaysian government into permitting Indonesian illegal migrants to return to Malaysia after having left the country during the voluntary repatriation programme of 2004. In order to encourage employers to take the former illegal migrants, a freeze on newly-recruited migrant workers was simultaneously imposed. In short, for a period of three months, only former illegal Indonesian migrants were allowed to enter Malaysia as legal migrant workers. This was in clear contradiction with a policy that explicitly no longer recognised illegal migrants. As one writer put it, ‘On the one hand, the government has repeatedly said that it is determined to rid the country of illegal foreign workers. On the other hand, if you have been hiring illegal workers, the government will reward you by showing you a fast lane to bring back your former illegal workers legally. If you are a low-abiding employer, you will have to wait for at least three months before you can apply through the proper channels for new foreign workers’ (New Straits Times, 3 February 2005). The main problem was that the freeze on new recruitments was not accompanied by the anticipated return of former illegal migrant workers. Only 500 of the 500,000 illegal migrants who left Malaysia during the repatriation programme of 2004 had come back a few months later (The Malay Mail, 7 March 2005).

According to the Malaysian newspapers, these limited results were mainly due to ‘[…] the inordinate delay by Indonesian authorities in processing documents of the illegal workers and a hefty processing fee’ (The Malay Mail, 7 March 2005). My interviews suggest that official procedures, in both Malaysia and Indonesia were very time consuming, problematic and costly. For instance, a Malaysian
Immigration officer explained that many Indonesian workers could not return because of technical problems: ‘The biometrical system that we used did not work. The fingerprint often did not coincide with the one we took from them before they left. We did it to make sure that the person who came back was the same one who had left. But then many fingerprint did not coincide. Why? Either the ones who came back were not the same or our system did not work properly. For example, we soon realised that our system did not recognise sweaty fingers’ (interview 6 October 2006, Putrajaya). A member of a government agency described the whole process as follows, ‘There were too many tolls. So it was a long process, for instance, agencies in Indonesia started to charge to process the passport. In Indonesia workers had to go through different agencies to get the passport. All of them wanted to get money. Then it was very difficult, too, to go through Malaysian procedures. Everything was too costly. Foreign workers were again object of abuse. Again the human trade became very lucrative. For instance, for the visa, workers had to pay about RM 400’ (interview 12 October 2006, Kuala Lumpur).

In general terms, the implementation and results of regularisation programmes in Malaysia highlight three main points. First, they reveal the resistance to regularisation. According to information given in newspapers and other published sources, employers resisted regularising their migrant workers since registration and the other requirements of legal employment were costly and time-consuming. It also seems that the migrant workers, too, resisted regularisation as, in many cases, they had to cover a major part of the expenses themselves while the benefits of being legal were far from being always evident. This would explain the cases of running away among those migrants recruited in deportation camps. Second, the results of regularisation programmes must be understood in relation to the bureaucracy as well. Long, complicated procedures replete with red-tape obstacles and delays have also determined the outcome of the regularisation programmes. Apart from the Malaysian bureaucracy, the bureaucracies and political will of the countries of origin played equally important roles. Since migrant workers are required to process several documents in their embassy or homelands, the way this is done and the end results depend on the possibilities, limits and constraints imposed by the bureaucratic and political apparatus of the sending states. Third and finally, complicated and time-consuming procedures have led to a demand for agencies or middlemen to help smooth the process by bridging the gap between employers and the state apparatus. However, they increased the costs of regularisation while often making procedures less transparent and even more uncertain.

3.7. DETAINING AND DEPORTING ‘ILLEGALS’

Together with regularisation programmes, continuous amendments of the Immigration Act to penalise illegal migrants and highly publicised deportation
campaigns have sought to reduce illegal migration by detaining, imprisoning, caning and finally deporting illegal migrants. The basic aim has been to persuade legal migrants to remain legal and illegal migrants to regularise or return to their countries of origin. At the same time, as we shall see in the following paragraphs, these policies have had a twofold symbolic effect. First, they have sought to give an impression of control and therefore to bolster the image of the State as guarantor of the national borders. Second, by detaining, penalising and deporting migrants, these policies have criminalised them, irrespective of their legal status.

