Migrant Labor in Southeast Asia

Country Study: Malaysia

Dr. Nicola Piper
Asia Research Institute
National University of Singapore
1. Introduction

The employment of foreign labour has been part and parcel of the history of Malaysia’s socio-economic make-up, starting in the 19th century under British colonial policies, when Malaysia experienced rapid economic development. Plantations, tin mines, infrastructure projects (the building of roads and railways), and the distribution and service sectors all depended on migrant labour brought in through various systems of recruitment from China, India and Indonesia. Migrant workers in those days tended to become permanent residents and thus part of the multi-ethnic composition of Malaysian society. After independence in 1957, their future generations became citizens of Malaysia (Navamukundan, n.d.).

Since independence, Malaysia’s rapid economic development has relied on Malaysian workers moving from rural-to-rural and rural-to-urban areas as well as on migrant workers, especially from ASEAN countries such as Indonesia, the Philippines, Thailand but also from South Asia. The sustained high economic growth rates in Malaysia over approximately three decades caused the increase in migrant workers who were to meet the rising demand in certain sectors of the Malaysian labour market. Outward migration of Malaysians also takes place, mainly to Singapore, Taiwan and West Asian countries. This, however, mostly involves skilled workers.

Socio-politically and economically, the dominant type of migrants are un- or semi-skilled workers, and it is especially the large presence of Bangladeshis and Indonesians which has become the focus of debate in recent times in Malaysia. One major issue is the relatively high number of undocumented migrant workers. The large presence of undocumented foreign workers is also one of the main reasons why it is impossible to establish the exact overall number of migrant workers in the country. Another reason is the lack of clear policies by the government. The current situation where the government frequently changes its approaches to in-coming migration has resulted in ad-hoc expulsions/deportations and subsequent re-admissions of foreign workers creating a situation close to chaos and adding to the high level of vulnerability of the workers involved (Piper and Iredale 2003; Ford forthcoming).

The many-sided problems legal and undocumented migrant workers have been facing in Malaysia are addressed by a number of NGOs as well as some sector-specific trade unions. The Societies Act of Malaysia requires all non-profit organizations to register formally and overall, there is a fairly vibrant NGO sector. Malaysian unions have been weakened since independence in 1957, as a result of a general anti-union propaganda casting unions as ‘anti-development’ (Crinis 2002). Nevertheless it is the Malaysian national labour centre which has been at the forefront of campaigning for better wages for local workers (Ramasamy 2005). Vis-à-vis migrant labour, its stance was for a long time conventional because it viewed foreigners as competitors for local workers. In spite of the national trade union council’s (hereafter: MTUC) less favourable position, some of the individual trade unions in key sectors have reached out to migrant workers for quite some time. With the recent change in leadership, however, the MTUC has begun to adopt a more inclusive and pro-active policy approach.
This report examines Malaysia in its role as a destination country of migrant labour. It surveys existing NGO and trade union activities revolving around foreign migrant workers in view of identifying room for collaboration among them. The data derive from a wide variety of reports and materials originating from non-governmental organizations (local and international NGOs as well as trade unions), academic papers, international organizations (ILO) as well as interviews with key informants/senior staff at NGOs and trade unions which were conducted in June and July 2005.

2. Overview of the Country’s Migrant Labour Context

During the last few decades, the move of Malaysian workers to jobs with better economic opportunities saw certain sectors such as construction, plantations, forestry and certain services experiencing labour ‘shortages’ (i.e. inadequate numbers of workers responding to the wage levels and conditions of employment offered by employers in the respective industries or sectors) (Navamukundan, n.d.). This resulted in labour market vacancies being increasingly filled by foreign workers. In addition, the expansion of the middle classes and the accelerated entry of women into the labour market led to a rising demand for foreign domestic helpers in the absence of social services such as child care facilities.

2.1 General Labour Market Situation

Malaysia’s economic policy of industrialization has been geared toward exports and intensive labour production. Thus, its GDP share has been increasing in the manufacturing sector while the agriculture sector’s share has been declining. This resulted in a situation of full employment in 1996 which led to greater import of foreign labour to fill jobs in the plantation sector, the construction industry, domestic work, and manufacturing. In manufacturing, it is now the norm to sub-contract to smaller factories where working conditions tend to be worse than in bigger enterprises. Higher growth rates have not benefited all workers, with e.g. plantation workers in certain parts of the country facing a grimmer future. The expansion of the plantation industry has occurred in East Malaysia, but plantations in West Malaysia are in fact closing down. In addition to some plantation industries being downscaled and relocated, the textile sector following the same trend as well. Slowdown is also being experienced in the electronics industry (Mosses and Xavier 1997).

As a result of rapid industrialization in export oriented industries, the Malaysian workforce has grown dramatically from about 5.6 million in 1985 to about 7.9 million in 1995 (Suaram 1998:46). Along with economic growth just prior to the 1997-98 financial crisis, an unemployment rate of 2.6% was achieved in 1996, which is technically recognized as a full employment situation. Malaysia experienced declining
unemployment rates thereafter (2.6% in 1997), but this rate rose to 4.9% or 443,200 workers in 1998.

There is still no legislation on minimum wage, and the key concerns of labour today still revolve around the restrictive framework for the exercise of freedom of association, the right to organize and bargain collectively and the right to strike, to name a few issues. Unionisation remains low with less than 10% of labour or 706,253 members in 1995 (see Table 1, page XX). This also means that only 10% of the labour force in the country is covered by Collective Agreements. The organization of workers is tightly regulated, and the average Malaysian worker generally does not see the benefits of belonging to a trade union. Workers are constrained by non-democratic laws which allow for detention without trial, restricted freedom of speech, publication or assembly (Mosses and Xavier 1997).

Over time, the characteristics of employment have changed. Trade unions are concerned with the gradual enlargement of the informal sector, abuses with regard to wages and terms and conditions of employment. Workers in the informal sector cannot expect full compliance of provisions of the Employment Act and other labour legislation (Employees Providence Fund Act or Social Security Organization Act). Employers typically avoid all obligations, with the effect of a declining quality of life for many workers (Navamukundan, n.d.). In fact, it has been commented that in the 22 years of Mahathir’s tenure, workers’ rights were gradually whittled away.

The presence of a large migrant workforce, both legal and illegal, creates a further division in the labour market. Employers are cost-conscious and choose workers who are inexpensive and who comply with strict discipline and hard work. A further phenomenon is the presence of contractors for labour services: these contractors facilitate casual employment. The government encouraged employers to repatriate migrant workers who became unemployed as a result of the East Asian economic crisis. Ever since, its policies on migrant labour have kept changing frequently – a situation with which most employer organizations, trade unions and NGOs do not agree.

The National Advisory Council (NLAC) is the highest tripartite forum on labour matters, but consultation on migrant labour does not involve trade unions (interview, July 2005). Major labour legislation in Malaysia includes: 1. Employment Act 1995; 2. Social Security Act 1969 (occupational injuries and illnesses); 3. Employees Provident Act 1951; 4. Industrial Relation Act 1967; 5. Trade Union Act 1959. In theory, migrant workers are covered by these acts, but in practice there are many problems (see below).

