

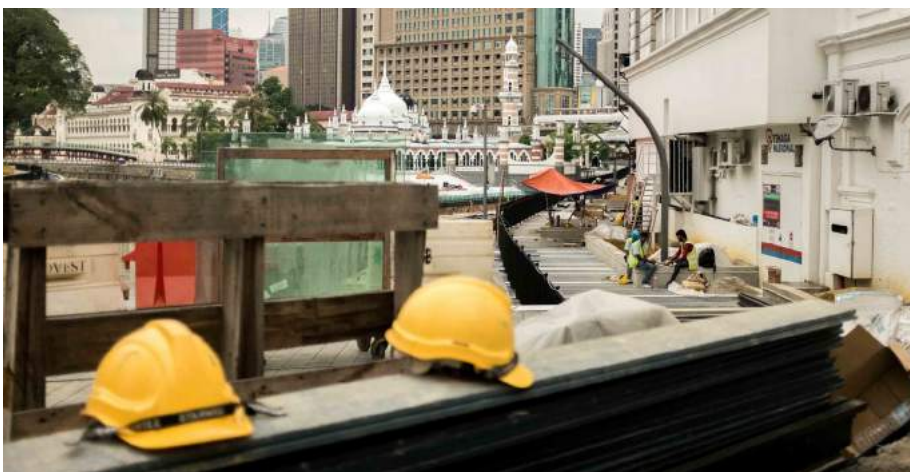


No compensation, no justice: Dead and injured migrant workers in 'new' Malaysia

In Malaysia migrant workers are prevalent in the BWI sectors like construction, wood processing and furniture, contributing both to the Malaysian economy and their country-of-origin. Indeed, from 2014 to 2017 remittance flows out of Malaysia hovered around US\$10 billion per year, serving as a major capital injection for communities across countries of origin like Nepal, Bangladesh, Indonesia, Vietnam and Myanmar (for example, in 2018 a full 28% of the Nepali GDP came from remittances).¹

On average, over the period 2015 - 2018 a Nepali migrant worker in Malaysia died at least every day.

However it wasn't just remittance money being sent back, there were bodies too. While we only have reliable data for Nepali migrant workers (which make up around a third of documented migrant workers in Malaysia), in the ten years from 2005 the Nepali Embassy recorded the deaths of 2,945 Nepalese workers.² This trend appears to be worsening: on average, over 2015-2018 at least one Nepali migrant worker in Malaysia died every day. While other embassies did not respond to our requests for information, if this trend is consistent across other nationality groups then Malaysia may be accountable for at least a thousand migrant worker fatalities a year.



¹ Data on Outward Remittance Flows (April 2019) Knomad, The World Bank Group. Available at: <https://www.knomad.org/sites/default/files/2019-04/Remittance%20Outflows%20Apr%202019.xlsx>

² "Most deaths of Nepalese workers in Malaysia due to cardiac arrest, says ambassador" (12 June 2016) The Star Online. Available at: <https://www.thestar.com.my/news/nation/2016/06/12/most-deaths-of-nepalese-workers-in-malaysia-due-to-cardiac-arrest-says-ambassador/>

In this report we question some of available statistics on the causes of death, arguing that the official narrative – that a majority of migrant workers are dying as a result of heart attacks – is both an indictment on the conditions of employment for many migrant workers, as well as likely to be grossly exaggerated. In addition, we have investigated a number of accident cases from our sectors, finding eight fatality and twenty serious accident cases where no compensation has been paid whatsoever. Some of those cases are presented here as case studies, and we will be reaching out to their employers to negotiate an outcome for their families.

No compensation, no justice.

A new approach?

In June 2018 Malaysia got its first new Government since decolonisation in the 1960s – the Pakatan Harapan (PH) coalition – and hopes were high that proposed democratic reforms would mean a better standard of living for Malaysian workers. However for Malaysia's migrant worker population – by some estimates as high as 5.5 million,³ the majority of which are undocumented – little appeared to change.

