

SOCIAL PROTECTIONS FOR MIGRANT DOMESTIC WORKERS:

DENIAL OF FULL PROTECTION MAY CONTRAVENE MALAYSIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

INTRODUCTION

On the 14th of October 2021, Malaysia was elected as a member of the United Nations Human Rights Council (UNHRC) for the 2021- 2024 term. In a bid to support its candidature for this council, Malaysia had submitted voluntary pledges stating that it would protect and promote human right. These pledges that can be read on the website of the Permanent Mission of Malaysia to the United Nations. It needs to be noted that it included a pledge to 'Take a whole-of-society approach in the promotion and protection of human rights in the country, primarily in the assessment, monitoring and implementation of the Universal Periodic Review (UPR) recommendations. In this policy brief, the position taken is that migrant workers working in Malaysia are part of Malaysian society and therefore should be included in the approach to human rights as stated by the Malaysian government.



SOCIAL PROTECTION

The Office of the High Commissioner of Human Rights (OHCHR) has stressed the crucial nature of social protections for marginalised groups in ensuring a safety net when there is a lack of income, high cost of healthcare and insufficient resources to support families. To achieve these conditions, social protections must (i) be available (ii) adequate in amount and duration; (iii) accessible; (iv) ensure equality and be non-discriminating.

However, in the International Labour Organisation's (ILO) 2016 Social Protection Policy Paper, it is estimated that 90% of domestic workers worldwide are excluded from any form of social protection. The developing world bears further scrutiny as it is estimated, in the same report, that 68% of domestic workers worldwide are to be found in Asia and Latin America.

The highly feminised nature of this sector is apparent in that 80% of all workers globally are women. This means that regardless of the provision of obligatory international laws for the protection of women, realities on the ground worldwide suggests that such obligations are overlooked where domestic workers are concerned.

MIGRANT DOMESTIC WORKERS IN MALAYSIA

Malaysia as a receiving country for domestic workers is estimated to have between 300,000 to 400,000 documented and undocumented workers. As noted by Ms Hawati Abdul Hamid, Deputy Director of Research at Khazanah Research Institute in the webinar, "Women Migrant Workers' Exclusion from Comprehensive SOCSO Protection: Reasons and Consequences", domestic workers constitute a significant but invisible pillar of Malaysian families. Unfortunately, the nation does not adequately acknowledge their contributions to the Malaysian economy and as a result, domestic workers in Malaysia continue to suffer significantly in terms of their rights. In the long run, such denial of these rights may result in Malaysia being seen as a less than attractive destination for domestic work.

In January 2023, while unveiling the concept of Malaysia Madani, Prime Minister Anwar Ibrahim struck a crucial note on humanitarian principles in his speech. In particular, he referred to the notion of *karamah insaniah* or human dignity that has been neglected in state governance according to him. The PM underlined the central role of human dignity in developing the nation (The Edge, 19 January 2023).

While this call for ensuring human dignity is to be lauded, the current administration would be strongly urged to direct such calls and their attention to ensuring that this human dignity is accorded to migrant

domestic workers in the country. Calls to recognise them under Schedule 1 of the Employment Act as well as to provide them with minimum standards of decent work have gone largely unheeded. The additional stress of a Covid-19 revealed further vulnerabilities of this sector in the loss of incomes, lack of access to healthcare and the dangers of abusive work conditions for migrant domestic workers. More than ever, the pandemic revealed the lack of human dignity for this sector. In this long run, such vulnerabilities have implications for Malaysia and its need for domestic workers. Additionally, while the introduction of social protections for domestic workers may be considered a slight improvement in conditions, it falls short in not offering full social protection to a sector that is considerably exploited and abused locally.



MALAYSIAN SOCIAL PROTECTION SCHEMES

The Malaysian Central Bank defines social protections as policies that protect workers against economic and social distress. Types of social protection stated by the Bank includes social safety nets, social insurance and active labour market policies. In 2021, Malaysia extended social protections to the domestic workers' sector for the first time under the schemes provided by the Social Security Organisation (SOCSO).

According to SOCSO, "a domestic worker is a person employed exclusively in the work or in connection with work of a private dwelling house and not of any trade, business or profession carried on by the employer in such a dwelling house". This basis of identifying workers in this sector for provision of social protections does not take into account two crucial facts: (1) domestic workers in Malaysia are still not protected under Malaysian employment laws; (2) there is no agency to monitor and ensure that workers are not exploited by employers by being made to work in the dwelling house as well as in other spaces. So, the question that might arise here is what this means for social security schemes under SOCSO, when the specific understanding of a domestic worker as set out by SOCSO is not complied with by employers.