According to the employment law, it is perfectly legal for migrant workers to join trade unions, although they cannot be elected as office-bearers in them. What membership can achieve, however, is another issue. Also, in practice, the contracts that are signed between the migrants and labour recruitment agencies in their country of origin typically stipulate that they cannot join political associations and trade unions.
2.2 Profile of Migrant Labour

By 1995, Malaysia had become the largest importer of labour in Asia in terms of overall numbers\(^1\). The Malaysian government differentiates between two broad types of foreign workers: the group of skilled professional and technical workers (also referred to as ‘expatriates’) and the group of semi-skilled or unskilled workers. These two categories are subject to different immigration laws, employment rules and regulations. The expatriate workers are recruited legally from their country of origin, usually with a job tenure of two years (subject to extension). The workers in the second category are also recruited in their country of origin on a contract basis (for a minimum of one year and a maximum of seven years) but the terms of their contracts differ. Their employer, job specification and salary are stipulated in their contract which, upon expiry, requires them to leave the country. The majority of Malaysia’s migrant worker population belongs to the semi- and unskilled group. Among the latter, there is a large pool of undocumented foreign workers who either enter in an unauthorized manner or turn into ‘illegal’ workers due to a number of reasons, many of which are beyond their control (Jones 1996).

There has also been a rising demand for foreign domestic helpers triggered by rapid urbanization, the expansion of the middle classes and greater participation of women in the workforce. This demand was initially met by local women and men from rural areas, but these jobs are now largely filled by women from neighboring countries. Hotels, restaurants and other businesses in the hospitality industries also rely on foreign workers. Apart from these un- or semi-skilled jobs, ‘shortages’ have also begun to appear in the skilled categories, such as in medical health care. The manufacturing sector has also experienced an increased demand for semi-skilled and skilled industrial workers.

In 1996 a total of 449,565 legal foreign workers were reported which can be broken down into the following sectors/job categories: domestic work 71,254; factory work 204,614; agriculture 75,944; service 10,841; other 17,079. In terms of percentage, the proportion of foreigners in various sectors were: 37% in manufacturing; 24% in agriculture, 22% in domestic services, 9% in construction, 8% in service sector.

Over time, the share of foreign workers (legal and undocumented) in the workforce has fluctuated, from 6.5% in 1993 to a peak of 17.5% in 1997 (Navamukundan, n.d.). Their number declined following the financial crisis, but with the economic recovery since 2000, figures have gone up again. As of 1999, the total of registered foreign workers was 715,145 (73% Indonesian, 19% Bangladeshi, 3% Filipinos etc.). By 2002, there were approximately 1.45 million foreign workers in Malaysia representing 12.8% of the labour force (Narayanan 2005).

In 2004, it was estimated that the number of registered migrant workers was 1.4 million or 12.5%, of which 80% were from Indonesia, 13.6 from Bangladesh, 6.5% from the Philippines and the remainder from various other Asian countries. In the same year, it was estimated that there were 1.2 million ‘illegal’ migrant workers (Malaysian Employers Federation, 2005). The number of (mostly undocumented) migrants in Sabah

---

\(^1\) Singapore has the highest ratio of foreign migrants to the local population.
and Sarawak is said to be difficult to establish because of the relaxed entry and exit opportunities. The illegal smuggling/trafficking of workers has become a lucrative business for contractors and agents contributing to the fairly large presence of workers without legal papers (Navamukundan, n.d.). The relatively high number of unauthorized workers is sometimes addressed by amnesty periods (such as between 22 March 2002 and 31 July 2002) but also by ad hoc deportations/expulsions (WAO 2003; Ford forthcoming).

The foreign workforce is 68% male. Most foreign workers are unaccompanied by their family. The share of foreign female workers has risen from 26% in 1990 to 32% in 2002. The foreign workforce consists largely of young workers, many of whom are unskilled. But the share of older workers has been increasing – the share of workers aged 40 or more is said to have risen from 20% in 1995 to 30% by 2002. The majority of foreign workers has consistently been from Indonesia (but with slightly varying percentages) (Navamukundan, n.d.).

Today, foreign workers are employed in all major sectors of the national economy. Figures slightly vary depending on the source. According to a trade unionist (Navamukundan, n.d.), in the agricultural sector, there are 33%, in manufacturing 25%, in construction 21% and in the service sector 31%. Their share in agriculture and construction is, however, presumed to be understated (ibid.). The plantation, construction and manufacturing sectors are predominantly staffed by migrant workers from Indonesia and Bangladesh. Overall, Indonesians constitute the largest nationality group (ca. 83.50%), followed by Bangladeshis (on whom, however, a ban has been imposed in 1998), Filipinos, Thais, Vietnamese, Nepalese and others. On 1 March 2005, Prime Minister Badawi announced that Malaysia would accept Pakistan as a source country (The Strait Times). In another newspaper article (Nation, June 6th, 2005), it was announced that Sri Lanka was to provide an “unlimited” number of workers.

According to the Malaysian Employers Federation (2005), the last decade saw the emergence of two new employment patterns amongst migrant workers. First, there is the gradual shift of employment from the plantation and construction sectors to the manufacturing sector. By 2004, 414,300 migrant workers (30.5%) were employed in the manufacturing sector, followed by the services sector (25%), agriculture (24.7%) and construction (19.8%). The main industries in the manufacturing sector employing migrant workers are in the wood and wood-based, electrical and electronics industry, followed by textiles and apparel, food manufacturing, plastic products and rubber products industries (ibid.). The second trend is the acceleration of the feminization of migration labour, especially in the services sector and factories. More women from the Philippines, Indonesia and Bangladesh are now employed as production operators in the manufacturing centres in the Klang Valley region, Penang and Johor.

There is little available information or data on the exact number of foreign domestic workers (FDWs). A report compiled by Tenaganita states that as of 1996, women workers were estimated to total 1.25 million, the majority of whom were employed in the domestic sectors as live-in domestic helpers (WAO 2003). According to the Minister of
Human Resources, there were about 155,000 FDWs in Malaysia in 2002, 70% of whom were Indonesians. These statistics refer to documented workers (ibid.).

2.3 Policy Framework and Issues

On the whole, Malaysia’s foreign labour policies governing the semi- and unskilled workers are constantly being modified in an ad hoc manner in response to the changing conditions of its labour market, social circumstances as well as public opinion (UNCHR roundtable 2005). Periodically these adjustments have involved the mass arrests and deportation of undocumented workers, mainly Indonesians (Ford forthcoming). This has created many opportunities for exploitation by employers and security forces.

In general, the fate of migrant workers is in the hands of the employers and the Malaysian security forces which operate with the approval of the government. The various ministries involved in migrant worker related issues include the Ministry of Home Affairs (Immigration Section), Ministry of Human Resources, and the Labour Department, but there is no coordination between them, neither is there much transparency (Piper and Iredale 2003).

The inflow of migrant workers was, and still is, not fully in the control of the Malaysian government, hence the large presence of undocumented migrants. All such persons in Malaysia are labeled “illegal migrants” and are subjected to harsh and arbitrary immigration laws. The Immigration Act of 1959 (revised in 1963) provides the police and immigration authorities with widespread powers to arrest, detain and eventually deport undocumented persons. Those arrested can be detained in detention camps for such periods as are deemed necessary to arrange for their removal and deportation (Suaram 2003). Conditions have been reported as appalling (by Tenaganita as well as the National Commission for Human Rights, personal interviews, Kuala Lumpur 2003).

