

# The Cost of Legality: Navigating Labour Mobility and Exploitation in Malaysia

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## Abstract

Through examining the experiences of Burmese migrant workers in Malaysia this paper analyses the complicated relationship between legal status and protection from violence and abuse. While legal status has often been promoted as a means to protect migrants, we suggest that legal status is actually pursued only at particular moments and on the basis of particular cost/benefit calculations made by migrants. Even as legal status offers some protection from state authorities, the linkage between legal status and employer sponsorship means that it also binds migrants to specific employers. Crucial to these calculations too is the cost of legal status for both migrants and employers, imbuing the relationship with financial risk on both sides and turning legal status into an expensive “commodity”. Therefore, while migrant labour is often constructed as being “cheap”, our study reveals that a key factor in the exploitation of migrants is that they are in fact so expensive to hire. Thus, as we argue here, it is important to look beyond a narrow focus on legal status and consider the basis on which such status is extended – especially as such status is increasingly predicated on a sponsoring employer and significant financial investments.

**Keywords:** Malaysia, Myanmar, guestworkers, employer sponsorship, legal status, labour mobility

## Introduction

Previous scholarship on the relationship between labour mobility and worker exploitation shows a clear linkage between precarious legal status and precarious forms of work (Fudge 2011, Goldring et al. 2012). The literature has particularly explored how “illegal” status in host countries works to produce a cheap and exploitable migrant labour force (De Genova 2002, Khosravi 2010). Key to this, as de Genova’s (2002) famous reading suggests, is the disciplinary power of “deportability”. Or, more precisely, how the threat of deportation in everyday life can be mobilised into a very particular spatialised (and racialised) social condition that sustains the vulnerability and docility of “illegal” migrant workers. Yet whereas this connection between migrant “ille-

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gality” and exploitation is well established in the literature (Shamir 2017), there is growing recognition that the abuse and violence facing the migrant workforce is not exclusive to “illegality” (Garcés-Mascareñas 2012: 157). In fact, scholarship both within and beyond the Asian region points towards a growing slippage and blurring of boundaries between “legal” and “illegal” status, as states employ multiple constructions of non-citizenship that grant “legal” migrants limited and differentiated access to rights and entitlements (see for example Cohen 2006, Standing 2014 on “denizens”, Menjívar 2006 on “liminal legality” and Nah 2012 on “hierarchies of rights”).

What follows from this blurring is often the deterioration of labour conditions, as various forms of inequalities and unfreedom are made an integral feature of legally sanctioned guestworker schemes. A much-cited example of this is the *kefala* system present throughout much of the Middle East (Gardner 2010), but studies have also pointed towards similar dynamics in the Seasonal Agricultural Worker Program in Canada (Basok et al. 2014) or temporary foreign worker programmes in Asia (see for example Bélanger 2014, Killias 2010, Lê 2010 on Malaysia, Bylander 2019, Derks 2010 and 2013 on Thailand and Lan 2007 on Taiwan). Thus, despite international calls to promote “legal” (or “regular”) forms of migration as a means to protect the rights of workers (most notably the United Nations Global Compact on Migration, 2018), the above studies give cause for caution in assuming that “legality” connotes “protection” (see Vigneswaran 2019 for more on protection). Rather to the contrary, these studies suggest that the very conditions associated with legal guestworker schemes may increase migrants’ susceptibility to abuse, force and even violence in the host labour market.

Based on insights from such scholarship, and drawing on fieldwork conducted in the Burmese migrant community in the Malaysian city of George Town, this study seeks to further disentangle the relationship between legal status and exploitation. In doing so, we show how migrants navigate the framework governing their residence and employment in Malaysia by moving in and out of legal status. Our contention is that migrants choose to have – or not have – legal status based on negotiating the cost/benefit calculations between safety concerns, relationships with employers and financial costs. During certain periods migrants may, in other words, deem it more advantageous or safe to hold “legal” status, whereas “illegal” status may be the preferred option at another time. In light of this, our study moves beyond a binary examination of how legal status functions as a means of protection (or not) towards an analysis of how it is strategically used by migrants and why (see also Coutin 2003).