Additionally, as noted in previous research as well as in this report, a significant number of migrant domestic workers are also undocumented. This is a situation that continues as some Malaysians employers of domestic workers appear to circumvent the official channels and requirements to find workers for their homes. It is unclear how the authorities and SOCSO are addressing the needs of such a group of workers who are completely unacknowledged and unprotected. Implementing a measure to protect worker without acknowledging the reality of the context is but a half measure that does not address crucial issues of abuse and exploitation for which social protections are needed.

The specific social protections made available under SOCSO included the Employees' Social Security Act 1969 (Act 4) and Employment Insurance System Act 2017 (Act 800). These were extended to the domestic worker sector in Malaysia on 1 June 2021 and registration was opened on 16 June 2021. Act 4 comprises two sub-schemes, one of which covers the worker for Employment Injury Schemes that includes occupational diseases or accidents experienced out of the work or in the course of the work. Specifically, this scheme covers domestic workers for work accidents, commuting accidents, emergency accidents and occupational diseases. The benefits provided under this sub-scheme include medical benefits, temporary disablement, permanent disablement, constant-attendance allowance, physical or vocational rehabilitation, dependant's benefits, funeral benefits and education benefits for children of workers.

Another scheme under Act 4 is Invalidity Scheme that covers permanent disability or death experienced by workers at any time in the course of their employment and is not necessarily work-related. The coverage for the Invalidity Scheme is to protect the workers against loss of earnings as well as to provide

for their families. This sub-scheme under Act 4 provides 24-hour coverage to domestic workers who suffer from a disability or death due to any cause, not just in the line of duty. The benefits provided under this scheme include invalidity pension, invalidity grant, constant-attendance allowance, survivors' pension, physical or vocational rehabilitation & dialysis, funeral benefits and education benefits.

Act 800 is the Employment Insurance System Act of 2017. This scheme is to provide interim support for contributors who suffer a loss of income; it also opportunities for re-employment placement programmes for such cases. Under this scheme, domestic workers are required to enroll with MyFutureJobs, to enable SOCSO officers to find suitable vacancies for them. Skills training is provided while unemployed or after they are re-employed. The loss of employment may be due to retrenchments, voluntary/mutual separation schemes, workplace closures due to natural disasters, bankruptcy or closure of business, constructive dismissal, resignation due to sexual harassment or threats made in the workplace, resignations for being ordered to perform duties that are dangerous or not within their job scope. The benefits under this scheme include job search allowance, reduced income allowance and early re-employment allowance.

SOCISO SCHEME	COVERAGE	BENEFITS
Act 4 – Employment Injuries	1. Work accidents 2. Commuting accidents 3. Emergency accidents Occupational diseases	1. Medical benefits 2. Temporary disablement 3. Constant-attendance allowance 4. Physical or vocational rehabilitation 5. Funeral benefits Educational benefits
Act 4 – Invalidity Scheme	Any disability or death arising from causes outside the line of duty	1. Invalidity pension 2. Invalidity grant 3. Constant-attendance allowance 4. Survivors' pension 5. Physical or vocational rehabilitation & dialysis 6. Funeral benefits 7. Education benefits

SOCSO SCHEME	COVERAGE	BENEFITS
<p>Act 800 – Employment Insurance Scheme</p>	<p>Loss of employment or income due to:</p> <ol style="list-style-type: none"> 1. Retrenchments 2. Voluntary/mutual separation schemes 3. Workplace closures due to natural disasters 4. Bankruptcy or closure of business 5. Constructive dismissal 6. Resignations due to sexual harassments or threats made in the workplace 7. Resignations due to being asked to perform duties that are dangerous or not within worker’s job scope 	<ol style="list-style-type: none"> 1. Job search allowance 2. Reduced income allowance <p>Early re-employment allowance</p>

**TABLE 1: DETAILS OF SOCSO PROTECTIONS:
 SOCIAL PROTECTIONS FOR THE DOMESTIC WORK SECTOR IN MALAYSIA**

Currently, domestic workers in Malaysia include:

- (i) Malaysian citizens with MyKad;
- (ii) Non-Malaysians with MyPR who are permanent residents;
- (iii) Non-Malaysian citizens with MyKas who are temporary residents;
- (iv) Foreign domestic workers with valid travel documents and temporary visitors’ passes issued by the Malaysian immigration department.