National legislation which provides a social security safety net for workers protecting both local as well as foreign labour actually exists. There is first of all the Employment Act of 1955. However, female domestic workers are excluded from the benefits pertaining to rest days, working hours, holidays, and termination of contract. The Workmen’s Compensation Act 1952 also excludes domestic workers. There are only insurance schemes to protect domestic workers against accidents with long-lasting effects, medical and repatriation expenses and hospitalisation. Since 1998, every employee has been required to contribute to the Employees Provident Fund (EPF). However, expatriates and seamen are exempted. Migrant workers have to contribute 11% of their wages to the EPF and the employer is required to contribute RM 5.00 every month. In theory, workers have the right to withdraw all their savings when leaving Malaysia. In practice, this rarely happens.

Domestic helper related employment issues are dealt with in the form of contracts between the employer and the foreign worker, outlining duration, address of employer,
responsibilities of the employee, and provision of accommodation, food and medical
treatment by the employer. Another type of contract between the recruitment agency and the
domestic worker stipulates, amongst other things, that they will not marry a
Malaysian citizen. This is the same for un-skilled male migrants who are equally barred
from marrying Malaysian women.

There is almost no legal access or assistance accorded to migrant workers. Convicted
undocumented persons face penalties set by the amended immigration laws (which
became effective in August 2002) that provide for a mandatory and harsh jail sentence of
up to five years, whipping up to six strokes of the rotan (cane) or a fine of up to RM
10,000. Because of their status, undocumented migrants are open to harassment, extortion
and theft by the pertinent government agencies that they come across, especially the
police and the immigration authorities. There have also been reports of assault, sexual
abuse, inadequate living conditions, lack of medical treatment and even death while in
detention. Health care and other social services are oftentimes restricted for
undocumented migrants as there are various and inconsistent policies. This constitutes
serious violations of migrants’ human rights (Suaram 2003).

There is an annual levy for foreign labour employment in the manufacturing, construction
and service sectors, which has been increased several times over the years. This has
resulted in the common practice among employers of deducting this sum from the
workers’ wages (although this is not supposed to happen). The levy differs according to
sector with the highest being for FDWs. In the construction and manufacturing sectors,
the amount is ca. RM 1,400 to 1,500; in the plantation sector it is the lowest at ca. RM
400. In the restaurant/servicing sector, it amounts to RM 1,600 (interview, June 2005).
The levy goes via the Immigration Bureau to the Ministry of Home Affairs, but there is
no transparency about the final use of this money.

As of March 2005, employers from the service sector have requested the government to
make it easier for them to recruit foreign workers by lobbying for the recruitment of
foreign workers through formal channels.

2.4 Political-Economic and Social Issues

Migrant workers face problems ranging from poor housing, discrimination and various
forms of abuse since they are either undocumented or not protected by unions and/or
labour laws. They are subject to expulsions or deportations, police brutality and torture.
The conditions in detention centres have been reported as appalling. Figures received
from an NGO based in Jakarta, Solidaritas Perempuan, indicated that out of 499
Indonesian migrant deaths reported for the period 1991-1997, 85% or 429 were from
Malaysia. This rate of deaths is about 60 per year for Indonesians alone.

As far as the labour movement is concerned, it is the terms of contract which constitute
one of the most serious problem areas. Contracts are signed while the workers are in their
country of origin. The language used is typically English only and no translation is
provided. Once in Malaysia, employers often violate the contracts by making deductions (such as for accommodation) from the workers’ wages contrary to the contractual agreements. The contracts contain clauses stating that migrant workers are not allowed to join a union or be politically active which actually violates the law. The Industrial Relations Act and Trade Unions Act govern the formal industrial relations system in the country and the law allows migrant workers to become members of trade unions (but not hold office). Thus, the law as such is clear, but in practice migrants are prevented from joining unions as stipulated in their contracts. The moment a migrant joins a union, the employer can sack this worker without being punished. According to one lawyer, the clause of the contract which prohibits foreign workers from joining a union is actually void and severable. In other words, legally speaking, in cases where there is conflict between the provisions of a statute and a term of a contract, the provisions of a statute actually prevail. But in Malaysia the contracts have so far been treated as above the Employment or Labour Law – and this remains uncontested to date. Thus, the formal labour/employment system is weakened by the existence of an informal system. Trade unions find it difficult to sustain their collective bargaining strength when workers are prevented from becoming members of the union.

Legal and undocumented migrant workers face the various tactics of employers and contractors to keep them out of trade union membership despite their legal entitlement to do so. In addition, on the issue of social security, employers also try to evade their responsibilities where they can, in order to reduce costs. As a result, migrant workers suffer the denial of paid sick leave, medical benefits, retirement benefits, maternity benefits, paid holidays and other monetary benefits.

The undocumented status of many migrants is another issue that is highly exploited by employers. Often it is not at all the migrants’ fault that they are or that they become undocumented. Their status maybe due to their employers’ illegal practices (such as non-payment of wages or withholding of travel documents) which is entirely beyond the workers’ control. But immigration officials usually act very swiftly when arresting and deporting the migrants, often with the migrants having insufficient money at hand to make the journey to their home village.

A related problem area is that of unpaid wages. In a memorandum from 1994, the MTUC pointed out the possibility of such practices by unscrupulous employers and greedy and unethical employment agents leading to cheating and exploitation. On 8 February, 2005, MTUC (under its new president) and Tenaganita (the main migrant worker NGO, see below) published a joint statement in which they exposed the situation of a large number of migrant workers who had filed cases in court for unpaid wages or unfair dismissal but had been denied visas by the Immigration Department that would give them the right to stay in the country. Both the Labour Court and the Industrial Relations Department take their time before they settle a case, with the minimum being

---

2 The exact wording in one contract for a Nepalese worker is “The Employee shall not marry with any Malaysian and shall not participate in any political activities of those connected with Trade Unions” (copy shown to the author during interview, June 2005).

3 E-mail communication, July 14, 2005.
six months. The Immigration Bureau in the meantime hands out special pass visas for three months, renewable monthly at a cost of RM100, but the migrants are not allowed to take up paid employment during this period. The MTUC and Tenaganita lament the lack of cooperation on the part of the Immigration Bureau in allowing migrants to stay until their cases have been resolved. In some instances, unions of the origin country pay for travel and accommodation so that the worker can return for his/her trial but this is rare.

To sum up, for the year 2004, it was noted by leading NGOs that the top violation of labour rights was the non-payment of wages, followed by unfair dismissal in the construction and small/medium industries linked to the sub-contracting labour system. There are many loopholes in the system which create a situation of ‘no redress’ for undocumented workers, leaving employers unpunished for illegal practices. This needs to be addressed. The trade union council and NGOs therefore call for the right of all workers to seek redress to put an end to such discriminatory practices. They call for the right to stay by issuing foreign workers not just social pass visas but work permit visas. Tenaganita has recently published more press statements calling for the need to create a ‘culture of payment of wages’.

Thus, the major problems foreign workers are facing have to do with inconsistent or non-existent migration policies, employers’ illegal practices and contract violations. In addition, they are subjected to: abuse of the right to freedom of movement; abuse while in detention; physical and sexual abuse at the workplace; poor living and working conditions; denial of due process of law. Government policies only target migrant workers, but not the illegal practices by employers.