Malaysia provides an important context for the examination of these issues, considering its importance as a destination country for temporary labour migrants in Asia. The vast majority of these migrant workers, or “foreign

workers” as they are officially termed, originate from the poorer countries in the region, with neighbouring Indonesia being the top sending state, followed by Bangladesh, Nepal, Myanmar and others (Economic Planning Unit Malaysia 2016). For the Malaysian state, these foreign workers have come to play an absolutely essential role in sustaining economic growth (World Bank 2015). While official data puts the number of registered foreign workers at around two million, estimates from the Malaysian Employers Federation (MEF) suggest that the total number of foreign workers in the country approaches six million (Lek 2016). If these figures are accurate, the share of foreign workers in the Malaysian labour market exceeds 40 per cent (*ibid.*). However, despite this dependence on foreign labour, the conditions facing the migrant workforce in Malaysia are notoriously poor. Reports from human rights organisations speak of systemic exploitation, abuse and violence – and in 2014 the watchdog organisation Verité released a report that presented evidence of widespread forced labour in the electronics sector, one of Malaysia’s key industries (Verité 2014). As will become apparent throughout this paper, the situation facing the migrant workforce can be explained by the social and legal position they are offered in Malaysian society. For those who stay in the country “illegally” the main challenges in everyday life can be traced back to their criminalised status (Franck 2016), which not only puts them at risk of deportation but also of being fined, imprisoned, detained or even caned (Nah 2011, 2012). While many “illegal” migrants in Malaysia have entered the country through irregular channels, many others have overstayed their visas or have absconded from their designated employers, often referred to as “runaway workers” in public debate (see for example The Star 2018).

Like many of their peers, the “runaway workers” interviewed in this study had originally entered Malaysia on a temporary working visa (Visit Pass / Temporary Employment). These temporary working visas are part of the Malaysian foreign worker policy scheme, which allows workers from particular countries in the Asian region to work for a designated employer for a distinct period of time. Much like other temporary guestworker programmes within and beyond the Asian region, the primary objectives of the Malaysian policy framework are to ensure the supply of low-waged labour to select industries, to ensure that the presence of foreign guest workers is temporary and to restrict their mobility in the labour market (Garcés-Mascareñas 2012). To achieve these objectives, foreign workers not only rely on a single employer to sponsor their entry, but these employers are also responsible for the daily management and control of workers throughout their stay in the country. In order to prevent the workers’ longer-term incorporation into society, the Malaysian policy framework includes additional restrictions, such as prohibiting workers from bringing dependents or getting married (Immigration Department of Malaysia n.d.). The broader outcome of this policy framework is that

foreign workers face both a legally and socially precarious situation – one in which their bargaining power is severely restricted. In fact, and as Bélanger (2014: 88) has suggested, the above policy framework “form[s] the basis of systemic problems that lead to workers’ exclusion, exploitation, forced labour, and, in some cases, trafficking.”

As indicated above, the following paper approaches these processes by looking at how Burmese foreign workers in Malaysia move in an out of legal status in order to secure their livelihoods and avoid exploitation, but also points towards some key factors as to why this occurs. Following a conceptual discussion on guestworker programmes and an introduction to our methodology, we focus our inquiry on the experiences of Htet, a 23-year-old migrant from Mandalay in Myanmar, who will be introduced later in the paper.

## Temporary guestworker schemes

Despite the sounding of their death knell in Western Europe in the 1980s (Castles 1986), guestworker schemes, also referred to as Temporary Migrant Worker Programmes, have become resurgently popular around the world. Much like the Malaysian foreign worker programme, these guestworker schemes centre on their temporary character, employer sponsorship and a reliance on private actors to source and manage workers (Anderson / Franck 2019). Typically, workers are only granted temporary work permits, rely on a designated employer to retain their legal status in the country and are endowed with relatively few rights (Ruhs 2013). This design essentially means that states are able to exploit the benefits of foreign labour without bearing responsibility for the costs of their long-term participation in society (Sharma 2006). Or, as phrased by Surak (2013a: 88), it allows the state to “maximize economic utility while minimizing social cost”. As guestworker schemes are designed within particular parameters in pursuit of various state aims, they can also be highly targeted to particular sectors of the economy, allowing for states to potentially create immigrant categories that are relatively narrowly focused on particular economic needs (Surak 2013b). In the Malaysian case this is, for example, visible in that the state allows foreign workers in particular sectors of the economy and regulates the countries, age groups and genders from which workers can be sourced (Immigration Department of Malaysia n.d.). Myanmar nationals between the ages of 18 and 45 are, for example, allowed to work in all stipulated sectors (manufacturing, construction, plantation, agriculture and services), whereas male workers from Indonesia are not allowed to work in manufacturing, for example (ibid.).