Data from SOCSO in June 2021 showed that 104,400 domestic workers would benefit from these protections. Of this total number of domestic workers, 15,000 were Malaysian citizens and permanent residents while 89,000 were migrant domestic workers (The Star, 19 June 2021).



Many domestic workers in the country, therefore, are migrant workers, but Act 4 and Act 800 do not adequately protect this majority. This is because while domestic workers who are Malaysians or permanent residents are covered under both Acts, migrant domestic workers are only partially protected under Act 4, specifically under the Employment Injury Scheme. However, they are not covered under the Invalidity Scheme of Act 4 or under the Employment Insurance Scheme of 2017 under Act 800 (refer Table 2). As seen in Table 2 below, the exclusion may also be related to the fact that migrant domestic workers do not make contributions to SOCSO unlike the requirement placed on the other categories of workers. If this is the possible reason for such an exclusion, perhaps this requirement could be made of all categories of domestic workers so that they may all benefit from full social protections as provided by SOCSO, regardless of nationality.

DOMESTIC WORKER CATEGORY	ACT 4		ACT 800
	EMPLOYMENT INJURY SCHEME	INVALIDITY SCHEME	EMPLOYMENT INSURANCE SCHEME
Malaysian citizen	Eligible	Eligible	Eligible
Permanent citizen	Eligible	Eligible	Eligible
Temporary citizen	Eligible	Eligible	Eligible
Migrant worker	Eligible	Not Eligible	Not Eligible
Employer Contribution	1.25%	0.5%	0.2%
Employee Contribution	-	0.5%	0.2%

TABLE 2: SCHEME ELIGIBILITY FOR VARIOUS CATEGORIES OF DOMESTIC WORKERS

This partial coverage is troubling, given the existing vulnerabilities faced by workers in this feminised sector who are not adequately protected under Malaysian employment laws. The First Schedule of the Employment Act 1955 excludes domestic workers from basic labour rights such as rest days, hours of work, conditions of service and maternity benefits – rights which are accorded to all other workers. This has given rise to situations of exploitation, extreme physical, mental and sexual abuse as well as deaths of domestic workers. In such a context where dangers and vulnerabilities abound, it is most urgent that the State accords full protections to this sector of women.

The partial coverage is also discriminatory and unfair against foreign nationals working in this sector and who are providing crucial support to society and country as noted by the researcher from Khazanah. International obligations require that Malaysia ensures equal opportunities and protections for all classes of workers. The government should explain if there is any justification for excluding equal opportunities for migrant domestic workers in Malaysia.

THE HUMAN FACE OF THE PROBLEM

It is ironic that Malaysia as a developing nation and a receiving country for migrant domestic labour continues to exclude domestic workers from social protections that are urgently required when considering the vicious examples of abuse that have been regularly highlighted in public domains. Many migrant domestic workers come with hopes of finding a better life in Malaysia, only to end up in conditions that may lead to long-term post-traumatic stress disorders or death. For each worker who returns home under such conditions, it is worth noting that this also means a worse life of deprivation for themselves and for their dependants than when they started out. It is a deeper descent into the cycle of poverty from which the worker and her family had tried to escape when starting on her journey as a domestic worker to Malaysia.

In the absence of actual figures of migrant domestic workers who face debilitating abuse, rendered incapable of work or end up dead as a result of domestic work in Malaysia, the following 2 cases highlight the need for a non-discriminatory Invalidity Scheme and Employment Insurance Scheme. Such schemes will not only protect their lives, their livelihoods, but also their families who are rendered helpless when an earning member is rendered incapacitated.

On 2 March 2023, a BBC article highlighted the case of Meriance Kabu, from West Timor. She was 32 when she arrived in Kuala Lumpur in 2014 in the hope of seeking a better future for herself and her family of 6. She came from a village without electricity or running water and her husband's earnings as a day labourer was not sufficient to feed her family. Within 3 weeks of her arrival, the employer began beating and torturing her until her desperate handwritten note thrown outside her employer's residence led to her rescue 8 months later. Her employer, Serene Ong Su Ping, was charged with grievous hurt, attempted murder, human trafficking and immigration violations. The details of her injuries read out in court described the severe abuse. The employer had beaten her severely, breaking her nose on one occasion, torturing her with hot iron, hammer, tweezers, plier and baton. Four of her teeth were knocked out in the beatings and one ear was deformed. Her upper lip showed a deep gash from the beatings. So grievous was the hurt, that her husband recalls not being able to recognise her when he was shown pictures of her in her hospital bed in Malaysia.