3.7.1. The first deportation campaigns: The first deportation campaign was launched by the Malaysian government after it introduced the first comprehensive work permit policy in 1991 and the regularisation programme of 1991-1992. The ideological thrust of this first deportation campaign was to ‘clear the country of illegals’ before embarking on the new labour migration policy. Moreover, by letting migrant workers and employers know that illegal migration would not be tolerated any more, the concerted threat of deportation sought to push both migrant workers and employers into complying with the new registration and legalisation requirements. With dual aim, the Malaysian government launched two enforcement exercises known as Ops Nyah I and Ops Nyah II (literally Riddance Operation I and II). While Ops Nyah I was designed to prevent unauthorised landings on Malaysia’s long coastline, Ops Nyah II was directed at illegal migrants already in the country and took the form of raids at worksites and in squatter settlements. At the end of 1992, after six months of a much proclaimed and publicised ‘crackdown on illegal aliens’, a total of 71,000 illegal migrants had been detained and 21,247 deported (New Sunday Times, 14 February 1993).

Although there was no doubt in official circles that illegal migrants had to ‘be made to leave’ or that Malaysia should be ‘cleansed of illegal aliens’, this first deportation exercise had its limitations. First, the deportation of thousands of illegal migrants, along with the fact that many went into hiding during the crackdown, had a direct, immediate effect on the national economy with labour shortages being reported in the construction, plantation, manufacturing and service sectors. This led employers’ organisations to urge the government ‘to relax its regulations concerning illegal foreign workers’ (New Straits Times, 29 August 1992). Second, since detention centres had a limited capacity and it was costly to hold illegal migrants in camps (about RM 3,50 per person per day), deportations were stepped up and detentions were implemented only periodically (New Straits Times, 19 August 1992). Third, as many detained illegal migrants did not possess travel documents, the deportation procedures were very complicated and time-consuming (New Straits Times, 19 October 1992). Both a Malaysian immigration officer and a representative of the Indonesian embassy recognised in interviews that, in order to ease and expedite deportations, ‘extra-official practices’ or ‘back-door policies’ were applied. For the Malaysian government, this meant deporting illegal migrants to the Thai border (independently of origin) without their being identified by any government (interview 6 October 2006, Putrajaya). For the Indonesian government, such practices included taking in deported migrants
identified as Indonesians by the Malaysian government without further ado (interview 26 September 2006, Kuala Lumpur).

Table 5: Number of illegal migrants detained under Ops Nyah I and II

<table>
<thead>
<tr>
<th>Period</th>
<th>Ops Nyah I</th>
<th>Ops Nyah II</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total arrests</td>
<td>Total arrests</td>
</tr>
<tr>
<td>July-Dec 1992</td>
<td>20,453</td>
<td>19,268</td>
</tr>
<tr>
<td>Jan-Dec 1993</td>
<td>14,211</td>
<td>41,584</td>
</tr>
<tr>
<td>Jan-Dec 1994</td>
<td>11,082</td>
<td>43,189</td>
</tr>
<tr>
<td>Jan-Dec 1995</td>
<td>7,825</td>
<td>32,835</td>
</tr>
<tr>
<td>TOTAL</td>
<td>53,571</td>
<td>136,876</td>
</tr>
</tbody>
</table>

Source: Kassim, 1996: 11

Although the ‘crackdown on illegal aliens’ formally ended in December 1992, Ops Nyah I and II continued. For instance, between December 1991 and December 1995, some 700-800 illegal migrants were arrested each week (see Table 5). Indonesians accounted for 99.8 per cent of those arrested entering the country illegally (under Ops Nyah I) and 70 per cent of those arrested within the country (under Ops Nyah II). The rest were from Bangladesh (13.2 per cent), Myanmar (9.5 per cent), Thailand (3.3 per cent), India (1.3 per cent) and Pakistan (1.2 per cent) (Kassim 1996: 15). During this period, two new questions regarding detention and deportation policies were raised in the newspapers: the detention of legal migrant workers and the bad living conditions and abuses perpetrated in detention camps. Legal migrants had been detained because employers held their passports and, when the raids were carried out, they had no documents to prove their legal status. In 1993, the Immigration Department reported that 11,017 legal migrant workers had been detained and subsequently released at the request of their employers (New Straits Times, 14 February 1993). By 1994 this number had risen to 35,312 (New Sunday Times, 16 January 1994).