Yet, even as guestworker schemes seem to exist within tightly defined parameters, in practice, their modes of operation are significantly more complex. As this paper will show, stakeholders within guestworker schemes (in our case: migrants and employers) may navigate the (often shifting) regulatory context in ways that produce both unexpected and unintended outcomes. One reason for this is that while guestworker schemes function under the imprimatur of the state, much of the actual operation of these schemes requires the extensive involvement of private actors. These private actors may have roles officially delegated by the state or play a role of their own making. Within the Asian context, there is a particularly well-developed literature on the long string of private actors that facilitate the entire migration process (Franck et al. 2018, Bélanger 2014: 88, Hugo 2005: 94, Lê 2010, Lindquist 2010, Tseng / Wang 2013, Xiang 2012).

What can be drawn from these readings is how the involvement of private actors produces complex sets of relationships between state structures and the variety of private actors involved in migration processes, although the nature of that relationship is not always entirely clear (Anderson 2019). In other words, while these private, or “migration industry” actors if you will (Gammeltoft-Hansen / Sørensen 2013), clearly provide migration services, it is not obvious for whose benefit those services are rendered. Within the migration industry literature there has been extensive debate regarding the ways in which states govern with, through and around private actors in guestworker schemes. Some view the state as delegating functions to private actors in order to increase control over guestworker schemes (Surak 2017), others have noted the ways in which the private actors help states to govern at a distance (Kemp / Raijman 2014) or to govern migrants closely (Anderson / Franck 2019), and still others see the governance produced by states and the migration industry as “co-constitutive” (Goh et al. 2017: 424). Yet regardless of the specific relationship, what emerges from all these accounts is a state that benefits to some degree from the inclusion of these private actors.

It is in this context that both employer sponsorship and costs, the two key factors that we focus on in this paper, have become essential features of the migratory system. As private actors engage in migration processes and services, they come to have new responsibilities within migration management and control. While these functions may be delegated to some degree, private actors often retain significant latitude in how they function, at least in practice if not by law. Likewise, as many of these migration services have been outsourced, costs have risen as more and more actors look to profit from migration services. Although private actors in migration management, particularly in the Asian context, include a broad range of actors (such as brokers, outsourcing and visa agencies, etc.) our particular interest in the role of employers is motivated by the way in which they are heavily implicated in this system

through various forms of employer sponsorship. Employer sponsorship here refers to the system of binding migrants to a single employer for the duration of their stay in the host country. Previous literature shows how employer sponsorship is deployed as a powerful tool in order to maintain a precarious workforce (Basok et al. 2014, Hahamovitch 2014, Wright et al. 2017), through granting employers extensive powers to very closely control their migrant employees (Anderson / Franck 2019). In fact, studies have suggested that employer sponsorship tends to produce a “hyper-dependence” (Zou 2015) upon employers both within and beyond the labour market (Wright et al. 2017).

This hyper-dependence derives from the fact that migrants depend on their employers to retain their legal status – but also from the fact that employers are often granted quite far-reaching responsibilities when it comes to the everyday management and “supervision” of migrant workers (Krissman 2005, Griffith 2014). Also, and as the above indicates, the role of employers in the context of temporary guestworker schemes is not merely to facilitate worker mobility. Quite to the contrary, and as forcefully argued by Derks (2010, 2013) in the Thai context, a key function of employers in host countries is often to ensure the immobility of migrant workers (see Garcés-Masareñas 2012 for a similar discussion on Malaysia). Not only are migrants often prohibited from changing employers once they have arrived in the host country, but additional policies may also be in place that circumvent workers’ mobility within and beyond the labour market (such as linking work permits to geographical restrictions). In this context, employers are thus granted a very powerful role “as they have direct control over the spatial and temporal parameters of workers’ lives” (Hennebry 2008: 347). An interesting aspect of this is thus that whereas other private and migration industry actors profit from the process of moving migrants across borders (or, importantly, preventing them from moving across borders), employers here largely profit from migrants’ staying put. When employers have had to bear significant fees and costs for the arrival of migrant workers, the immobilisation of those workers is essential for employers to recoup their investment. As we will see in sections to come, this latter condition has dire consequences for the everyday relationship between migrants and their employers.

