

**COUNTRY REPORT**  
**MIGRANT WORKERS SITUATION IN MALAYSIA**  
**Overview and concerns**

The MTUC recognizes the positive contribution of migrant workers in the development of the country and its economy. It believes firmly in the principle that all workers should be treated with fairness, dignity and equality without distinction whether they are migrant or local. While the laws of Malaysia do not discriminate against migrant workers, in practice, the rights of migrant workers are not fully protected.

The right of migrant workers to join a trade union is guaranteed under the Trade Union Act of 1959. However, administrative practices and unscrupulous employers often discourage migrant workers from joining trade unions.

A series of actions will have to be initiated by the MTUC to realize an effective mechanism that will provide an adequate mechanism to protect over 2 million documented migrant workers who are working legally in the country. They are mainly from Indonesia, Bangladesh, Vietnam, Myanmar, India, Sri Lanka, Philippines, Thailand and Pakistan. There are also a few from East European nations.

Foreign male workers are usually engaged in the construction, manufacturing, services and plantations. And female foreign workers are mainly engaged as domestic maid or as restaurant helpers and assembly line workers.

### Integration with the local community

The foreign workers are not fully integrated to with the local society. This is due their being housed in separate camps. Locals feel that the foreign workers often cause social problems by being entangled in relationship with local girls. This makes the local community rather suspicious of them. There are few localities the foreign workers are fully intergrated with the locals. In those places issues like local girls left abandoned with babies after their migrant partners returns to their home nations. Full integration thus may be a problem. However this do not in any way deter them from participating in local community work, join prayers with locals in local temples and mosques and churches.

Here the blame falls flatly on the migrants as they have taken it as a means to find local partners. Their intention is to prolong their stay. Some have managed to do it with strong connection. Many just left when their contract is due for termination.

The MTUC supports government action to manage the foreign migration flow. Along with this there is the large undocumented foreign workers who are also gainfully employed.

The presence of undocumented foreign workers in large numbers has a profound effect on local wage rates and terms of employment for documented migrants. The undocumented migrant workers are often forced to work more for less and often without basic facilities such as housing, medical care, overtime payment and so forth.

The MTUC expects the employers of undocumented workers are severely punished and the concerned undocumented workers themselves are humanely treated.

### **Undocumented Workers**

The terms “undocumented foreign workers”, itself is defined broadly and differs from country to country.

- **Malaysia**

“Undocumented foreign workers” includes anyone who does not hold a proper travel document or a valid visa to stay in the country. Refugees, asylum seekers and trafficked persons without documents as proof of their legal stay in the country are included in this category.

- I. As explained in the earlier section, the Immigration Act 1959/63 (Amended 2002) provides tough penalty for migrants who do not possess valid travel documents. Immigration Policy also prohibits migrants from working for employer other than stated in the work permit. Above all, the law does not reflect on how one will distinguish the different forms and kinds undocumented foreign workers.
- II. Though the Malaysia has Passport Act 1964, which prohibits the holding of an individual’s passport by others, due to laxity in enforcement of the Act, the passports of the migrants are held by the employers and recruiting agents.

Many of the migrants regarded as ‘illegal migrants’ have become undocumented foreign workers for various reasons.

MTUC had a meeting with the Director of the Immigration Department to discuss the problems faced by the migrant workers, who are being victimized by some unscrupulous employers. It also render assistance to the migrant workers to get temporary passes to stay in the country until their matters are fully resolved.

- MTUC handled cases of migrant workers who have been unfairly dismissed, or whose wages have not been paid or who have been abused by the employers and are forced to leave their workplace. As a result, they lose their status and thus become undocumented.

## **Arrest, Detention and Deportation**

### **I. Crackdown on ‘undocumented migrants’ in Malaysia**

In less than 2 years, the Malaysian Government (one of the largest receiving countries of migrants in the region) launched another massive crackdown on ‘undocumented immigrants’ in the country on 1<sup>st</sup> March 2005. The target is 400,000 “illegal” immigrants who had either overstayed in the country or do not possess valid document for their stay in the country.

