

Domestic workers: Can unionisation lead to improved work conditions in the domestic work sector?

Preliminary Discussion Paper

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Background on Domestic Work

Domestic workers provide crucial services in modern societies, although often hidden from view, exploited and without the basic protections of these societies. Reports from the International Labour Organisation (ILO) notes that a third of all domestic workers in Malaysia are trapped in forced labour conditions (Migrant Domestic Workers in Malaysia: Forced Labour and Its Catalysts, ILO, 30 November 2023). Despite rapid advances in the country, this sector continues to be denied rights to equality before the laws, freedoms from discrimination and protections from violence and abuse. The issue has been much discussed and the International Labour Organisation's (ILO) adoption of Convention 189 and Recommendation 201 in 2011 is one of the clearest reminders to humanity that domestic workers, like all workers, have a right to decent work and living conditions.

This reminder is made more urgent by the fact that domestic workers are also often from among the most vulnerable communities. ILO findings highlight that women constitute more than 80% of all domestic workers worldwide, thereby reflecting the fact that domestic work is a highly feminised sector, greatly affected by attendant discriminations and exploitations. Domestic work is sometimes the only option made available to women and girls from marginalised communities in societies with high incidence of poverty and traditional biases against education of women and girls. Such work also often takes the latter far from their families, homes and countries. In many cases, therefore, domestic workers arrive at their workplaces, already disadvantaged by socioeconomic deprivations of poverty, lack of education and cultural biases of gender.

In Malaysia, which has witnessed greater participation of women in the local labour force, domestic workers are often indispensable care workers in households. The 12th Malaysia Plan (2021-2025) called for a target increase in the country's labour force to 60% women as part of its empowerment of Malaysian women. Such participation of women is made possible in many households through the recruitment of domestic care workers to take over the duties traditionally managed by women.

It is ironic, though, that such empowering initiatives for Malaysian women are at the expense of the well-being of women domestic workers, many of whose conditions of work are distinctly disempowering to them (see PSWS Policy Brief on Protections for Domestic Workers). The integrity of such empowerment initiatives as set out in the Malaysia Plans is greatly flawed if the advantages for some segments of women in the country is only obtained through disadvantaging other women.

Societal prejudices about women's roles in societies, coupled with location of the home as the workplace, as well as the inherent prejudice that domestic work is for those marginalised, poorly educated and incapable of better appear to be some unspoken causes for this continuing failure to address unfair and unequal treatment of workers in this sector. Specifically, in the face of trenchant and continuing authority silence about this highly exploited sector, PSWS proposes examining means to create space for domestic workers to be seen and heard.

Malaysia Context

It is worth recalling Malaysia's voluntary pledge about taking a "whole of society approach" to promote and protect human rights during the country's bid for a seat on the UN Human Rights' Council in 2021. In relation to domestic workers, this pledge is yet to be fulfilled.

According to Social Security Organisation (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". Some examples of domestic workers include house helpers, personal drivers, gardeners, personal bodyguard, personal security guard, personal cook, caregiver and nanny.



Despite the acknowledgement that domestic work is an employed status, domestic workers in Malaysia are not protected under Malaysian employment laws and, consequently, are vulnerable to abuse and exploitation. Since domestic work is not considered formal work, it is exempted from the First Schedule of the Employment Act (1955) Section 2(1)(5). As a result, domestic workers are denied legal protections afforded to other employees. This denial of legal protections results in domestic workers becoming vulnerable to forced labour conditions (as defined by the ILO's Special Action Programme to Combat Forced Labour) at the workplace.

This imbalance of power in the worker-employer relationship has meant that the work conditions are arbitrary and dependent on employer whims and fancies. There is a lack of minimum guidelines of what are fair and acceptable conditions for domestic workers in the country. A possible solution to this ongoing crisis in the domestic work sector is to establish a domestic workers' union in the country. This paper seeks to consider the feasibility of unionisation to address extant inequalities in the sector.