3. Migrant Labour Organizations

The organizations in this section are understood as referring to collectives of/organizations run by migrant workers themselves as opposed to NGOs set up by local citizens.

3.1 Nature of Migrant Organizations

There are no such organizations run by foreigners in Malaysia on a formal basis. The few Church-based groups may have Filipino priests, but that is all. According to one interviewee, by law, foreign migrants are not permitted to form their own organization.

The only services provided by foreigners (for their own nationals) are those by the embassies. Among the various embassies of countries of origin, the Philippine Embassy offers the most comprehensive range of services to its migrant workers that go beyond work permit/passport related matters.
3.2 Programs and Services

Embassies

The Philippine Embassy offers conciliation services (where Filipino workers can lodge complaints against employers or manpower agencies and vice versa), counseling and advisory services (on legal, technical and practical matters) as well as a skills training program for overseas Filipino workers (OFWs). The latter consists of 11 types of courses (for a fee) currently offered: 1. computing, 2. tailoring, 3. agribusiness, 4. English, 5. business development, 6. hairdressing, 7. dressmaking, 8. culinary arts, 9. cosmetology, 10. basic nursing home care, 11. arts and crafts.

In addition, Filipino workers who failed to register as OWWA (Overseas Workers Welfare Administration) members prior to departure from the Philippines can apply for membership with the Welfare Officer at the Philippine Overseas Labor Office at the embassy. This applies to workers who were issued work permits under the regularization program of the Malaysian government. As OWWA members, OFWs are entitled to the following benefits: (a) livelihood loan assistance, (b) insurance coverage, (c) burial assistance, (d) MEDICARE benefits, (e) skills training and refresher courses, (f) scholarship program, and (g) other benefits for members of the OFW’s family.

According to its website, the Philippine Embassy conducts periodic seminars and meetings on employment-related matters in Malaysia. No information could be found on the effectiveness and number of OFWs attending/seeking any of the above services.

The Indonesian Embassy runs a shelter and the Bangladeshi Embassy supposedly offers counseling services, but both embassies are said to have fairly incompetent staff who show little interest in the plight of lower class compatriots (interviews, June 2005).

4. NGO Involvement in Migrant Labour

Various NGOs in Malaysia have been active on labour issues involving women and foreign workers for quite some time. However, NGOs that exclusively focus on migrant workers do not exist, although one organization (Tenaganita) has practically become a migrant worker NGO because of the sheer number of individual migrants seeking their assistance (personal interview).

Those NGOs which concern themselves with migrant workers as part of their broader portfolio or mandate can be classified as follows: 1. worker/labour NGOs; 2. women’s rights organizations; 3. human rights organizations; 4. faith-based organizations.
4.1 Key Migrant NGOs in the Country

Worker NGOs

*Tenaganita*

This organization was formed in 1991, originally with a focus on women workers’ problems but it is now specializing in service delivery and advocacy for workers in general with a comprehensive program for migrant labour. It has formed links with a number of regional and international organizations and has developed into a fairly well-known organization internationally. Their ‘fame’ is partly related to Tenaganita’s critical report on the deplorable conditions of migrant detention centres in Malaysia published in 1995, with the result that the director, Dr. Irene Fernandez, was arrested and charged under the Printing Presses and Publications Act for publishing “false news”. She subsequently had to undergo a trial that ended in her being convicted. An international campaign was launched in her support throughout the process of the trial (with updates on Amnesty International’s and Human Rights Watch’s websites). She is now on bail facing restrictions to her freedom of movement (especially internationally).

Tenaganita’s key focus is on “empowering sex workers, migrants, and female workers in plantations and factories….With respect to foreign migrant workers, Tenaganita has a whole range of activities related to the violation of labour rights, health, HIV/AIDS, arrest and detention, education and training on labour and immigration laws, occupational health and adapting to Malaysia” ([www.gn.aoc.org/caramasia/tn_pg0.html](http://www.gn.aoc.org/caramasia/tn_pg0.html)). Its national work is complemented by active regional engagement with other NGOs, most important of which is its own initiation and management of the regional secretariat of CARAM-Asia (Coordination of Action Research on AIDS and Mobility). This network encompasses ten countries in the region and focuses on research and information exchange, community-based interventions and regional-based advocacy on migrant health and rights issues. They raised the necessary funds to organize two consultative meetings with the UN Special Rapporteur on the Human Rights of Migrants to bring to her attention a whole range of problems migrant workers face in the Asian region.

Tenaganita also offers services such as counseling and legal aid to migrant workers. They advocate for the “Right to Work” pending court proceedings and have also launched a campaign on migrant workers’ “Right to Legal Stay” (in response to an unofficial announcement by the Immigration Department that any migrant worker awaiting court proceedings exceeding three years will be sent to the detention camp).

Most recently, Tenaganita has produced a documentary film entitled “Breaking Labour” (June 2005) as well as an audio CD entitled “Silenced Voices” (April 2005) which consists of 15 songs in various languages portraying the struggles, emotions and feelings of migrant workers. The latter was the subject of a feature on the BBC World Service (radio).
Overall, Tenaganita has been extremely influential in speaking out on behalf of all migrant workers and advocating for their rights.

**Women’s Rights**

**WAO**

The Women’s Aid Organization was set up in 1982 primarily to shelter battered women and their children. Since its inception WAO began receiving several isolated cases of domestic worker abuse and in 1995 (after a series of severe cases), it started documenting the experience of FDWs in detail. As a result, it has evolved into a women’s rights group which incorporates migrant women domestic workers into its advocacy for women’s rights and its research efforts on women and domestic violence, together with the provision of shelter for abused women. In this way, it is the most prominent NGO that focuses on migrant women domestic workers in Malaysia.

WAO strives to work with various state agencies, particularly the Immigration Department, Ministry of Human Resources, Labor Department and the Police, to resolve issues on behalf of abused FDWs and trafficked women. It also works closely with other women’s organizations and brings FDW related issues to their attention for further support.

WAO’s main mission is to eliminate discrimination against women and promote equality for women and men (and to this end, it monitors state compliance with CEDAW, ratified by Malaysia in 1995). It is also member of an Asia-Pacific network of NGOs that lobbies for state ratification of the UN Convention on the Rights of All Migrant Workers and their Families (ICRMW).

**Human Rights**

**Suaram (Suara Rakyat Malaysia - Voice of Malaysians)**

This NGO which was formed in 1989 has established itself in the last 10 years as the major human rights centre and one of the leading activist organizations in Malaysia. In its role as a general human rights group, it has also extended its advocacy activities to covering migrant workers’ human rights. Its advocacy work involves documenting, monitoring, and exposing human rights violations. It has published the “Malaysia Human Rights Report 2003” which devotes one chapter to refugees and labour migrants. It is a member of, or networks with, several regional alliances which facilitate lobbying efforts at the UN Human Rights Commission as well as ASEAN. Apart from Malaysia, their other priority areas are Indonesia, East Timor, Aceh, Burma and Singapore.