In August 1995 the non-governmental organisation Tenaganita published a report that denounced sustained physical and mental abuse in detention camps. This included the restriction of water to two glasses a day (while food was provided in plastic bags with holes so that they could not be used to collect rainwater), the housing of detainees in overcrowded blocks (up to 500 people per block) and the trade in which female detainees were given extra water and supplied with sanitary pads in exchange for sexual favours (see Tenaganita 1995). In 1997 Amnesty International reported that, in the five preceding years, 71 illegal migrants had died in the detention camps. Of these, 59 died in Semenyih, the largest of the camps, allegedly of beriberi, a malnutrition-related disease. The Malaysian government denied the allegations, describing them as completely ‘untrue and baseless’. In 1996, Irene Fernandez, head of Tenaganita, was charged under the Printing Presses and Publication Act 1984 for maliciously publishing false information. After a trial that dragged on for seven and a half years, she was convicted in 2003 and sentenced to 12 months’ imprisonment (Malaysiakini, 11 December 2003). In 2008
she was finally acquitted by the High Court of Malaysia at Kuala Lumpur (Criminal Division).

Despite all the limitations and criticisms, a new deportation campaign was launched in January 1997 in the wake of the regularisation programme of 1996 and accompanied by an amendment of the Immigration Act, which again raised costs for the employer of illegal migrant workers. As in 1992, the aim of this combination of a regularisation programme, a deportation campaign and increasing penalties for illegal migrants and their employers was to gain control over the migrant worker population. As one Malaysian newspaper stated, it was believed that these measures would counterbalance the fact that ‘[…] a substantial and uncounted number of illegal immigrants was turning the role of the foreign worker from a temporary, controllable solution to a permanent, uncontrollable need’ (New Straits Times, 3 January 1997). This deportation campaign was announced as ‘[…] the biggest security sweep in Malaysian history, deploying more than 3,000 men including 1,000 soldiers, to conduct door-to-door checks at homes, offices and night markets and to seal off certain parts of the Thai-Malaysian border’ (New Straits Times, 1 January 1997). In one highly publicised manoeuvre, an Indonesian navy vessel took about 1,500 illegal workers back to Indonesia on three different occasions (January, July and August). In total, about 45,952 illegal migrants were detained in 1997 (Chin 2002: 29).

This deportation campaign also had limitations. According to the Malaysian newspapers, the main problem this time was perceived in terms of costs and results. In particular, sustained criticism pointed to the fact that, while detention and deportation campaigns were very costly and time-consuming, the deportees could very easily return to Malaysia. For instance, according to the Deputy Home Minister, it cost between RM 125 and RM 400 to deport an immigrant to Indonesia (New Straits Times, 7 January 1997). In total, the government spent about RM 14 million in expelling about 13,169 illegal migrants (New Straits Times, 25 February 1997). The total cost of arrests, detention camps and deportation amounted to some RM 1,000 per illegal migrant worker (New Sunday Times, 31 August 1997). In contrast, it was generally perceived that illegal immigrants could very easily return to Malaysia. Indeed, the government admitted in May 1997 that some 50,000 deported migrants were positioned along the Thai-Malaysian border waiting for their chance to re-enter Malaysia (New Straits Times, 17 July 1997).

3.7.2. Repatriation campaigns: With the financial crisis of 1997, the Malaysian government announced the repatriation of legal migrant workers in the hardest-hit construction and service sectors. In August 1998, a total of 159,135 legal migrant workers left the country upon expiry of their work permits. At the same time, 187,486 illegal migrants (many of them former legal migrants) left the country under a programme for voluntary return (‘amnesty’ as it was called in Malaysia) that permitted illegal migrants to register and leave the country without penalty (Wong & Anwar 2003: 181). Moreover, that same year, 68,452 illegal migrants were detained, in comparison with 45,952 in 1997. All in all, 415,073 migrant
workers were sent back to their countries of origin in 1998 (Asia Migrant Centre 1999: 152). Again, as shown in Section 3.5.3., in 2001 the Malaysian Parliament passed legislation that set a three-year limit to work permits for migrant workers. This meant the repatriation of those workers that had been in Malaysia for more than three years. In 2002 almost 400,000 migrant workers were sent back to their countries of origin in what became the biggest single repatriation exercise ever undertaken in Malaysia (Ford 2006: 228).