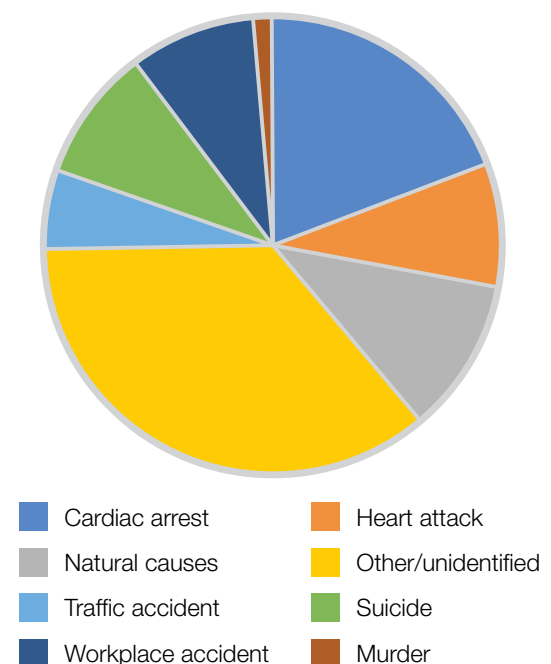
While the PH election manifesto included many measures proposed to improve the protection of workers' rights and livelihoods, a key pillar of the manifesto was a reduction in the overall number of migrant workers.

What followed soon after was a crackdown on undocumented migrant workers (whose overall numbers may well be higher than the number of documented workers). Incarceration and deportation of tens of thousands of workers followed, without any meaningful reform to the policies and processes that cause migrant workers to become undocumented, or consultation with the migrant communities themselves. There have been other changes that will strengthen migrant workers' rights, key among them being that migrant workers will now be covered by the same social security (SOCSO) scheme as local workers, although coverage will not be as comprehensive as for local workers and

Identifying the causes of death

A 2016 study by the International Labour Organisation (ILO) goes into some detail looking at the deaths of Nepali migrant workers in seven countries (Malaysia, as well as six Gulf countries). In total they register 1,562 fatalities in Malaysia over the seven year to 2015. According to their findings (see adjacent chart) only 8.7% of these deaths are caused by workplace accidents, while 27% are caused by cardiac arrest or heart attack.⁴ Of the 461 deaths recorded by the Nepali Embassy in 2015, the Ambassador has stated that around 70 percent of those fatalities were caused by massive heart attack or sudden cardiac arrest.⁵

Cause of Death of Nepali workers in Malaysia FY 2008/9 to 2014/15



On the one hand, there is some evidence to support this contention. As well as practicing a 48 hour work week,⁶ Malaysia has some of the weakest overtime restrictions on the planet, with standard overtime capped at 104 hours per month.⁷ In fact, this limit is even higher because working on a rest day or

³ Lee Hwok-Aun and Hkor Yu Leng "Counting Migrant Workers in Malaysia: A Needlessly Persisting Conundrum" (25 April 2018) ISEAS-Yusof Ishak Institute. Available at: https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_25@50.pdf

⁴ "When the Safety of Nepali Migrant Workers Fails: A review of data on the number and causes of the death of Nepali migrant worker" (2016) International Labour Organisation, p13. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_493777.pdf

⁵ See Note 2.

⁶ The international standard for working hours is 40 hours per week, mandated by ILO Convention No. 47 (1935).

⁷ See Section 2 of the Employment (Limitation of Overtime Work) Regulations 1980.

paid holiday is not defined as overtime, meaning that in fact in a 31-day month workers could legally work an additional 60 hours a month on top of their standard work schedule (and they will not receive overtime rates for these hours).⁸ According to a 2016 survey that the BWI undertook of migrant construction workers in Nepal, 77% of workers reported on average working 7 days a week, while 78% of workers reported on average working 10+ hours per day.

With wages often scarcely above the minimum – now set at MYR1100 (US\$267) per month – it is often a severe struggle for migrant workers to make ends meet as well as service recruitment debt and remit money back to their families. A March 2018 Bank Negara report (using 2016 data) estimated a living wage for a single adult in Kuala Lumpur to be RM2,700 (US\$656).⁹ Most migrant workers don't have the luxury of being able to choose where they live or the food they eat – it is often provided by employers at inflated prices that come directly out of workers' salaries before they even see it.

The Malaysia-Nepal MOU (which has not yet been implemented) aims to eliminate recruitment debt for future engagements, and this has been a clearly stated ambition of the Nepal Government. However migrant rights advocates have said that cost of around MYR5,500 (~US\$1340) represent an average initial cost of recruitment debt incurred by Nepali migrant workers coming to Malaysia (these may be much higher – Bangladeshi workers are often reportedly forced to pay around US\$5000 in recruitment debt). This money is often borrowed from local money-lenders at usurious interest rates, and close community relationships that exist mean that workers' family members may be under threat when payments are not forthcoming. Under these conditions, working as many overtime hours becomes a near necessity for many migrant workers.