**Faith-based organization**
National Organization of Human Development (NOHD)

In 1952, the Catholic Welfare Services was set up as the arm of the Church in Malaysia for Welfare and Charity. In 1993, their approach to the promotion of justice was concretized, and migrant workers’ issues are included as one of NOHD’s primary concerns today. The Migrant Services Secretariat caters to the pastoral care of migrant workers. On-going services include spiritual formation, activities like selling food in the community centre, counseling, legal assistance, casework, education and information, and social/cultural activities. Visits to migrant communities are carried out periodically. They engage in efforts to educate all Malaysians, and Christians in particular, to be aware and sensitive to the welfare of migrant workers. Some annual events organized are ‘Migration Sunday’ in September and the ‘National Consultation on Migrant Workers’.

4.2 Nature of Programs and Services

The existing NGOs offer a range of services and programs covering important issues in connection with migrant workers. There is clear engagement with regional networks/alliances and lobbying efforts for the ratification of ICRM nationally, regionally and at UN Level. Apart from services offered by embassies, there is no organization that caters for a specific nationality group only. Apart from WAO which concentrates on offering services and advocacy to FDWs only (and victims of trafficking), thus to women only, the other groups cover all types of migrant workers of all nationalities and sexes.

Although no formalized national network exists, cooperation among NGOs takes place to a certain extent, such as in form of the publishing of joint statements or the organizing/attending of joint conferences/workshops.

Some NGOs are more service-oriented with an advocacy component, such as WAO which defines itself as a service organization and is not interested in organizing migrants on a large scale. They have no resources and no mandate for this. But through their efforts to provide services they have become aware of a number of issues that they try to address in their advocacy work (such as standardization of contracts, abuse, lack of training opportunities for migrants, insufficient information, no access to the public for FDWs). Their idea of cross-border collaboration is that they would like to have an Indonesian social worker assigned to WAO who could help with the Indonesian FDWs and see the situation from the Malaysian perspective.

Tenaganita appears to be the one NGO that balances advocacy and service provision most equally. Suaram is a pure advocacy NGO (human rights). NOHD has the smallest advocacy component among all the NGOs that work with migrant labour.
5. Trade Union Involvement in Migrant Labour

5.1 Main Trade Union Groups

Starting from one federation of trade unions in the 1950s, there are today three trade union federations holding similar ideological positions. All major industries and sectors have unions that are affiliated to the Malaysian Trade Union Council (MTUC) with a total of approximately 800,000 members today. Having been established in 1949, the MTUC is the oldest National Centre representing Malaysian workers and has been officially registered under the Societies Act since 1955. In 1949, there were 163 registered trade unions with a total membership of 68,814. Since then, membership has increased considerably (see Table 1 and 2 below).

Unions are affiliated and not ‘proper’ members because MTUC is registered under the Societies Act and not the Trade Unions Act. Hence, MTUC cannot call for a strike and has generally little control over its affiliates (personal interview, June 2005). In addition, even when cases reach the Minister of Labour (after a conciliation process has failed), there tends to be a bias toward business with many ministers being involved in companies as shareholders or owners (sometimes through their wives or relatives). At the same time, the trade union movement’s leaders are democratically elected, not politically appointed as in Singapore (hence the recent shift in the presidency at MTUC), and MTUC is more outspoken than SNTUC. According to an ‘old’ (and cynical) trade union veteran (interview June 2005), however, “the power of trade unions in Malaysia is zero”. There are too many oppressive laws and practices (see also Crinis 2002), and it is in general hard to organize a national union, let alone migrant labour.4

Despite the fact that only only 10% of all workers are unionized, the MTUC is recognized by the government as representing workers in Malaysia and is consulted by the government on major changes in labour laws through the National Joint Labour Advisory Council (tripartite body). The MTUC’s president is also on the governing board of the ILO.

The MTUC’s biggest challenge today is to bring about changes to some of the restrictive provisions in the Trade Union Act of 1959, the Industrial Relations Act of 1967 and the Employment Act of 1955 as well as to boost the overall number of unionized workers. Among the current programmes the MTUC is pursuing are (1) “organising the large number of workers yet to be organized including workers in the Free Trade Zone Area”, and (2) “the influx of guest workers”.

Table 1 – Total Unions and Membership in Malaysia 1995-2003

---

4 One example is the case of a company in Port Klang where soon after local workers formed a union called Zetavest, 30 of them were dismissed and 50 foreign workers were hired to replace them. These migrants were not permitted by the company to join a union.
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Unions</th>
<th>Total membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>504</td>
<td>706,253</td>
</tr>
<tr>
<td>1996</td>
<td>516</td>
<td>728,246</td>
</tr>
<tr>
<td>1997</td>
<td>526</td>
<td>734,685</td>
</tr>
<tr>
<td>1998</td>
<td>532</td>
<td>739,636</td>
</tr>
<tr>
<td>1999</td>
<td>537</td>
<td>725,322</td>
</tr>
<tr>
<td>2000</td>
<td>563</td>
<td>734,037</td>
</tr>
<tr>
<td>2001</td>
<td>578</td>
<td>784,881</td>
</tr>
<tr>
<td>2002</td>
<td>581</td>
<td>802,260</td>
</tr>
<tr>
<td>2003</td>
<td>581</td>
<td>803,879</td>
</tr>
</tbody>
</table>

(Source: www.mtuc.org.my/total_union.htm, downloaded 19 April 2005)

**Table 2 – Membership of the Malaysian Trades Union Congress (MTUC): 1990, 1992, 2000 and 2002**

<table>
<thead>
<tr>
<th>Type of Employee Union</th>
<th>1990</th>
<th>1992</th>
<th>2000</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. Member-ship</td>
<td>No. Member-ship</td>
<td>No. Member-ship</td>
<td>No. Member-ship</td>
<td>No. Member-ship</td>
</tr>
<tr>
<td>Private Sector Employee Unions Peninsular Malaysia Sabah And Sarawak</td>
<td>91</td>
<td>255,197</td>
<td>80</td>
<td>209,492</td>
</tr>
<tr>
<td>75</td>
<td>240,047</td>
<td>69</td>
<td>204,318</td>
<td>137</td>
</tr>
<tr>
<td>16</td>
<td>15,150</td>
<td>11</td>
<td>5,174</td>
<td>27</td>
</tr>
<tr>
<td>Public Sector Employee Unions Peninsular Malaysia Sabah And Sarawak</td>
<td>39</td>
<td>86,489</td>
<td>29</td>
<td>97,247</td>
</tr>
<tr>
<td>30</td>
<td>77,733</td>
<td>20</td>
<td>92,937</td>
<td>32</td>
</tr>
<tr>
<td>9</td>
<td>8,756</td>
<td>9</td>
<td>4,310</td>
<td>12</td>
</tr>
<tr>
<td>TOTAL</td>
<td>130</td>
<td>341,686</td>
<td>109</td>
<td>306,739</td>
</tr>
</tbody>
</table>

(Source: www.mtuc.org.my/membership.htm; downloaded 25 July 2005)
5.2 Union Services to Migrant Labour

MTUC

To date, there are very few, if any, concrete services offered by the MTUC to migrant workers. This is related to two main issues: 1. Many migrant workers in the ‘traditional’ sectors are undocumented or obliged under their contracts to stay away from joining unions. There was no clear information available on the membership of foreigners and it is assumed that if any, there are only very few; 2. The other reason for a lack of concrete services to foreign workers is the policy stance that the MTUC took until recently.