During a similar operations in 2002, about 450,000 “undocumented” immigrants were sent back their home countries. Despite the attempt and harsh penalties imposed on “undocumented” migrants during the period, the country continues to witness an increase in “undocumented” immigrants. As of January 2005 there were 1.2 million “undocumented” migrants in Malaysia.

The crackdown on “undocumented” migrants and the penalty imposed on them under the Immigration Act raises a lot of concerns.

## II. Unpaid wages

MTUC case handling and management reveals that out of 600 case files opened involving 1,200 migrants, the top violation of labor rights from 2000- 2005 was nonpayment of wages, followed by unfair dismissal. This clearly reveals that Malaysian sub contracted labor system do not have the culture of paying workers.

Employers of documented foreign workers are denied the visa to legalize their stay in the country by the Immigration Department to continue their case at the Labor Court.

In one of the landmark cases, non payment of wages as per the Collective agreement which involved 126 Bangladeshi workers, the Court Of Appeal in Malaysia has decided the foreign workers are entitled the same rights as the local workers

### **Standardized employment contracts**

One of the first issues faced was the absence of employment contracts. Some domestic workers had contracts and some didn't. Some workers were not even aware that there were such contracts.

In Malaysia, a memorandum of understanding with Philippines regulates an employment contract is left to employment agents.

MTUC has now engaged a full time staff with the assistance of international organizations to study and organize the domestic maids

Bringing in migrant workers become free-for –all in Malaysia and that resulted in number of foreign workers left stranded and they cannot find employment here and run into trouble . Therefore, MTUC recently proposed that bringing in migrant workers should be done at government level not through “middlemen” or agents and event licensed employment agencies should not be allowed to bring in migrant workers. If licensed agencies were allowed to bring in migrant workers, the danger is that they would monopolise the industry and try to abuse the system.

In view of the rising number of problems faced by the foreign workers and also the impact of their presence to the locals and the wage system MTUC organized a workshop. The workshop was attended by trade unionists. Lately even the NGO’s are involved in migrant workers issues. Government authorities and International organizations and various embassies officials in the beginning of the year.

A number of emerging concerns in Malaysia were identify and need to be addressed is as follows:-:



- The government has an ad hoc policy on management of migration. Frequent policy changes by the state lead to lack of clarity, abuse by different stakeholders and increase the vulnerability of migrant workers.
- The work permit issued to migrant workers only allows the migrant workers to be employed by one employer. This policy may create a form of bonded contract where the workers are unable to move to another job and thus is open to abuse and exploitation.
- Contract substitution upon employment in Malaysia changes drastically the work conditions and lowers wages. It has been often observed that the contract presented to the worker upon arrival in Malaysia is considerably less favorable than the contract to which the workers agreed before departure.
- When a worker seeks redress for unpaid wages or raises other forms of labour dispute or abuse, the employer often retaliates by canceling the work pass. As a result the migrant worker loses his or her status in the country and his or her right to stay. Without a visa, the worker is not able to continue his or her case through the courts. To enable the worker to pursue his or her case, the Immigration Department only gives the

workers a 3 months special pass at RM100.00 per month. The worker is not allowed to work under this pass.

- There are various sub-policies and laws that are discriminatory and thus remove certain rights of the migrant workers and make him or her unequal compared to the national workers.
- Mandatory testing with deportation on the grounds of having contracted 15 diseases, including pregnancy tests and HIV/AIDS tests threaten job security, and increase discrimination and stigmatization.
- The Immigration Act (especially Section 6) provides for penalties including whipping and imprisonment. It criminalizes migrant workers for an administrative problem. Migrant workers have difficulty in accessing legal representation and due process.