## Methodology

This paper is part of a broader study on the social, spatial and legal conditions of migrants from Myanmar in Malaysia, and builds upon qualitative fieldwork conducted in the Malaysian city of George Town between 2012 and 2017. The broader empirical material consists of observations, informant in-

interviews and in-depth interviews with 32 migrants. Attention to temporary labour migrants from Myanmar is interesting for several reasons. For one, Myanmar nationals are considered to be the fourth largest migrant group in Malaysia. While official data is hard to come by, estimates suggest that the number of Myanmar nationals in the country exceeds half a million. Also, while several studies have provided fascinating in-depth analyses of the situation for Myanmar refugee/ethnic minority communities in Malaysia (see for example Azis 2014, De Vries 2016, Hoffstaedter 2014), few empirical studies have examined the conditions for temporary labour migrants originating from Myanmar. Amongst the respondents in this study, the vast majority belonged to the ethnic majority group in Myanmar, the Bamar, and a limited number were ethnic Kayin. What these respondents all had in common is that they had travelled to Malaysia in search of employment. Whereas the Burmese workers in Malaysia face a similar situation to that of many other foreign workers, their situation is also somewhat distinct in that the Burmese government has only recently taken an interest in its nationals abroad (Hall 2012). While other major sending states have long-standing engagements and agreements with Malaysia, seeking to enhance the situation for workers and secure broader development gains, such endeavours are more recent in relation to Myanmar. Also, the group of migrants interviewed for this study had mostly left their homes prior to democratic reform in Myanmar – and many of them thus shared the sentiment that their government was (or at least had been) largely indifferent to their situation.

The observations and interviews conducted in George Town were facilitated by recurring two-week stays together with a group of Burmese foreign workers in the Jelutong Area of the city. These stays provided the opportunity to follow people in everyday life, build a network in the Burmese community and access respondents. The in-depth interviews conducted focused on retrieving information involving the decision to migrate, the journey to Malaysia, the conditions of work and the experience of immigration control practices, as well as the perception of fear and safety in everyday life. A few field visits also focused on particular themes, such as the involvement of private actors during the respondents' migration trajectories and the experiences of unfreedom in the labour market. During the interviews, one of the two Burmese research assistants working in the project was always present, to provide interpretation when needed. The length of these interviews varied between 30 minutes and several hours, but a number of respondents, depending on their situation and availability at the time, were interviewed on numerous occasions over several years, which allowed us to capture changes occurring in, for example, legal status and working conditions.

With regard to legal status, 19 of our 32 respondents had experienced a shift in legal status over the course of their stay in Malaysia – some of them up

to six times. Interestingly, none of those who had entered the country legally had remained with their designated employers. Instead, they had – at one point or another – taken the decision to abscond. The reasons for doing so were commonly related to the working conditions offered and what they described as deceptive recruitment practices. That is, the employer in Malaysia did not live up to what the recruiters in Myanmar had promised. Several of the respondents had, for example, signed formal labour contracts in Myanmar that were blatantly disregarded upon their arrival at their workplace in Malaysia. While workers who abscond from their employers should be “black-listed” (Immigration Department of Malaysia n.d.), a number of our respondents had been able to reapply for a work permit together with a new sponsoring employer. In some cases, they had remained with this employer while others had, following disputes over working conditions, ended up absconding once more. A few migrants had entered the country without legal documentation but had been able to regularise their status during their stay. These moves between legality and illegality need to be seen in the context of the many different amnesty, registration and expulsion campaigns implemented over the past decade (see for example Hedman 2008, Nah 2011a, Chin 2017). Critics argue that migrants, in the face of the many different changes to the enforcement strategy of the Malaysian government, have to navigate an ad-hoc or even “enigmatic” policy landscape (Nah 2011b). With regards to the most recent changes (from the Amnesty Programme (3+1) to the Back for Good (B4G) Programme within 12 months), NGOs for example publicly stated that: “One cannot blame migrant workers for wanting to come to Malaysia without proper documentation and wait out until the next amnesty exercise, given the government’s track record” (Malay Mail 2019).

In the next section we will take a closer look at one of our respondents, Htet. We interviewed Htet on several occasions between 2012 and 2015, and we have here selected his story for the way that it captures migrants’ experiences of shifting legal status. While Htet’s story is by no means exceptional with regard to the experiences of other Burmese migrants we encountered in Malaysia, it allows us to illustrate how the rules governing migration in Malaysia play out in migrants’ decision-making and relationships to their employers.