Long working hours are a key driver of fatigue, which can lead to conditions cardiac arrest and heart failure. The physical conditions of work could also be a contributing factor. Malaysia is a tropical environment where outside temperatures during the working day rarely falls below 30°C. In a recent Guardian investigation from a series of rubber glove factories in Malaysia workers (some of which had worked illegal overtime of up to 160 hours per week) reported factory temperatures of up to 70°C.¹⁰

In addition, the fact that, according to ILO data more Nepali workers are committing suicide in Malaysia than dying of workplace accidents underscores an uncomfortable idea – that the conditions of work and living are so bad that for many suicide seems like the best option.

A sudden death, much to soon

Nar Singh Dhimi was a quality controller in a Klang furniture company. Hard-working and resourceful, he was always keen to take on more work to ensure that his wife and four children back in Nepal lived a better life, along with his parents and younger brother who he also supported.

However on 21 March 2019 while working he was suddenly struck with a severe headache, stomach ache and feeling hot all over. His friends advised him to take a cold shower, but he soon began shaking all over, before collapsing and passing away almost instantly.

Nar had managed to save enough to purchase a bus in Nepal (that others rented from him), however with outstanding debts his wife thinks she may have to sell this critical asset. They have lodged insurance claims in Nepal but have heard nothing from her deceased husband's employer or agent in Malaysia.



⁸ See Section 60A(4)(a) of the Employment Act 1955.

⁹ Eilyn Chong and Farina Adam Khong "The Living Wage: Beyond Making Ends Meet" (March 2018) Bank Negara Malaysia. Available at: http://www.bnm.gov.my/index.php?ch=en_publication&pg=en_work_papers&ac=62&bb=file

¹⁰ Hannah Ellis-Peterson "NHS rubber gloves made in Malaysian factories linked with forced labour" (9 December 2018) The Guardian. Available at: <https://www.theguardian.com/global-development/2018/dec/09/nhs-rubber-gloves-made-in-malaysian-factories-accused-of-forced-labour>

Can we really believe it?

It is clear from the above discussion that the horrific conditions of work and living for many migrant workers are extremely unsafe. There are reports in many different countries of a phenomenon called “sudden unexplained death syndrome” that appears to primarily affect migrant workers.¹¹ And yet, on the other hand, it seems to beggar belief that so many young healthy workers – and they are young and healthy, as recruitment agents tend not to recruit workers over a certain age that cannot pass a physical test – would be falling victim to causes of death (like heart attacks and stroke) that are usually reserved for the aged.

These findings have been challenged by rights groups, who claim that there is likely more than meets the eye here.¹² The relevant Malaysian law that covered workers under the period which the statistics cover mandates lower compensation payouts for non-workplace accidents and there is less culpability for the employer concerned. While there are certainly cardiac arrests and heart attacks taking place, many believe that employers are conspiring with medical and immigration authorities to lower the costs associated with worker fatalities.

Anecdotal evidence from migrant worker organisers deployed by BWI affiliates suggest that workplace accidents are being disguised as cardiac arrests, heart attack and suicides. It is much cheaper for an employer and agent to conspire with a friendly doctor or medical professional to have a fatality characterised as a heart attack to avoid having to pay the costs associated with a workplace accident. Official occupational fatality statistics kept by the Malaysian Government for the year to October 2018 listed only 173 fatalities across all sectors,¹³ however we remained concerned that the system may be vulnerable to corruption to lower employers’ compliance costs.

What happened to Chiranjibi?

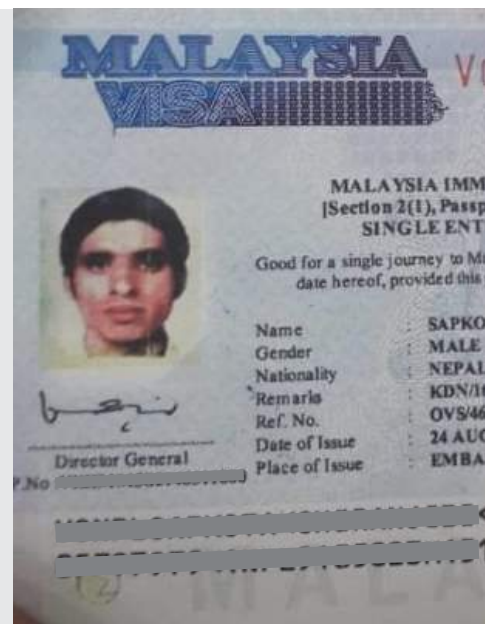
After spending almost three years working in an Ipoh timber factory in Malaysia, 22-year old Chiranjibi was excited to return to Nepal. His family were planning to match him with a suitable girl and start a family. However with just months to go, Chiranjibi died in suspicious circumstances.

Official documents note that in September 2017 he died of a heart attack in his sleep. However his workmates explained to family members that he had died from a fatal accident in the factory.