### **Basic rights**

We recognize that migrant workers are workers with equal right and dignity. These rights must be protected in laws and policies. Such laws and policies must be effectively and justly enforced by the various agencies. Key principles

for migration policy should include non-discrimination and equal treatment of workers – nationals and migrants alike, respect for basic human rights and labour rights of migrant workers, protection of migrant workers in both regular status and irregular situations and regular consultations among government, employers, workers, NGOs and other representatives of civil society.

The MTUC should actively promote the ratification of the Migration for Employment (Revised) Convention, 1949 (No.97), the migrant workers Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and support the ILO Plan of Action of Migrant Workers.

MTUC actions

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Based on the above the MTUC resolves to:

- Undertake actions to give migrant workers all the necessary protection of their rights and dignity
- Organize migrant workers

- Provide the relevant knowledge to migrant workers to make their tenure in Malaysia comfortable, peaceful and productive, e.g. introduction to local unions, religious customs, taboos, work ethics, etc.
- Provide opportunities for skills enhancement so that they may not only be able to have better working environment and benefits but also be better trained and skills when they eventually return home.
- Monitor the real manpower needs of every sector and to work closely with the Government to ensure that there is no excess supply of labour in any sector.
- Identify errant and problematic employers and encourage the authorities to take all the available punitive action against them.
- Work closely with embassies and national trade unions of sending countries.
- Set up a special committee with the Bar Council and NGOs review all the laws that discriminate against migrant workers, that denies them fundamental labor rights and work towards areas for legal reform and

development of a comprehensive labour migration and management policy.

- Review, together with other national trade union centers from the sending countries; MOU's and contracts.
- Work out a standard model MOU and contract for recruitment and employment of migrant workers.
- Advocate with the relevant government agencies, for the issuance of a T-S visa (temporary Stay) for all workers who have cases of labor dispute or abuse to enable the workers to stay and work in the country until the case is settled.
- Give special focus on domestic workers. Propose changes to the Employment Act to recognize domestic work as work; to develop standardized contracts; and to organize domestic workers into unions.
- Make the changes in order to make sure that the State does not discriminate.

- Review repatriation- the manner in which this occurs is of concern.
- Protect refugees and undocumented workers who find themselves in an irregular situation. Root causes must be addressed.
- Establish social security mechanisms with contributions from employees and employers.
- Advocate the principle that payment of any levy should be borne by the employer.
- Establish a Tripartite Council to review the policy on labour migration and management.
- Strengthen labor inspection services to enforce legal conditions of work for migrant workers.
- Reintroduce the EPF for migrant workers without discrimination vis-à-vis local workers.
- Abolish corporal punishment such as whipping and caning.

- Enhance the social image of migrant workers.
- Address the specific risks for all migrant workers, men and woman, in certain occupations and sectors with particular emphasis on dirty, demeaning and dangerous jobs, and on women in domestic service and the informal economy.

**Action by trade unions in sending countries:**

Trade unions in sending countries resolve to:

- Encourage their Government to ratify ILO Conventions protecting the rights of migrant workers.
- Encourage Governments to negotiate bilateral agreements on recruitments, including the elimination of recruitment agents.
- Encourage migrant workers to join existing unions in the host countries.

- Government, NGOs and other stakeholders should work in close collaboration and cooperation to further the rights of migrant workers.
- Advocate a regulatory framework based on ILO Conventions and the UN Convention to respond to the issue of migration.
- Encourage monitoring recruiting and employment agencies in both sending and receiving countries to reduce fraud, malpractice and harassment of migrant workers.
- Conduct rights-based and community-based pre-departure training.
- Work in the MTUC to prepare pre-departure modules. Conditions of service under the Malaysian Employment Act should be translated into languages of migrant workers.
- Develop a system for networking and information exchange between sending and receiving country trade unions.
- Encourage governments to establish “Pillars” or principles of sending countries which govern diplomatic relations.



Prepared by A.Balasubramaniam.

Vice-President –MTUC-

Malaysia.