## Htet’s Story

When we meet Htet for the first time he walks into our research assistant’s house with a motorcycle helmet under his arm. He has just finished work, and after the interview he invites us to join him for some food in a nearby street

stall where his friend works the night shift. The Free School area, where both Htet and our research assistant reside, is not a typical “migrant neighbourhood”. Many Burmese migrants can, however, be found working in (primarily Chinese-owned) street food stalls, shops and smaller businesses. While the advantage of not living in a typical migrant neighbourhood is that the authorities do not conduct too many larger raids in search of “illegal” migrants, the police still perform random identity controls or roadblocks in the streets (Franck 2016). Htet, however, states that he is not too bothered by these controls. He has been stopped by the police on numerous occasions, particularly when riding his motorbike, but he has always managed to bargain his way out of the situation.

Like many other Burmese migrants that we encounter in George Town, Htet has moved in and out of legal status during his stay in the country. He first arrived in Malaysia through an outsourcing agency, with a contract to work as a mechanic. Upon arrival in Malaysia, however, he was transferred from the airport to a different type of job, a machinery factory outside of Malacca. The conditions of work in this factory were further not in accordance with what he had been promised. “The pay was bad,” he states. “I only made RM700 and we worked from eight in the morning to nine in the evening.” Two months into his stay, he therefore took the decision to abscond from his employer. “When everybody went to work one morning, I ran away,” he says. He took the bus to Butterworth, a few hours north of Malacca, where a friend provided food and shelter for a couple of months. Running away from the factory not only meant that Htet was now out of job, but also that he had moved into “illegal” migrant status. As such, he had to find an employer that was willing to hire an “illegal” worker.

Five months after his arrival in Butterworth, Htet travelled across the bridge to the island of Penang and managed to secure employment in a garage in George Town. His previous experience as a mechanic in Myanmar worked in his favour and this employer found it worthwhile to sponsor his application for a new work permit. Because the employer paid the fees, he deducted the costs from Htet’s salary and confiscated his identity documents. Asked if he is now free to leave his employer, Htet states: “If I say that I want to go back to Myanmar, I can leave ... If [I want to leave] for another job, he [the employer] will keep the passport. [...] The boss paid for the work permit and passport so he doesn’t want me to leave.” At the time of our last interview, Htet had remained with his employer for two years. He likes the job, the pay is decent and (depending on how much he drinks, he laughingly adds) he is able to remit around 1000 ringgit (220USD) per month back to his parents in Myanmar. “I want to stay a long time in Malaysia,” he says. After that he wants to go back to Myanmar to get married – to “someone that my mother and father also like”.

The experiences of Htet speak to the need to recognise that migrants do not merely passively accept the conditions offered to them in the Malaysian labour market (see also Bélanger 2014). On the contrary, his story illustrates how migrants actively (and selectively) navigate these precarious conditions in order to “live a normal life” (Teng 2017), secure their livelihoods and avoid exploitation. As recognised also in previous literature, absconding – or “running away” – from employers is an oft-used tactic by migrants in order to improve their conditions (Franck et al. 2018; Garcés-Mascareñas 2010, 2012; Killias 2010; Lan 2007). While indicative of the way that workers may use “illegality” as a means to counter (or “resist”, Killias 2010) exploitation, Htet’s story shows how migrants may also *move in and out of* legal status during their stay in Malaysia. As such, “illegality” may present itself as a preferable (or necessary) option during certain periods, but “legality” may be favoured during other periods. For Htet, as seen above, “illegality” functioned as a means to counter the exploitation faced in his first place of work, whereas the deal he was able to strike with a later employer made him pursue (re)regularisation. This, we argue, captures how migrants navigate the regulatory framework according to a calculation of the costs and/or benefits that it brings during particular moments in time. In the sections to come we will further analyse what we see as two key factors promoting this move between legality and illegality: employer sponsorship and financial costs.

## Navigating employer sponsorship

While employers and employer sponsorship have long been features of foreign worker control (Hahamovitch 2014), employers have gained an increasingly important role within systems of migration management in Malaysia. As the Malaysian government has worked to increase pressure on undocumented workers, it has frequently done so by making employers more responsible for foreign workers. One example of this is the “Strict Liability Principle”, which “ensures that employers are responsible and accountable for their foreign workers, from the application, hiring, and employment until they return to their home countries” (Chin 2017: 120). The rules governing foreign workers further explicitly stipulate that “[u]pon completion or termination of employment” it is the responsibility of the employer to “ensure that foreign workers are deported to their origin countries” through the official procedures (Immigration Department of Malaysia n.d.). Therefore, one’s employer, and the relationship with that employer, becomes essential for all aspects of obtaining and maintaining legal status in Malaysia.