Nine years later, she is still struggling to find justice as the case against her former employer was dropped by Malaysian prosecutors who cited insufficient evidence as the reason for this.



The same BBC article notes a worse case of abuse was of another young woman, Adelina Sau, also from the same district as Meriance Kabu in West Timor. She was found starved and tortured, and died after she was finally rescued from her employer's home in Bukit Mertajam. Her employer, Ambika Shan was charged with murder, but the Malaysian prosecutors withdrew the charges in 2019. An appeal to reopen her case in 2022 was not successful.

In both cases, it is fair to say that families in a sending country ended up losing more as a result of their family member's attempt to seek employment opportunities in Malaysia. In addition to international obligations, Malaysia bears moral obligations to such workers sent home in the worst imaginable circumstances. These are but two example of the most heinous conditions of work that sometimes domestic workers must face.

MALAYSIA'S FUTURE NEEDS AND CONCERNS AS AN AGING SOCIETY

The ILO stresses the importance of domestic workers as a means of long-term care for countries with ageing populations. Coupled with increase in female labour participation, countries with ageing populations and inadequate residential care for such ageing communities have seen increasing demand for domestic workers (Making Decent Work a Reality for Domestic Workers, 2021).

In 2022, the Department of Statistics, Malaysia, stated that based on definitions set by the United Nations, Malaysia was now officially categorised as an ageing population with 7.3% of Malaysians aged 65 and above. A World Bank publication, A Silver Lining: Productive and Inclusive Aging for Malaysia, further notes that by 2044, 14 % of the population will be 65 and above, thereby categorising the country as an aged society. The report goes on to say that Malaysia will be considered a superaged society in 2056 when it is predicted that those aged 65 and above will constitute 20% of the population. The report further states that this shift towards an aging society brings grave consequences for the country including a decline in its Gross Domestic Product (GDP) by the year 2050 with the shrinking figures of citizens of working age.

A crucial area of need for an aging society is skilled and accessible healthcare. Aside from Malaysia's alarming current inadequacy of geriatric specialists, the country also needs urgent allied health professionals comprising nurses, physiotherapists, occupational therapists, speech therapists as well as social workers. Given these health inadequacies and poor annual budgetary planning for the same, the country's reliance on domestic helpers as caregivers is inevitable. Additionally, the expanding figures of aging communities will bring additional stresses to families. Old age chronic diseases as well as long term debilitating conditions like Alzheimer's and Parkinson's require sustained and consistent care. In the absence of trained and adequate geriatric healthcare that provides long-term rehabilitative care, families will need alternative means of providing such care to elderly family members needing such care.

Additionally, as a signatory of CEDAW, Malaysia has to strive for greater female empowerment through labour participation. As Ms Hawati noted in her paper, the Malaysian government is keen to see a higher participation of women in the workforce. Currently, the percentage of women participation stands at 55% in comparison with male participation at 80%. The traditional roles of females as providers of care for families are rapidly changing as a result, leading to potentially greater demands for domestic workers to fill this gap.





International Human Rights Obligations

The Committee on Elimination of Discrimination has also offered recommendations for States on issues affecting women. General Recommendation No.26 (GR 26), published in 2009, makes recommendations on State obligations in relation to migrant women workers who “are in low-paid job, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship...” (pg.3) (Section 4). These obligations, in summary, call for the State to ensure that migrant women workers have access to all protections and equal treatment in living and working conditions. In denying migrant domestic workers protection under Act 4 and Act 800, the State is violating its obligations under this convention.

CEDAW’s General Recommendation 26 also states: “... all categories of women migrants fall within the scope of the obligations of States parties to the Convention and must be protected against all forms of discrimination by the Convention.” All rights, therefore, provided for under the Universal Declaration of Human Rights as well as under various human rights treaties must be followed in ensuring equal treatment for migrant workers, which includes female migrant domestic workers.