The number of migrants sent back to Indonesia in August and September 2002 far exceeded the capacity of return points in the transit provinces of Sumatra and Kalimantan. In particular, the sudden influx of deportees to Nunukan, a small island on Indonesia’s border with the Malaysian state of Sabah, caused a humanitarian crisis that became a flash point in Indonesian-Malaysian bilateral relations. In the first half of August, between 5,000 and 9,000 people passed through Nunukan’s Immigration Office every day (Palupi & Yasser 2002: 2). Although the majority of those deported to Nunukan were moved to other areas of Indonesia, approximately 25,000 people remained in twenty-one camps run by registered recruitment agencies. According to local officials, at least half this number remained on the island without being registered (Palupi & Yasser 2002: 10). NGO investigations have reported that between 67 and 70 deportees died (Palupi & Yasser 2002: 17-18). The effects on the population of Nunukan were also severe. Basic facilities were lacking as the town’s infrastructure could not cope with the sudden quadrupling of its population. Moreover, although local residents profited in some ways by providing services and facilities for the deportees, prices for basic foodstuffs shot up by one hundred per cent (Ford 2006: 239).

This mass repatriation campaign, together with the announcement of a temporary halt to the employment of Indonesian workers and the politically-motivated claim that they were to be replaced by workers of other nationalities, led labour activists and non-governmental organisations to protest outside the Malaysian Embassy in Jakarta and to criticise the Malaysian government for its ‘degrading’ and ‘disparaging’ treatment of Indonesian workers. Some people called upon Indonesian workers in Malaysia to strike against deportation plans and condemned Malaysia for turning a blind eye to the immigrant-smuggling activities of its own nationals. In July 2002 a group of NGOs sent a letter to the Indonesian Coordinating Ministers for Politics and Security, Health and Welfare and Economics and Industry, as well as the Parliament and the National Human Rights Committee, to urge the government to address the impending mass repatriation. They asked their government to find a diplomatic solution that would put an end to the Malaysian government’s arbitrary treatment of Indonesians, to prepare for future large-scale deportations, to instruct the local governments of sending areas to become involved, and to undertake a complete revision of the process by means of which workers are sent and placed overseas (Ford 2006: 240).

Until 2002, illegal migration had been a relatively muted issue in the bilateral relations between Malaysia and Indonesia. However, this time the speaker of the
Indonesian National Assembly criticised Malaysia in Parliament and called on the government to take action against ‘the smaller country’. In an article titled ‘Remember Konfrontasi’, alluding to the past military confrontation between Malaysia and Indonesian (1962-1966), the Jakarta Post argued that Malaysia’s new policies were far too extreme, recalling that ‘[…] there was a time, not so long ago, when Indonesia would not take such a belligerent act from a neighbouring country lying down’ (Jakarta Post, 1 February 2002). The Malaysian government responded in feisty diplomatic terms, warning its citizens against travelling to Indonesia and calling upon the Indonesian government to take action against those who threatened to jeopardise bilateral relations with their protests (Liow 2004: 23).

After a critical period in bilateral relations, the Nunukan crisis ended with new bills and projects to protect Indonesian workers abroad as well as new bilateral and multilateral negotiations. Significantly, the new Memorandum of Understanding (2004), which resulted from the negotiations between the two governments, aimed to regulate Indonesian labour migration to Malaysia, covering such issues as recruitment, medical check-ups and transportation, but without addressing the once-touchy issues of deportation and repatriation of migrants.

3.7.3. Voluntary return: The mass repatriation campaign of 2002 once again brought to light the enormous difficulties and costs involved in detaining, holding and eventually deporting large numbers of migrants. Since then, illegal migrants have mainly been persuaded to return home. When launching the programmes for ‘voluntary return’ (‘amnesties’), the Malaysian government proffered two main reasons. First and most important, voluntary return reduces costs of deportation. In fact, there was general consensus on the need to reduce deportation costs. For instance, the president of the Malaysian Trade Union Congress stated that ‘[…] the government can’t keep on clamping down on illegals, stretching its resources to the limit. Don’t forget, we are also feeding those in detention camps’ (New Sunday Times, 31 October 2004). Second, on some occasions, the Malaysian government presented these programmes for voluntary return as demonstrations of ‘[…] the Malaysian spirit of charity and forgiveness during the Muslim fasting month of Ramadan’ (New Straits Times, 23 October 2004). Contrary to what one might expect, these programmes have had significant results. For instance, official accounts indicated that in 2005 about 400,000 of the estimated 800,000 to 1,200,000 illegal migrants had returned under the ‘amnesty’ (New Straits Times, 22 June 2005).