After his death, his remaining family in Nepal heard nothing from his employer or the agent that arranged for his employment. They later found out that his agent had forged his initial documentation, making it difficult for them to make insurance claims.

With help from GEFONT (who threatened to complain to Nepali authorities) the agent agreed to file the documents for an insurance claim and they were successful in receiving a payout from the Nepal Government.

Chiranjibi’s employer have paid no compensation in connection to his fatality, and his family were left to deal with the outstanding RM 7,047 owing from his recruitment cost.



¹¹ See e.g. Andrea Chen “Mystery as hundreds of young Chinese workers are dying in their sleep” (22 July 2014) South China Morning Post. Available at: <https://www.scmp.com/news/china/article/1557127/more-young-males-dying-mysteriously-their-sleep-dongguan>

¹² See e.g. Mangai Balasegaram “Human Writes: One Nepali migrant worker died every day in Malaysia in 2018” (10 February 2019) Star2.com. Available at: <https://www.star2.com/living/2019/02/10/migrant-workers-dying/>

¹³ “Occupational Accident Statistics by Sector Until October 2018 (Investigated)” (November 2018) Department of Occupational Safety and Health. Available at: <http://www.dosh.gov.my/index.php/en/occupational-accident-statistics/by-sector>

From WCA to SOCSO

In November 2018 the Malaysian Government announced that it was changing the way it dealt with compensation payments for migrant workers, replacing coverage under the Workmen's Compensation Act 1952 ('WCA') with coverage under the Employees Social Security Act 1969 ('SOCSO').¹⁴ Since migrant workers all have their own different policies under the WCA, there will be a one year 'cooling-off' period in which the transition will be managed.¹⁵ We applaud this decision: the WCA was a purely inhuman piece of legislation that literally put upper limit price-tags on workers' bodies – price tags that maxed out at RM 25,000 (~US\$6,100).¹⁶ In some instances where workers have significant outstanding recruitment debt, this debt is shifted on to their families.

The motivation for this change was to bring Malaysian law in line with its commitments under the Equality of Treatment (Accident Compensation) Convention 1925, which BWI affiliates in Malaysia had previously been lobbying for. However, the change was brought into effect on 1 January 2019 without the passage of any legislation and with no discussion in the Parliament. Again, while we see this change as an improvement on the current situation, we suspect its implementation outside of the auspices of Parliament was intended to limit the extent to which the broader issues relating to migrant workers' safety and health – including a discussion on how low wages, hefty recruitment debt and long hours create consistently dangerous practices of work characterised by mental stress and physical fatigue.

Inequality of treatment has been sustained in some areas – while migrants can now avail themselves of medical benefits, temporary disablement benefits, permanent disablement benefits, the constant-attendance allowance, the dependant's benefit and rehabilitation, and repatriation costs (including funeral costs), foreign will not be covered by the invalidity pension scheme.¹⁷ The purpose here is to shift the costs of long-term care of workers rendered invalid onto their countries of origin – for example Bangladesh and Nepal – knowing full well that these countries lack the systems to ensure their care. Ultimately it will be local communities that pay these costs, and the affected workers are likely to see their lifespan radically reduced as a result of their injuries. In addition migrant workers will not be covered for dialysis treatment.

Of persistent concern, however, is the fact that fatalities like heart attacks still not covered under the SOCSO. It is clear that some workers are dying as a



¹⁴ "Kuala: Workmen's Compensation Act 1952 to be abolished" (29 November 2018). Available at: <https://www.nst.com.my/news/nation/2018/11/435868/kuala-workmens-compensation-act-1952-be-abolished>

¹⁵ Under the WCA workers have an individual insurance policy with an expiry date. If that expiry date is before 31 December 2019 then their employer will be obligated to have them enrolled in SOCSO prior to that date, however if after then it the transition date will be 1 January 2020.

¹⁶ See the Workmen's Compensation Act 1952.

¹⁷ <https://www.thestar.com.my/news/nation/2018/11/21/foreign-workers-to-be-covered-under-socso-effective-jan-1/>

result of the extreme pressure and fatigue – both physical and mental – they are taking on to pay off recruitment and remit money back to their families. It is alarming that a fatality of this nature cannot be considered being primarily caused by the work environment itself. On top of this, as we saw in the case of Chiranjibi, non-coverage of heart attacks as workplace accidents means that employers will still be tempted to disguise workplace accidents as heart attacks.

Justice for the past?