Different categories of domestic workers

The specific number of domestic workers in Malaysia is unclear since they may be:

- (a) local domestic workers
- (b) documented and undocumented migrant workers,
- (c) full-time and part-time workers in both the local and the migrant groups.

Given these different levels of types of workers, unofficial estimates of domestic workers in the country state that it is between 200,000 to 300,000.

When comparing the different categories of domestic workers, there appears to be better documentation of the conditions of work of migrant domestic workers in the country, possibly because of media publicity of abuses in that sector, as well as international reports on trafficking and forced labour. Local domestic workers, on the other hand, are a relatively more invisible group when compared with migrant domestic workers. Little is known, therefore, of how local domestic workers, dependent on domestic work as their only means of livelihood, negotiate the well acknowledged precarious and unstable terrain of domestic work, which comes with little job security.

The status of local domestic workers may also be considered relatively more precarious, given that no written formal contract is officially required between the employer and the worker. They are twice as handicapped as neither the labour department nor any other official department registers their employment status. And as with most sectors which are reliant on blue-collar workers, there is probably a local preference for migrant domestic workers on the understanding that they are cheaper to employ and more compliant when faced with unreasonable work demands.

In comparison, migrant domestic workers are placed under the purview of Immigration department and there is a written contract that sets out some basic terms regarding:

- (a) duration of contract
- (b) location of work
- (c) duties and responsibilities of the employer
- (d) payment of wages
- (e) rest period, conditions of termination of contract, etc.

Despite such written agreements that should provide some measure of protection, abuses and exploitation of migrant domestic workers have been widely documented.

If that is so, it is very possible that local domestic workers whose jobs are considered as informal and therefore without the protection of any law or government agency may face many similar abuses and others unique to their situation as locals.

In June 2021, SOCSO extended protection from workplace injuries and invalidity to all local and migrant domestic workers. While this has provided some measure of relief to local and documented migrant domestic workers, undocumented migrant workers and part-time domestic workers, both local and migrant, are left out of such protections. This means that a sizeable portion of workers of this sector in Malaysia is still trapped in precarious situations

Unionisation in Malaysia

According to the Trade Union Act 1959, a union is an association of employees or employers in the same occupation, organisation or industry. The union provides such members with two crucial labour rights: (1) to speak out on work-related grievances; (2) to seek redress through collective bargaining for better work conditions. Malaysia has ratified Convention 98: Right to Organise and Collective Bargaining Convention, 1949,

enabling trade unions in the country to engage in collective bargaining with employers. In The Department of Trade Union Affairs registers and regulates trade unions in the country, the Malaysian Trade Union Congress (MTUC) represents workers in the country, while the Malaysian Employers' Federation (MEF) represents employers. The Trade Union Affairs Department statistics reveal that as of 2023 there were one million unionised members out of a labour force of 16.3 million people across public, private and statutory bodies. This means that only 6% of the labour force have union membership (“Aiming to boost union memberships nationwide”, *The Star*, 4 May 2025). There are repercussions for workers as a declining membership means a lower bargaining power for better conditions of work.

Trade unions are powerful entities to promote worker rights, to negotiate better working conditions and to generally ensure that workers are treated with respect. However, thanks to a colonial legacy of interference, Malaysian unions have been weak and ineffective in providing workers with the necessary support. Colonial governments introduced laws to control unions in the country and these practices were followed by leaders of the country after independence.

As a possible result of such repressive measures, those setting up of unions have faced many challenges. The repressive measures of the past have continued to ensure employers wield an asymmetric power over workers. Another restrictive practice enforced on trade unions is the requirement that the federation of unions register under specific categories according to their trade, industry and occupation. Such a requirement denies freedom of association to unions and their members, thereby disallowing any category from representing others.