Since the leadership of the MTUC changed only in December 2004, not much concrete has happened yet apart from rhetorics. However, MTUC has recently begun to organize workshops and/or conferences (co-organized with ILO), and released statements with NGOs on the situation of migrants. The new president of MTUC is now trying to bring the complexity of problems for migrant workers to the surface and into the domain of public debate. They do so by releasing press statements (often with Tenaganita) and organizing meetings to which they invite government officials, NGOs and also trade unions from the sending countries. In addition, in their monthly newsletter, more stories and information on migrant workers have recently appeared. This might contribute to changing the attitude among those member unions reluctant to pay migrant labour any attention. The MTUC sees the exposure of abusive practices and engagement in dialogue as the first step in pushing for policy improvements.

The MTUC has a Foreign Worker Sub-Committee but it is under-staffed and under-resourced which might be a legacy of the ‘old management’. With trade unions’ funding coming from local workers, they are obliged to prioritize the concerns of local workers. One type of service they have begun to carry out (in collaboration with Tenaganita) is the representation of individual cases of migrant workers at the Labour Department, usually in connection with matters of non-payment of wages and compensation. The MTUC also had discussions with the Immigration Bureau about the extension of visa permit for migrant workers awaiting the settlement of a dispute, but Immigration has so far not shown any willingness to cooperate or to change its practices.

Under the previous leadership, the MTUC adopted a conservative agenda vis-à-vis migrant labour as dictated by the government. It did not even formally object to a statement made by the Minister of Labour that foreign workers should not join trade unions (interview, Tenaganita, June 2005). Now, with Syed Shahir Syed Mohamud as the new president, there is a completely different approach. He was president of a smaller union before and already supported migrant workers then by, for instance, representing them in industrial disputes. Shahir supports the attempts made by some unions to recruit migrant workers (see below). Unions, such as Hotel Workers’ Union, Rubber Workers’ Union and Timber Union, have been more open toward foreign workers than the MTUC under its former leadership. Likewise, there are unions which seem to support migrants
on the surface, such as the National Union of Plantation Workers which takes a monthly membership fee from migrants, but are said to do nothing when it comes to concrete protection (interview, Tenaganita, June 2005).

Individual unions

Despite the historically rather careful policy approach of the MTUC, individual member unions have been more active or outspoken in trying to improve the lot of migrant workers.

As early as 1979, the Timber Employees Union called for the abolition of foreign contract labour in the timber industry (to replace this with a different system). About 50% of the workers in this industry are on short-term contracts and cannot join the union. In this case they fall outside the ambit of labour laws (Crinis n.d.). This union started to concern itself more concretely with foreign workers about three years ago (interview, June 2005) which is highly important considering that 30-40% of all timber workers are foreign (Nepalese, Indonesian, Bangladeshi, Vietnamese). In Sabah, the percentage is much more, with 80-90% of the timber workers being foreign, of whom 50% are undocumented (Indonesians and Filipinos).

The timber union tries to organize workers at company level in Sabah and Sarawak where they have union branches. Constraints they have been facing when trying to organize migrants include: 1) language barrier (especially with Vietnamese); 2) company practices of dismissing foreign workers who join trade unions; 3) policy of immigration (immediate deportation of foreign workers upon dismissal). Stage One, according to this union, is therefore to organize migrant workers secretly – to ensure membership of all foreign workers from a specific company and then to pressurize the individual company to recognize and accept union representation. This is not an easy task because the workers tend to be intimidated. Some are also not used to the political environment of trade unions and do not trust unions. In some incidences, there are also inter-group fights among migrants (e.g. Indonesians do not like or trust the Bangladeshis and vice versa). In the case of undocumented migrants, this union has visited the Immigration Bureau and reported employers’ illegal practices but the workers were nevertheless deported (personal interview, June 2005).

5.3 Union Cooperation with NGOs

All NGOs had very little contact with trade unions before Shahir became MTUC’s new president. According to Tenaganita, the problem with MTUC used to be its leadership and the previous president’s pro-government stance. Migrants were depicted in purely negative terms i.e. as taking away jobs from locals and for creating too many social problems. Although Tenaganita claims to have tried to engage in dialogue with the MTUC then, they apparently received no support from the union which they put down to an attitude as well as a political problem (interview, June 2005).
This has changed with the new president. Tenaganita now works with the MTUC more closely on individual cases. The MTUC has begun to represent migrant workers in mediation cases (lawyers are not allowed, only unions). Previously Tenaganita had to train the migrant workers to represent themselves as NGOs were not permitted to do so. How this collaboration between the two evolves and whether it will lead to more concrete advocacy or other projects/programmes is yet to be seen.

Despite the new wind blowing from the president’s office, some trade unionists of the older generation would prefer not to collaborate with NGOs because they have little trust in them. NGOs are seen as having their own mission and are keeping workers from joining unions (by offering them an alternative). Apparently, before the emergence of NGOs, more people attended gatherings organized by trade unions but now the people’s attention has been diverted and less come to trade union meetings. Also, NGO activists are criticized for being typically from a middle class background and for expecting workers to listen to their middle class views (interview June 2005).

The NGOs interviewed, on the other hand, feel that trade unions have a clear role to play and they should take over some of the tasks that NGOs used to fulfill until now. At the same time, there is concern that trade unions might claim ‘ownership’ of migrant worker issues if they got more actively involved.

5.4 Trends and Developments Union Policy Advocacies and Stance

Historically, the MTUC’s response to labour migration in Malaysia took the conventional anti-immigration line that is typical for trade unions in receiving countries in general. It pressured the government to stop the flow of foreign labour on the grounds that foreign labour depresses wages and weakens incentives to attract Malaysian workers. The argument was that if employers increased the wages and conditions, there would be no need for foreign labour. In 1980, for instance, the MTUC objected to the presence of immigrants in the plantations in Malaysia because, according to a spokesperson, the real reason for labour shortages were the “colonial attitudes” of plantation employers. The MTUC has also been calling for the introduction of the minimum wage but without success (Crinis n.d.)

However, while the MTUC did not support the active recruitment of foreign workers, it could not be silent on the issue of exploitation and abuse once migrants were actually working in the country. The previous president Zainal took the line that by allowing foreign workers to join trade unions, this would stem the influx of foreign workers into the country. He also argued that once foreign workers were employed, they should be accorded the same rights, wages and benefits as Malaysian workers (Crinis n.d.). But apart from rhetorics, nothing concrete happened.

This ambiguous policy stance to migrant labour also becomes clear in the conclusion to a random survey amongst 10 affiliated unions that the MTUC carried out in August 2002 to
ascertain the current labour market situation. In their final statement the MTUC (2002)
agreed with the Minister of Labour that there is no labour shortage in the country. In their
proposal (MTUC 2002), the MTUC stated that Malaysian workers must be given priority;
that dependence on foreign workers must be phased out; and that foreign labour must be
the last resort. The MTUC expressed opposition to the government’s “one-for-one”
proposal (50% of workforce foreign) – this would result in too many foreign workers in
the MTUC’s view. They call for the implementation of a minimum wage which would
help to attract Malaysian workers into certain jobs or sectors. They recommend that the
subcontracting system in construction needs to be addressed and that all construction
workers must be registered. Recruiting agents should be eliminated. And to ensure fair
treatment, the government should stipulate the wages and working conditions for
foreigners. Unfairly treated foreigners must be allowed to follow due process of law to
seek justice.