For migrant workers a central component of this “hyper-dependence” (Zou 2015) upon employers is that the conditions of their work permit prohibit them from changing their employer or employment sector during their stay in the country (Immigration Department of Malaysia n.d.). Unlike citizens faced with unsatisfactory or abusive labour conditions, foreign workers are thus deprived of the right to counter such situations by seeking new employment. Instead, they face two basic options: resign and be deported back to their country of origin or “run away” from the employer to find work “illegally”. While the issue of workers “opting” for “illegality” as a means to counter exploitation has been discussed above, it is also important to note that whereas the disciplinary power of “deportability” (i.e. using the threat of deportation as a means of coercion) has mostly been discussed in relation to migrant “illegality” (see notably De Genova 2002), both “legal” and “illegal” foreign workers in Malaysia are “deportable subjects” (Garcés-Mascreñas 2015: 137). The threat of termination (and thus deportation) is therefore present in the employment relationships of all foreign workers – and the condition of “the legal foreign worker” is, as argued by Rajaram / Grundy-Warr (2004: 52), in fact “not terribly distant from the illegal migrant”. While we may associate extortion by law enforcement officials as well as deception, fraud and coercion from employers with migrant “illegality”, many of the migrants in this study who enjoyed legal status shared these experiences. In fact, many described employer practices that qualify as indications of forced labour (Franck / Brandström Arellano 2014), including deceptive recruitment, the withholding of identity documents and salaries and threats of denunciation to the authorities (ILO 2014; see also Verité 2014). Many of these practices can be directly traced back to the disciplinary power held by the employer under the employer sponsorship system, which leaves migrants in an (intentionally) weak bargaining position vis-à-vis their employers, recruiters and the state. Importantly, and as will be discussed in the coming section, migrants’ susceptibility to abuse under employer sponsorship needs to be understood in the context of the high costs associated with legal migration.

Before turning to this issue, we would like to point out, however, that while there are plenty of “bad” and even unscrupulous employers in Malaysia that take advantage of migrants’ precarious legal and social position, the relationships between migrants and their employers cannot be understood through simplistic notions of “bad” employers and “victim” migrants. Instead, and as revealed in Htet’s story above, our interviews with Burmese foreign workers show that the relationship between migrants and employers is often both complex and mutable. While some certainly spoke of employers’ treating them “like slaves” (Franck / Brandström Arellano 2014), others described their relationship to “the boss” in far less negative terms. Some, typically those working for smaller and more informal businesses, had stayed several years with

the same employer, during which time the relationship developed in various ways. In family businesses (such as street food stalls), such relationships may also have extended to other family members (see also Bélanger 2014). Some migrants also described how the employer “helped them out” in various situations – navigating bureaucratic procedures and/or paying bribes to smooth such processes or concealing them from the police (see also Derks 2010 and 2013 for similar findings from Thailand).

Also, while the widespread practice of withholding workers’ identity documents is both illegal and deeply problematic for the foreign workers, it does not always imply that employers are trying to gain “total” control of migrant workers’ lives. In Htet’s case, the employer would for example (at least in theory) return the passport should Htet want to travel back to Myanmar. He would, however, withhold the passport if Htet wanted to search for another job. This can be directly linked to the high cost of hiring foreign workers, as we will return to shortly. In this case, Htet’s employer had made it explicit that he wanted to ensure that his investment paid off before Htet would get his documents back. Our contention here is not that migrants are not taken advantage of in these processes (they are!) but rather to suggest that the actions of employers need to be understood in the context of the policy framework that governs their relationship to migrant employees. As we examine migrant decision-making in relation to employer sponsorship we cannot treat employers as a constant “bad”, but rather need to recognise that migrants have varying relationships to their employers – whereas some promote good outcomes for migrants, others are far more exploitative and thus lead to poor outcomes (see also Bélanger 2014: 101). Along similar lines, the assumption that migrants are merely passive victims of exploitation is inherently problematic. This is clearly illustrated by the very example of how employers so eagerly seek to protect their investment through withholding migrants’ documents or salaries – in response to the widespread tactic of labourers’ avoiding exploitative conditions by absconding. Employers are, in other words, well aware of the risk that foreign workers who are unhappy with their situation may “run away”. Again, we are in no way seeking to “defend” (illegal as well as unethical) practices of withholding workers’ salaries or identity documents. Rather, we are suggesting that employer sponsorship involves unequal and inherently problematic power dynamics, but that the relationship between migrants and their employers is neither static nor unidirectional. Quite the contrary, as our study reveals, it involves a broad range of power relations, negotiations and contestations across different scales (see also Rogaly 2008: 1444).