As a result of measures that discourage unions from representing workers, Malaysian workers have been disadvantaged. The repercussions of this were felt most acutely during the Covid-19 pandemic the government left decisions on wage reductions and other drastic cost-cutting measures to the discretion of individual employers (Whither Labour Law Reform in Malaysia, Ng Yap Hwa, 22 May 2021)

Largely because of these repressive laws, Malaysian unions do not meet minimum international standards. When the Trans-Pacific Partnership (TPP) agreements were first being considered, one of the pre-conditions for Malaysia was to significantly improve worker rights and human rights to level up with international standards.

In countries with strong union presence, unfair work conditions are addressed using strikes, campaigns against employers and pickets. These methods have two-fold benefits in that it tackles the unfair practices at the workplace such that legislative change is made possible, and it addresses grievances of specific groups or individual workers.

However, it has been observed that Malaysian unions prefer dealing directly with relevant government departments, which could lead to court action and subsequently to an appeal process. This preferred gentle approach, however, has minimal impact on the employer and their business as whole, even when the unions or workers win the case. So, the abusive conditions that gave rise to the industrial action is not removed or abolished, thereby leading to other workers facing the same conditions of exploitation.

A recent case of Pos Malaysia, in which unions took the side of the management against an employee is perhaps an interesting example of the state of unions in the country. It has been observed previously that in some cases, union heads are sometimes too compromised to do an effective job in providing support to the membership (“Torn Uniform: Pos Malaysia workers’ unions bashed for backing CEO”, *Malaysiakini*, 22 April 2025).

The MTUC has provided support to migrant workers in the country by setting up the Migrant Worker Resource Centres (MWRCs) as a support for matters including legal services, grievance handling and other potential work-related problems. Additionally, Section 8 of the Employment Act 1955 and Section 4 of the Industrial Relations Act 1967 grant foreign workers the right to join trade unions as members, but they are prohibited from holding any office within the union.

The participation of foreign workers in local unions has been a matter for some debate within the country. While some views focus on their position as non-citizens and therefore, without the necessary rights and responsibilities, others highlight the immense benefits to the industry, the workers and to the country. Nevertheless, such participation could enhance the workers' capacity for collective bargaining.

However, concerns about potential challenges for such participation has been raised, especially in the case of those workers in precarious positions such as undocumented positions. It has been observed that the participation of migrant workers among sectors where it is allowed have not been encouraging. Concerns about participation in unions include workers' fears include the possibility of jeopardising their positions with employers and the possibility of termination, non-renewal of contracts and deportations (Yusof et al, 2024). Additionally, social isolation, cultural differences, a lack of understanding of the roles of unions and the opportunities available to workers may also be reasons for workers choosing not to be involved

Unionisation of Domestic Workers in Malaysia

Undoubtedly, the continuing exploitation, lack of access to adequate protections and indeed, weak social protections that fail to acknowledge the existing gaps in the domestic work sector point to a need for workers to organise themselves to seek relief and to engage in collective bargaining.



There are several obvious benefits of forming a union for workers in Malaysia. Firstly, it will create a greater awareness among domestic workers of their rights and dues. Exploitation and abuses occur in many cases because many workers recruited in the sector are very young and inexperienced about work conditions. They fail therefore to read the early signs of disadvantages to themselves. In some cases, it has been observed that when workers have opportunities to meet with others from the same sector, they begin to identify terms and conditions of work that are unfair to them. This benefit alone could help to prevent many of the serious situations of abuse that has been highly publicised. This opportunity to gather and obtain information on rights and dues are crucial in Malaysia, since authorities have failed to do their part in enabling workers for this. Indeed, given the amount of negative publicity internationally for Malaysia from the abuses and exploitations among domestic workers, a reasonable expectation would have been to see the authorities step up to educate workers and offer avenues for them to access immediate relief and justice. However, experience shows that rather than provide such avenues that would lead to a minimization in abuses and criminal acts being perpetrated by employers, authorities appear to have adopted a laissez-faire attitude as if they await some inevitable self-correction to magically manifest itself in the domestic work sector. This apathy has only provided ample opportunities for abuses for continue.