The MTUC’s position on migrant workers is also expressed in a remark on the sensitive
issues in relations between foreign and national workers by the MTUC’s Indera Putra
Ismail: “Migrant workers have contributed to the rapid development of Malaysia, but the
fact that they represent 12.5% or 20% of the workforce … keeps wages low. In certain
sectors, such as plantations, their massive presence has pushed wages lower, forcing out
Malaysians.” Despite this, he claims the MTUC has adopted a policy of inclusion rather
than exclusion. In addition to reaching out and trying to unionize migrants, they also call
for the practical implementation of sanctions provided for by the law against employers
of illegal migrants, closer cooperation with unions in the origin countries and for equal
treatment and wages (Johannson, 2005:6-7).

The MTUC has, thus, made various policy proposals to the Malaysian governments, such
as the elimination of all employment agents by carrying out all recruitment on a
government-to-government basis instead (without success so far). Also, the MTUC
acknowledges that not all “illegal or undocumented foreign workers” are aware they are
breaching the laws and that drifting into an illegal status is often beyond their control.
Employers are now seen as the major culprits (interview Shahir, July 2005).

The MTUC’s argument is that the failure of employers to settle wages, and the high
numbers of illegals as well as other problems can be avoided if foreign workers were
encouraged to join local trade unions. Around the time of the presidential election last
December, the former vice-president was quoted as saying that the immigration status of

---

5 Their findings were: a) Automobile industry – large companies employ foreign workers through contractors and
pay them less and not regularly (mostly foreign companies; those which are represented by NUTEAIW do not have
foreign workers); b) Metal industry – amongst 110 factories represented, almost 80 had no foreign workers; Japanese
companies have foreign workers; c) Port Klang – mostly local workers; one case of a company where soon after
workers formed a union Zetavest, 30 locals were dismissed and 50 foreigners recruited who were told not to be
permitted to join a union; d) Casio Malaysia – almost 20% of companies have foreign workers who are paid a meager
sum of RM 400 per month; e) Construction industry – more than 265,000 of the 322,000 illegal foreign workers were
from construction sectors; this shows that illegal workers are preferred; MTUC does not see this as a cost factor but a
sign of extreme greed; more than 50% of payment is pocketed by sub-contractors; they often do not pay illegal
workers regularly and tip off the police who promptly arrest them; f) Timber industry – factory closures; g) Petroleum
and chemical industry – closures; h) Textile – jobs lost in Selangor; i) Clubs – union insisted that clubs would find local
workers and one club sought the assistance of a union which submitted a list of locals, all of whom were accepted by
this club.
migrant workers would have come to light much earlier when workers’ applications to join trade unions were processed. “The unions could have taken over the job of ensuring that migrant workers had proper work permits and immigration documents”.

How these rhetorical statements by the MTUC translate into concrete programmes/projects across the trade union movement in Malaysia is yet to be seen.

Individual unions

In contrast to the MTUC, individual unions have been taking action, such as the Timber Union which is trying to infiltrate specific companies to recruit migrants as members. They recently appointed an education officer whose job is to visit dormitories of foreign workers (who are employed at furniture making companies) during after-working hours, to explain to them what the trade union is all about and to get them to sign up as members.

The concrete organising of migrants meets different obstacles according to sector. It appears that the construction sector is particularly hard to organize because of the workers’ high level of mobility. Once a particular project is completed, they move on to the next. In addition, the structure of the construction industry with its complex sub-contracting system renders this sector particularly hard to target. Finding solutions to the huge problem of under- or non-payment of wages poses an enormous challenge to unions. The workers are often not paid during the first few months and hence cannot buy food and other essential items. The payment of wages is tied to funds coming from the top contracting party and is only made upon the completion of a project. Sub-contractors are supposed to have the capital for wages to pay the workers up-front on a regular basis but this is often not the case. Related to this is the fact that workers’ contracts are not as defined in this sector as in others.

Out of desperation, many foreign workers run away from non-paying companies and automatically become illegal as their contracts tie them to a specific company. When they find work with another company, they usually have no papers and no contracts. The whole system is filled with loopholes that work to the detriment of the migrants. Apparently, the conditions in this sector have become worse since the economic crisis in 1997. Before, workers were paid every 15 days; now they are paid only every three months or so. Another issue in the construction sector is that collective bargaining at enterprise level has a lifetime of two years and only covers “regular” workers, but most migrants are not regular but project-tied employees (personal interview, June 2005). Construction is thus a highly complex sector - a fact that is compounded by the entry of migrants.

The furniture industry, in contrast, is the biggest employer of foreign workers in Malaysia. Some companies have a 90%, and occasionally even 100%, foreign workforce. The advantage of this sector as far as trade unions are concerned is that the workers are immobile: they stay in dormitories close to the factories and do not move around. The
above quoted education officer is now trying to recruit all foreign workers at a number of targeted companies to join the timber union. In the case of one company which has a 100% foreign workforce, this goal (of 100% recruitment) has recently been achieved and the first case ever for the recognition of unionization of foreign workers has been filed with this company. This is an experiment whose outcome at the time of writing was unknown. But it is assumed that this company will most likely refuse recognition so that this case will have to go to the next higher instance.

Domestic work is an area so far not taken up by trade unions at all. The MTUC’s new president, however, is aware of developments in Hong Kong where FDWs have formed a union. According to him, migrant worker organising in all sectors, including domestic work, is possible. The practice of doing so is down to political will and resources. The most recent development in this regard is that the MTUC, with the support of the ILO, has launched a special project to organize domestic workers by setting up a Special Committee to assist them, strengthen advocacy, publicize their issues and make representation with authorities. This project is to cover Klang Valley, Johor Bahru and Ipoh. In addition, the MTUC plans to assist domestic workers establish their own association (MTUC 2005).

As the above shows, the MTUC is currently undergoing major changes that might result in the initiation of new strategies to integrate foreign worker issues into mainstream unionism.

6. Cooperation or Competition?: Dynamics of Migrant Labour Work

On the whole, trade unions have been facing conditions in Malaysia which have not been very conducive for mass organization except in isolated instances. Likewise, NGOs have encountered difficulties with political space for their advocacy (Fernandez case; raiding of offices) as well as with obtaining funds from foreign donor agencies. Many of these ‘internal’ problems in addition to others have meant that to date, there has been very little cooperation between these two types of organizations.

6.1 Strengths and Weaknesses/Gaps of Existing Migrant Labour Work

NGO perspective

According to Tenaganita, the strength of trade unions lies in their ability to engage in the mediation process in labour disputes. When a complaint is lodged with the Labour Department for unpaid wages, for instance, trade unions can represent the foreign worker in these negotiations. NGOs cannot do this and in this regard, trade unions have an important role. Another advantage that trade unions have is that they can access work
sites (such as factories) for inspection. This is more difficult for NGOs. They depend on workers coming to them to seek assistance. Furthermore, trade unions have more negotiation power with the government than NGOs.\(^6\) However, in terms of advocacy, NGOs see themselves as stronger. They often have a more global approach to their advocacy (e.g. on WTO issues and connections of problems in Malaysia to the erosion of workers’ rights globally). Also, some companies do not want to have anything to do with trade unions but do not mind NGOs’ involvement. This is another reason why trade unions and NGOs should collaborate more concretely and intensely.