## The cost of legality

This brings us to our second point, which is that an important factor of the migration process and the decision-making of migrants is the financial aspect. While migrants are often constructed as “cheap” labour, the key to their exploitation in Malaysia, we suggest, is the fact that they are so “expensive” for employers to hire and that migrants themselves have often made significant financial outlays to secure work permits. With regards to the latter, previous studies have underlined how the high costs associated with (legal) labour migration increases migrants’ susceptibility to abuse (see for example Bélanger 2014, Lê 2010 and Verité 2014 on the Malaysian case). The key to this is the high fees charged by recruitment companies and brokers, which often leave migrants with high levels of debt. The general understanding is that migrants in this context are more likely to remain with abusive employers for fear of failing to make enough money to repay their debts. This relationship between debt and exploitation is clearly exacerbated by employer sponsorship, given that migrants in such a situation are further deprived of the right to change employers. Our study provides no exception to the finding that brokerage increases both the costs and risks associated with migration. Indeed, the migrants we interviewed had paid up to 5500 RM (around 1500 USD) in recruitment fees to outsourcing companies and recruitment agents in Myanmar – sums large enough to complicate the possibility of absconding from employers (Franck et al. 2018). However, whereas previous analyses have largely been confined to the role that costs and debt play in the first step of the migration process, we are concerned here with highlighting the range of decisions made throughout the entire migration process and the ongoing role played by financial costs for both migrants and employers.

Starting with the recruitment phase, the costs of sourcing and hiring foreign workers are perhaps not excessive for large manufacturing companies, but they can be a significant burden for smaller businesses. The role that these costs play for such businesses has become evident in public debates on the management of migration in Malaysia and the increasing responsibilities that it shifts to employers (see Chin 2017 for a longer discussion on this). Business associations representing both larger and smaller companies have, for example, publicly protested the transfer of responsibility to pay the levies of foreign workers – stating that their members would be unable to bear the costs (Lo 2017, The Star 2017). Regardless of the accuracy of such statements, the reactions from business organisations here serve to illustrate that the cost of hiring of foreign workers is a contentious issue also for employers. At the same time, as the story of Htet reveals, the issue of the high cost of hiring foreign workers

creates fertile ground for coercion – as employers seek to protect their investment through measures intended to prevent workers from leaving.

Importantly, however, the employers' responsibility for foreign workers during their entire stay in Malaysia also includes a responsibility for the annual renewal of work permits (Immigration Department of Malaysia n.d.). The total cost of this procedure varies depending on the sector and the migrant's country of origin, but for Myanmar nationals working in manufacturing, construction or services the fees exceeds 2800 RM (including levy, work permit, visa, security bond and processing fee; see Immigration Department of Malaysia n.d.). While a report from the Malaysian Employer Federation (2014: 40) finds that the costs of renewing work permits (including the annual medical check-up) are largely born by employers, our interviews indicate that foreign workers still end up bearing the costs, through employers deducting from or withholding their salaries (see also Chin 2017). As Htet's story reveals, migrants face the same issues when they attempt to (re)regularise their status, as employers either charge migrants the fees or deduct the cost of the procedure from the migrants' wages. In both cases this translates into a situation where new debt and dependency upon employers continues throughout the migrant's stay in the country (see also Lê 2010).

Whereas the government has recently taken steps to ensure that levies and fees are covered by the employers, there is little oversight in ensuring that the total cost is not, in the end, borne by the migrants. In fact, transactions of this kind are often part of the intricate relations and negotiations between migrants and employers. This is exactly the kind of situation and decision-making faced by Htet. Having previously worked for an abusive employer, Htet needed to find a new position where the costs of obtaining legal status would be worth it. After initially working for his employer as an undocumented worker, Htet (and his employer) determined that regularising his status would be worthwhile even given the fees involved. While Htet did not have to pay these costs upfront, they were deducted from his wages. Furthermore, his employer kept his passport, a document that is difficult and expensive to replace and therefore represents a significant cost and financial investment in this employer. In this case, Htet's decision seems to have paid off and he was able to earn decent wages in a relatively stable context.