Although these results have been officially explained as a consequence of the increasing prosecution of illegal migrants in Malaysia, law and policy enforcement with regard to illegal migration has in fact been rather lacking. In a rare official pronouncement on this matter, the Minister of Justice observed in 2002 that existing laws like the Immigration Act and the Penal Code gave adequate powers to the authorities to deter the influx of illegal migrants but that the ‘[...] lackadaisical attitude of some authorities in enforcing the laws was a cause for worry’ (Business Times, 5 February 2002). Indeed, a survey done with 100 illegal migrants reveals that police harassment does not always result in detention since migrants can often
bribe their way out of ‘trouble’ (see Wong & Anwar 2003: 214). Despite this apparently widespread corruption, between 1999 and 2001 only 21 police officers were charged with taking bribes (Star, 13 March 2002). Lack of enforcement is also evident in the case of employers of illegal migrant workers. For instance, while in 2003 and 2004 a total of 12,319 illegal migrants were charged, during the same period only 107 employers were charged with harbouring illegal migrants (New Sunday Times, 15 August 2004).

Enforcement problems and pervasive corruption among officials raise the question of whether higher penalties and highly-publicised prosecution campaigns adequately explain the huge response to the last programmes for voluntary return. Although this question would require a different kind of research, I should like to venture two possible explanations. First, Indonesian labour migration to Malaysia is mainly temporary. As I noted in the introductory section of this chapter, many Indonesian migrants come to Malaysia in search of better wages and experience. After some years, many legal – but also illegal – migrants return to their places of origin. In this context, an ‘amnesty’ for voluntary return might appeal since it would mean going back legally. Second, the geographic contiguity between Malaysia and Indonesia facilitates re-entry to Malaysia. As illustrated by the cases presented by Wong and Anwar (2003), many illegal migrants return to Indonesia only to re-emigrate to Malaysia later on. In this regard, voluntary return does not mean leaving the country for once and for all. Since borders continue to be porous, programmes for voluntary return would seem to facilitate movement back and forth between countries.

3.7.4. Criminalisation of illegal migrants: Since 2000, illegal migration has been increasingly criminalised and prosecuted. The message has been very clear: illegal migrants who did not voluntarily return to their countries of origin would face detention, prison, caning and deportation. More specifically, under the amended Immigration Act (2002), illegal migrants can be sentenced to mandatory jail terms for up to five years, receive up to six strokes of the cane and be fined up to RM 10,000. Moreover, Malaysians who employ illegal migrants can be jailed for three months and fined RM 5,000. Along with this tougher legislation, law enforcement measures have been intensified in recent years. Of particular importance is the fact that, since 2004, the People’s Volunteer Corps (Ikatan Relawan Rakyat Malaysia, RELA), a paramilitary group, assists the police in arresting and detaining illegal migrants. The official argument for using RELA is lack of manpower in police and immigration departments: ‘[…] there are about 680 full-time enforcement officers compared with the 1.4 million strong legal foreign workers. Realising the shortage, the government has allowed Rela members to help out’ (The Malay Mail, 19 February 2005).

RELA has received wide discretionary powers to stop any person on the grounds of ‘reasonable belief’ that the person is a ‘terrorist’, ‘undesirable person’ or ‘illegal migrant’; to arrest such persons; to enter and search premises without a warrant; and to carry arms, including batons and firearms. Moreover, in 2008, RELA took
over the management of Immigration Detention Centres. This new step towards complete outsourcing of migration control was once again justified in terms of lack of public resources. RELA has now extended its control over the entire process, starting from arrest and detention through to the deportation of migrants. As a human rights' lawyer described it, ‘Now RELA arrests them, RELA keeps them, RELA deports them’ (interview 9 January 2008, Bangi). This gradual privatisation of migration control has first resulted in an increased number of arrests: while in 2004 23,571 migrants were arrested, in 2005 the figure rose to 28,079 and, in 2006, to 56,315 (Kassim 2008a: 22). Second, the participation of RELA members in detention campaigns has given rise to grave concerns among non-governmental and human rights organisations, which have denounced abuses, and even the torture and murder of several illegal migrants.  