Another issue raised by NGOs is that they feel they do a better job of empowering the workers so that they learn in the process how to help themselves and others. This, however, is an area trade unions should get involved in. Being mass organizations, they could empower workers on a larger scale.

Currently, the strongest collaboration is between Tenaganita and the MTUC. WAO has a loose relationship with the union centre through the MTUC’s Women’s Section. Both are members of the *Joint Action against Violence against Women* (JAG) which does not concern itself with migrant labour per se. Although WAO made headway on FDW related issues and still incorporates these into its work, they would prefer if another NGO existed which would specialize on FDWs only.\(^7\) But such an NGO does not exist.

There is no national coalition of NGOs on migrant labour, hence there are no regular meetings and coordination among NGOs to develop a common strategy. They work together on an ad hoc basis but not in a strategic and long-term manner (interview WAO, June 2005). In fact, there is also a division among NGOs. As a result, NGO cooperation with the MTUC is selective and does not involve the whole range of NGOs.

NGOs are of the opinion that the trade unions’ working style is very different (hierarchical, patriarchal) which renders collaboration with them difficult. Some are worried that MTUC’s new interest in migrant labour on a more pro-active basis might result in the MTUC’s excluding NGOs. NGOs would want the MTUC to develop a strategy to form a coalition with NGOs and thus avoid pretending to ‘possess’ migrant worker activism as its own.

To push for policies and improvement on migrant labour, national leadership is needed. The MTUC could take on this role by opening up a secretariat from which national and transnational networks can be run. More educational work (targeting local as well as foreign workers) also needs to be carried out by trade unions. Workers need to be educated that they, local and foreign, all sit in the same boat in order to create a sense of solidarity. NGOs thus feel that some of the areas they tried to cover in the past should be handled by trade unions to allow NGOs to concentrate fully on other issues.

---

\(^6\) The problem then is: the Ministry of Labour in Malaysia is weak and so is the Human Resource Ministry; they cannot stand up to the Home Ministry and Immigration Bureau, both of which have the final say in migration matters.

\(^7\) There is *Migrant Care* which concerns itself with Indonesian FDWs but although run by a Malaysian from Kuala Lumpur, it is registered in Indonesia and not Malaysia.
Tenaganita would like trade unions to join their campaign to get FDWs recognized as workers. This is what the MTUC has not yet done (although their latest statement proofs otherwise). MTUC should support the Colombo Declaration (at the time of its formulation, the MTUC was still under the old leadership and not interested). The MTUC should also support a unified approach to wages across all the nationality groups of FDWs. As it stands, there is an ethnic stratification, with Filipinos at the top (RM 750), followed by Indonesians and Cambodians who receive RM 380 (the Indonesian government apparently is pushing for RM 450). According to a new bilateral agreement, Sri Lankan FDWs will get RM 500. Tenaganita opposes this and supports the standardization of salaries.

Tenaganita also wants the MTUC to be more actively involved in their campaign on the “Right to Stay” while migrants are waiting for the outcome of a labour or court case without having to pay RM 100 for a bridging permit, as well as the “Right to Work” during such a period.

Trade union perspective

Trade unionists recognize NGOs’ strengths also. For instance, NGOs are seen as good in policy advocacy and conceptualizing migrant labour issues as part of globalization processes. Trade unions could provide more muscle in this regard if they joined hands with NGOs. But as it stands, trade unions are not quite sharp enough yet (interview Shahir, July 2005).

Trade unions, however, are facing a dilemma: their funding comes from local workers, hence they have to prioritize local workers’ concerns and issues. Thus, trade unions cannot give 100% of their time and resources to migrant worker related issues. This is, however, what NGOs can do (focusing on migrant workers only). Unless trade unions obtain external funding, they have difficulties justifying the allocation of resources to foreign worker related issues.

At the same time, more of the above mentioned ‘infiltration’ or recruiting activities currently carried out by the timber union are needed, but trade unions do not usually have the funding to pay for such staff. Also, it has been suggested that trade unionists from the sending countries should be stationed in Malaysia to help with the recruitment of their own nationals, but again funds are needed for the salaries of such officers.

There are also common areas of strength between NGOs and trade unions: they both often have expansive networks within and across borders. As these networks do not necessarily overlap, collaboration between them would allow for the full exploitation of each others’ contacts.

6.2 Models and New Trends in Migrant Work (in-country)
NGOs in Malaysia that have been highly influential in advocating for, and offering services to, migrant workers come from two main backgrounds: women’s rights and human rights. There are no nationality-based NGOs catering to one specific nationality group but rather NGOs take an all-inclusive approach. The reason for there not being any nationality-specific groups has partly got to do with the non-existence of any groups run by foreigners themselves. Also, there is no group which exclusively focuses on FDWs. Unlike in Singapore, there are also no skill training centres.

On the conceptual level, even if the MTUC is not pro-immigration as such, it has begun to follow trade unions in Europe and the US by treating undocumented workers first and foremost as workers to whom protection should be extended as much as to legal migrants and local workers. Its most recent announcement of having launched a Special Committee to assist domestic workers also follows trends elsewhere. But whether the provision of concrete services and advocacy is going to be sustained, and what shape it will take, has yet to be seen.

6.3 Models and New Trends in Migrant Work (cross border/international)

On many pressing issues such as recruitment and contractual issues, trade unions feel that assistance from sending countries is vital. Workers should be informed about unions and their rights before migrating (in the pre-departure phase). Ideally, the workers should also be unionized in their home country before coming to Malaysia.

As a member of ICFTU-APRO, the MTUC takes part in regional meetings and those focusing on migrant worker issues. Also, some of MTUC’s affiliated unions, such as timber, have contacts in the sending countries There is, however, no concrete cooperation/collaboration taking place with trade unions in sending countries.

NGOs working on migrant worker issues in Malaysia have been highly influential (together with Filipino NGOs) in setting up, and engaging with, regional networks. Tenaganita especially has been at the forefront of networking within Asia and of organizing of regional meetings. Cooperation with counterparts in countries of origin is thus a vital part of Tenaganita’s work.

6.4 Role of International Instruments and Platforms

Through their regional networks, many NGOs in Malaysia lobby at the UN and ASEAN level. They are extremely well informed on international law and channels by which to lobby for migrant’s rights (e.g. through the UN Special Rapporteur).
A recent study on the obstacles to the ratification of the 1990 UN Convention (Piper and Iredale 2003), however, has shown the various problem areas which make ratification by the Malaysian government extremely unlikely.

Being a member of the ILO and having taken part in the ILC in 2004 which focused on migrant labour, the MTUC is very much aware of the two ILO conventions relevant to migrant workers (no. 97 and 143) but there is no concrete campaign to pressure the Malaysian government into ratifying. The MTUC is also member of ICFTU-APRO and takes part in regional meetings.
References


Crinis, V. (n.d.), Overcoming Enmity Amongst the Workers? A Critical Examination of the MTUC’s Stance on the Migrant Worker Question in Malaysia, unpublished paper, University of Wollongong.