Costs, as we have seen, cannot therefore be separated from the overall relationship and dynamic between migrants and their employers. As discussed earlier, unlike employment relationships with citizens, where either party can easily terminate the agreement and move on, with migrant workers each side is making a large financial gamble that the relationship will be beneficial. By turning legal status into an expensive "commodity", migrant workers bear not only the direct costs of such status, but also the indirect costs, as employers confiscate documents or otherwise limit workers' movement in order to

recoup the investment they have made. Writing about the Thai context, Derks notes: “While the registration of migrant workers allows employers to operate their businesses without the constant threat of police raids, it also constitutes an investment employers do not want to lose. Many employers, therefore, keep the original identification documents” (2010: 926). This precisely mirrors the experience of Htet, who was forced to give up his passport as collateral against the costs incurred by the employer. Nonetheless, Htet felt that the “cost” of giving up his passport was worth the stability he gained by maintaining a regular legal status. At the same time, while workers with a regular status generally earn higher wages, the additional costs associated with having a regular status significantly undercut those wage gains (see also Bylander 2019), as several migrants told us. Thus, although legal status may be useful for workers seeking to avoid arrest, “legality” nonetheless creates financial costs and a context that exposes migrants to abusive practices of employers who seek to keep their workers immobile (see also Garcés-Masareñas 2010, 2012; Killias 2010; Lan 2007). Ironically, the mechanisms put in place to keep migrants immobile end up making them more likely to abscond in search of better opportunities. If legality becomes too punitive, illegality can become a more attractive option.

Taken together, the above examples challenge some of the dominant notions of the protective capacity of legal status. By creating a system that is expensive for both employers and migrants, it attempts to lock them into a set relationship and creates a system that is detrimental both to migrants’ wages and their ability to move to seek better conditions. Legal status therefore becomes an expensive commodity or insurance scheme.

## Conclusions

This paper has looked to examine the issue of migrant exploitation through the lenses of employer sponsorship and financial costs. By examining how migrants strategically move between legal and illegal status in order both to protect themselves from violence and to maintain their livelihood, we can see how the twin factors of employer sponsorship and financial costs end up featuring heavily in their decision-making.

Such an analysis is useful, as employer sponsorship is a pervasive feature of guestworker programmes, present in all contexts from Canada’s “model” programme (Hennebry / Preibisch 2012) to the *kefala* sponsorship programmes of the Middle East (Gardner 2010, Surak 2013a) and every context in between, including the Malaysian one. In fact, employer sponsorship has become entrenched as a way for states to control workers and pass supervisory powers

off to private actors while also reducing responsibility for any abuse that might take place (Kemp / Raijman 2014, Anderson / Franck 2019). Yet in this study we have sought to understand migrant precarity not just through the lens of unscrupulous employers or structural forces, but in an examination of how migrants themselves navigate these conditions. In this context, legal status is just one of the tools used by migrants – a tool that carries with it potential risks and costs. Also, while stories of malicious employers are plentiful, simply viewing employers as inherently bad actors can obscure both the larger structural issues at play as well as the ways in which migrants and employers alike navigate these contexts and these relationships.

One of the key factors behind migrant precarity is the issue of cost. While this is captured in the literature through the problems it creates for workers – through, for example, the proliferation of indebtedness (see Xiang / Lindquist 2014) – the Malaysian foreign worker scheme is expensive for employers as well. That employers are responsible for the bonds if workers abscond mean they are also caught up in a system that encourages them to protect their investment, limiting the mobility of their workers. For employers, hiring workers with legal status has both costs, in terms of significant financial outlays, while also providing potential benefits in the form of protection from sanctions for hiring workers illegally. Yet, as discussed in our paper, these costs also have secondary effects, as employers are both more likely to confiscate migrants' documents in order to ensure that they can recoup their investment, and potentially also to garnish wages in order to pay back the costs of regularisation. These are actions that, paradoxically, might make workers more likely to abscond as they seek better conditions and better wages.

This paper thus emphasises that legal status itself can be a source of precarity and abuse. Crucially, however, by examining how migrants move in and out of legal status to protect themselves from such abuse, we can build a more nuanced appreciation of the complex relationship between migrant agency, the legal framework and exploitation.

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