Some of the abuses are also caused by the agents involved in transactions and the means of recruitment. Many migrant domestic workers are recruited from amongst the underaged, those living in remote areas, those with very little education. It is probably the hope of agents that such profiles of workers would prove useful in ensuring compliance and acceptance of less than optimum conditions at work. Often, the compliance and acceptance are also the cause of the worst cases of abuse at work. At a minimum the availability of a union that brings workers together and offers awareness of rights should lead to a reduction in the offences currently being perpetrated against workers. In the long run, the country stands to benefit from such reductions and avoid the disgrace of regular international shaming and being downgraded regularly in the Trafficking in Persons Reports.

Secondly, there is a need for clear delineation of the wage structure. While there is a written contract between the employer and the worker currently, the actual amounts paid out may be arbitrary, depending on verbal discussions between the employer and the agent. The domestic worker is sometimes caught unawares in such prior

arrangements between the two parties. Non-payment of wages or irregular payment or payment of amounts that do not correspond to initial understanding given to the worker are among the most common complaints. A union would be able to help to aid workers by making this a priority for all workers, local and migrant. Clear wage structure may also clarify conditions for local workers. If there is fair pay for all domestic workers, perhaps this may also encourage more local workers to seek jobs in this sector, and it may also encourage more employers to look to this avenue and avoid unnecessary bureaucratic hassles of immigration procedures and convoluted fee structures.

Aside from these urgent areas, a union would be ideal for addressing urgent gaps in domestic work sector including that of improved wages and benefits, job security, workplace safety and fair treatment.

So far, however, attempts to register a union for this sector in Malaysia, however, have not met with success. The Malaysian Trade Union Congress (MTUC) tried to register domestic workers union twice, in 2007 and in 2014. Both times the applications were unsuccessful with no explanations provided for the rejection.

The situation is further complicated by the fact, that in Malaysia, while migrant workers are allowed to join trade unions as members, they are not allowed to form unions or hold offices in those set up locally. But this option is available to local workers.

However, there may be several stumbling blocks to accessing the latter group. As mentioned above, the actual statistics of local domestic workers who could play a vital role in setting up and running a domestic workers' union is unclear. As with most groups that might seek work in this sector, the work is a means to survival of families, mostly from marginalized B40 groups. Anecdotal examples from those familiar with local workers suggest that many locals are either unable and/or unwilling to take on a role in seeking to better the field of work for all. For many with the barest minimum survive on, these are not considerations that they can afford to expend energies or resources on.

Recommendations

1. Efforts to push for scoping domestic work under the labour laws of the country must be ongoing. It is unthinkable that in the 21st century, some people are to continue working in conditions that are akin to slavery, in forced labour conditions and as victims of trafficking. Apathetic authorities have not done enough to protect workers within the borders of the country. If not anything else, they should be concerned at the international disrepute brought on Malaysia as a result of their apathy.
2. Legal systems, courts, employment offices and NGOs must advocate urgently on behalf of workers caught up in this local trap of domestic work in Malaysia. Civilised nations must have avenues and access to justice systems to address and provide redress to anyone, local or migrant, caught up in such unfair work conditions.
3. More needs to be done to provide more accurate data on local domestic workers. Currently little is known of how this group of workers work and survive in this country. Such information is vital especially in the eventualities of forming unions. But there are other pressing reasons for which such documentation is necessary. These are citizens struggling for a livelihood, but invisible to local systems. There are worrying long term problems of job security, old age insecurities, loss of income due to job losses or old age that may already have affected such invisible groups.

References

Yusof, M.I.B.M, et al. (2024). Foreign Workers and Trade Unions in Malaysia. *International Journal of Academic Research in Malaysia in Economics and Management Sciences*, Vol. 13(3).