It is a cruel twist of fate that while migrant workers injured or killed on 1 January 2019 will be covered by SOCSO, those killed or injured the day before are covered by the WCA and therefore will receive a substantially lower standard of protection. Of even greater concern is the fact that many migrant killed or injured workers have received no compensation whatsoever. Working with GEFONT, the BWI has uncovered eight fatality cases and a further twenty major injury cases where no compensation or insurance payment was made by the workers' employers whatsoever.

In its sectors, the BWI has uncovered eight fatality cases and a further twenty serious injury cases in which no compensation was paid whatsoever.

For both deceased workers and workers whose injuries affect their long-term employability, non-payment of insurance or compensation leaves them and their families in a much worse position. The ongoing impact of recruitment debt and interest accrued under that debt shackle families into desperate and dangerous life decisions. Some choose to send other family members to work overseas, however this comes with an additional cost burden. Some may be driven into effective debt bondage, while others may be compelled to resort to criminal activities to quickly accumulate capital to address debts. In all the cases reviewed by the BWI, workers were remitting a significant proportion of their monthly wages back to their family in Nepal to pay down their debts. According to our 2016 survey, 50% of surveyed workers were remitting between RM600-700 per month, with 34% remitting more than this amount. Servicing recruitment debt without this kind of capital inflow is next to impossible for many Nepali families. In each case, adequate compensation payments could have easily addressed

A month's work, a lifetime of pain

34-year-old Damodar had only arrived in Malaysia a month before he sustained a workplace accident that has left him in pain for the rest of his life. While working in a Klang furniture company, the piece of wood he was working on unexpectedly broke and Damodar lost his thumb and index finger and leaving his middle finger practically unusable.

Damodar's employer did not take him to the medical clinic until three hours after the accident. His employer refused to give him medical leave (the next day on the job Damodar wrapped his hand in a T-shirt and continued working) and no compensation was ever paid.

Despite receiving no support from his employer or the Malaysian or Nepali Government, Damodar remained in Malaysia until 2017 and was able to repay his recruitment debt. He still lives with ongoing pain from his injuries, and is only able to find limited work because of his disability.

this situation.

In the case of deceased workers or those who are permanently debilitated workers, they face a difficult choice: whether to continue in Malaysia as an undocumented worker (without any legal protection and a poor capacity to find work) or to return to their country of origin, as a permanent burden on their family and community.

Where is Kailash?

In November 2017 the family of 28-year-old Kailash family received a call from one of his friends saying that he had died in a road accident, however the whereabouts of his body remains unknown and the circumstances of his death remain suspicious.

He arrived in Malaysia in 2016 and worked for a Klang Valley timber company. Despite the fact his work permit was tied to this employer, Kailash somehow changed employers twice (putting him in a situation where he was unable to avail himself of legal protection).

While he had been working elsewhere for some time, at the time of his passing Kailash's permit was still tied to his initial employer. No police report noting that he was missing was filed by the employer until after his passing. All documents in Nepal indicate that he is deceased, however the Nepali Embassy in Malaysia has no record of his death.

While Kailash was just able to repay his recruitment debt during his tenure in Malaysia, his family were not able to save anything beyond this.

Conclusion

Recent legal changes to bring migrant workers under the coverage of SOCSO are certainly a welcome change and will make it easier for migrant workers and their families to avail themselves of medical assistance and compensation when an injury or fatality occurs. However without clear changes to the broader conditions of work and major improvement in the systems of reporting accidents and tracking compensation payments, workers and their families will continue to suffer.

As regards the 8 fatality and 20 serious injury cases that have been identified by the BWI, we will be reaching out to their employers and recruitment agents to negotiate a fair compensation package to ensure that affected families and workers can nevertheless live a decent life. We will continue to engage with employers in the BWI sectors to avail justice for past injuries and fatalities.

Despite its commitment to lower the total number of migrant workers, the consistent demands of employer associations for more migrant workers means that, at least in the short-term, the Malaysian Government needs to do more to protect its migrant workers. It still has not publicly released the findings of the Independent Committee on Foreign Workers, however there is a multitude of evidence suggesting that the conditions under which migrant workers labour - whether documented or undocumented - are oppressive and inhumane.

Recommendations

The Malaysian Government must:

1. Assume much greater responsibility in record-keeping on fatalities and injuries of migrant workers.
2. Undertake a thorough investigation into past cases of apparent heart attacks of migrant workers to determine the veracity of these claims.
3. Develop a programme for migrant workers' families to receive fair and just compensation caused by past deaths and injuries in Malaysia.
4. Implement a cross-border system to verify the payment of compensation to families in the country of origin.

No compensation, no justice:

Dead and injured migrant workers in 'new' Malaysia

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