In 2006, grave human rights violations relating to RELA activities were denounced in the press and by many human rights organisations. For instance, on 11th February 2006, the BBC reported that five bodies had been retrieved from a lake in Selayang after undocumented migrants allegedly tried to flee a RELA raid. Others violations include detention of refugees with UNHCR-recognised status, asylum seekers, new-born babies, children, and pregnant women. As denounced by the human rights organisation SUARAM, ‘Cases revealed a consistent pattern of theft, deliberate damage to properties, physical assault, humiliation and degrading treatment of suspected ‘illegal immigrants’’ (SUARAM 2006).
been key measures in the regulation of illegal migration in Malaysia. In contrast with most Western countries, these measures have mainly been implemented inside national territory rather than at the border. For instance, from 1992 to 2006, of the total of one million arrested migrants, 12.3 per cent occurred at the border and 85.9 per cent within the country (Kassim 2008a: 21; see also Table 5). Also notable is the fact that deportation campaigns have not been implemented on any continuous basis since they are too costly and time-consuming. Detention and deportation have been resorted to in periods of economic crisis, when the demand for both legal and illegal migrants drops, or in times of social unrest, as a way of demonstrating state control over the national territory and boundaries. We might then conclude that deportation campaigns have sought to reinforce the core principle of Malaysian labour migration policies: the temporality and malleability of migrant workers. Yet there is a significant difference: while all legal migrants may be required to leave at any particular time, not all illegal migrants are deported. As I have just noted, public resources are limited and arrest and removal can be avoided by paying a bribe, while the border can always be re-crossed. Hence, if we focus on policy effects rather than declarations and discourse, deportation policies seem to function more as a measure to reinforce the illusion of control rather than as one that actually controls migration.

3.8. FINAL REMARKS

Malaysia has long depended on migrant labour. Anyone visiting Malaysia from the 1880s onwards would be struck by the presence of migrant workers in the country. At the end of the nineteenth century and the beginning of the twentieth, a visitor could observe Chinese workers in tin mines and Indian workers at sugar, coffee and later rubber plantations. Indian workers also constructed roads and railways and were employed in the associated public services. A hundred years later, from the 1980s onwards, a visitor would again find many migrant workers. This time they mainly come from Indonesia, but also Nepal, India, Myanmar, Vietnam and Bangladesh. As in the past, they work in plantations and construction sites but also in the manufacturing and service sectors. In response to the first question of my research, in other words how the Malaysian State has responded to this demand for migrant labour, the present chapter gives a clear answer: since the early 1990s it has resorted to a guestworker programme.

As with any guestworker programme, Malaysian migration policies have sought to open up entry while restricting membership. On the one hand, this means that several hundred thousand migrant workers enter the country every year. Any attempt of the Malaysian government to reduce this number has been opposed by employers and finally reversed. Although Malaysian scholars have interpreted these changes as the best illustration of the ad hoc, stop-go character of Malaysian migration policies, a more general perspective allows us to observe that, in fact, entry has never been really restricted. Since economic growth has depended on
cheap, flexible labour, there was general consensus on the ‘need’ for migrant workers. On the other hand, restriction has been applied within the country. Migration policies have aimed to turn migrants into pure labour, that is, into a labour force that could be immobilised within the labour market and returned when no longer needed, which is to say in periods of economic downturn, in case of illness or pregnancy, or before migrants could settle in the country. As many of my interviewees put it, ‘Malaysia doesn’t have migrants, just foreign workers’.

This guestworker policy has required the setting up and maintenance of a permanent apparatus to deal with the recruitment, transport, control and return of migrant workers. Since this machinery could not be provided by the Malaysian State, the labour system in its entirety has functioned on the basis of private agencies: private agencies that recruit migrant workers in their countries of origin; private agencies that process their papers, bring them to Malaysia and, in recent years, outsource their labour on the labour market; and private agencies that regularise illegal migrants. Finally, there is a paramilitary group acting as a private agency to detain, imprison and deport illegal migrants. This commercialisation and privatisation of the entire labour migration processing system, migration control and migration riddance has been perceived as necessary to fill the administrative gaps the Malaysian State could not cover. However, it has also driven up the costs of legal migration and made the whole migration process even more opaque and uncertain. For instance, the presence of recruitment agencies has tended to make legal entry more expensive, while also blurring the legal contours of employers’ responsibility vis-à-vis migrant workers. The privatisation of detention and deportation campaigns, in the hands of RELA, has meant more detentions and more human rights violations.