Malaysia’s international obligations to migrant workers and to women migrant workers were further highlighted during the 2018 United Nations Periodic Review (3rd Cycle – 31st session). As noted in the introduction, Malaysia had pledged to ‘take a whole of society approach’ in protecting and respecting human rights.

Some recommendations to Malaysia for the protection of migrant works and the advancement of women’s rights were as follows:

- Increase efforts for further inclusion of migrant workers and integration with local community (Theme: B31 Equality and non-discrimination)
- Improving safety, security and working conditions of migrant workers (Theme: E32 Right to just and favourable conditions of work)
- Explore best practices adopted by receiving countries for migrant workers that are in line with ILO conventions (Theme: E32 Right to just and favourable conditions of work)
- Improving women’s rights particularly for disadvantaged women (Theme: F11 Advancement of Women)
- Providing protections for women by strengthening laws and policies (Theme: F12 Discrimination Against Women)
- Protecting women’s rights through assistance for poor women (Theme: F12 Discrimination Against Women)
- Combating discrimination and violence against women (Theme: F13 Violence against women)
- Continue efforts at enhancing safety and welfare of migrant workers (Theme: G4 Migrants)
- Protecting the rights of migrant workers through further measures (Theme: G4 Migrants)

Malaysia is also obligated to accord full labour rights protection to migrant domestic workers in line with ILO's Decent Work for Domestic Workers Convention 189 (Submission by Human Rights Watch to the United Nations Committee on the Elimination of Discrimination Against Women, 69th Pre-sessional Working Group, May 2017).

Although Malaysia has not ratified Convention 189 ILO's Decent Work for Domestic Workers, it can be argued that by virtue of being a member of the United Nations and International Labour Organisation, Malaysia has in principle agreed with the standards that have been set. Article 14 of Convention 189 calls on States "to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity". Once again, the State obligation towards migrant workers is underlined in this convention.

SUMMARY

While the OHCHR underlines the key characteristics of social protections for its member states, it is ironic that Malaysia as a member of the Human Rights Council for the period 2022-2024 fails in ensuring these crucial aspects of social protections are extended to all within its borders, regardless of nationality, class and gender in the context of migrant domestic workers. The denial of the Invalidity Scheme under Act 4 and Act 800 to migrant domestic workers is discriminatory on the basis of nationality as well as gender, given that domestic work sector is also a highly feminised sector of work. At the same time, such denials of these two schemes is also a refusal to counter the fact that migrant domestic workers have worked and continue to work under extremely risky conditions which frequently have led to them losing life and limb in the course of their duties in Malaysian homes.

At the same time, the exclusion of domestic workers from coverage is also a further indication of the State's wilful blindness to the role of migrant domestic workers as significant pillars of Malaysian family units. This failure to acknowledge their roles have a direct negative impact on Malaysia's obligations in ensuring women's participation in the workplace. It is also short-sighted in Malaysia as an ageing society with poor healthcare provisions for this growing statistic is being ignored. Aside from highly discriminatory stance that raises questions about Malaysia's suitability to sit on such a council, the country is also failing in its international obligations to CEDAW, the recommendations of the UPR as well as Convention 189 to which it has not raised any objections.

RECOMMENDATIONS

1. Extend full coverage under Act 4 and Act 800 to migrant domestic workers so that they enjoy the same benefits as that of domestic workers who are Malaysian citizens, permanent residents and temporary residents. To further comply with all requirements, a similar contribution may be required of migrant domestic workers as with other categories of domestic workers.
2. Social protections extended to migrant domestic workers must be full and complete to ensure that they are able to enjoy all benefits on par with all workers in the country. This step is urgent to ensure that Malaysia is seen to walk the talk in avoiding discriminatory treatment of workers on the basis of gender, class or nationality.
3. Social protections must be granted in full to all migrant domestic workers so that the country may also attract quality workers to its shores. This is urgent for Malaysia as an ageing society.
4. The concept of domestic work as outlined by SOCSO must also address the multiple roles that some migrant domestic workers are required to perform in their employers' homes as well as the employers' businesses.
5. Malaysia's position as a member of the Human Rights' Council should be strengthened by ensuring that all workers' rights including those of migrant domestic workers in the country are guaranteed.
6. SOCSO's understanding of the term "domestic worker" as well as the measures for social protection of the sector will need to be expanded to acknowledge the ongoing presence of undocumented migrant domestic workers as documented in research.