As for the second question of this research, or what the case of Malaysia tells us about the relationship between markets, citizenship and rights, the first thing to highlight is that the market factor has played a central role. This needs to be explained not only in terms of the capacity of employers to impose their demands but also because of the crucial factor that economic growth – based on the import of cheap foreign labour – has been part and parcel of the social engineering programme of the new nation-state. However, it is no less true that the borders and boundaries of the Malaysian nation-state have gradually closed to the outside world. While geographic borders have certainly remained open to as many migrant workers as demanded by markets, severe restrictions have been imposed on membership. The boundaries between citizens and non-citizens have become increasingly impenetrable, at least in Peninsular Malaysia. Eastern Malaysia is another story. While, in the past, ethnicity was an important component of (the implementation of) migration policies, since the 1990s citizenship has become an uncontested barrier. As argued in Section 3.4., this is fruit of the demand to protect the national labour market (and, in particular, the socioeconomic position of Malays) and of an increasing emphasis on alleged security issues related with migration.
Rights, then, have played quite a marginal role in the formulation and implementation of migration policies. First, as we have seen, migrant workers have no right to permanent residence or to family reunification, are dependent on their employers for their work permits and are made to leave the country whenever the State decrees. Second, (legal and illegal) migrants are detained and deported with very little accountability, while human rights violations tend to be the norm during detention and deportation campaigns. These abuses of migrants’ rights (by law and in practice) have not been notably contested by the legal and political system. On the contrary, when denounced by the few Malaysian NGOs that work for the defence of migrants’ rights, laws such as the Internal Security Act and the Printing Presses and Publication Act have been deployed to prosecute and silence controversial voices. Although the disproportionate power of the Malaysian executive has made it possible to take the philosophy of guestworker programmes to further extremes, it has not completely succeeded in turning migrants into pure labour or just foreign workers. While the courts and other social and political actors did not contest the limitations imposed on migrant rights, the official practice was challenged by migrants themselves when they consciously opted for illegality.

As we have seen, illegal entry often represents a faster and cheaper way of migrating to Malaysia. Once in the country, illegal migrants are not tied to employers, which means they can move more freely from job to job, their work is not taxed and neither is their stay in Malaysia necessarily determined by State-imposed time limits. In short, illegality can be a tempting way of getting round the restrictions imposed on Malaysian ‘foreign workers’ (Garcés-Mascareñas 2008b). In this regard, as signalled by Wong and Anwar (2003: 217-218), striking similarities appear when Chinese migration of former times is compared with current illegal migration to Malaysia. First, Chinese labour migration to colonial Malaya is comparable to illegal migration in its speculative and yet spontaneous character. In both cases, most migrants paid their own passage to Malaysia and the migrant experience was organised on the basis of their own social networks. Second, and partially as a consequence of this, both the former Chinese and current illegal migrants were mainly recruited within the country by local employers. As in the case of illegal migrants, old Chinese migrants presented a higher rate of job mobility and higher wages than Indian workers, whose migration to Malaya was planned and directed by the colonial authorities.

However, as I have already observed elsewhere (Garcés Mascareñas 2008a: 122), there is one major difference: while old Chinese migration was un-regulated but not illegal, in recent decades ‘un-regulated’ has become synonymous with ‘illegal’. This leads to another difference: in contrast with the past, those who migrate or have fallen outside the regulated migrant system face detention and deportation. This does not mean that illegal migrants are necessarily removed from the country because deportation can be dealt with by paying a bribe or by re-crossing the borders. It does mean, however, that non-regularity turns migrants into ‘detainable’, ‘imprisonable’ and ‘deportable’ subjects. In practice, they are reduced to living objects that can be deported or killed with impunity and without trial or
protest. While escaping direct State control, illegal migrants thus enter a grey zone where State control can still be imposed (though only as a more remote possibility) in a heightened expression: that of deprivation of free movement and threat of forced physical expulsion. In this grey zone, illegal migrants become subjects without legal existence and therefore beyond the law. It is precisely their a- legality that makes ‘extra-official practices’ or ‘back-door policies’ possible, because the State cannot be held accountable for what is thrust beyond the pale of legal existence.