



Malaysian Trades Union Congress

Wisma MTUC 10-5, Jalan USJ 9/5T Subang Jaya, 47620, Selangor, Malaysia
MIGRANT RESOURCE CENTRE

Knowledge Sharing Workshop on Good and Promising Practice and Lesson Learned to Promote Decent Work for Domestic Workers and to Eliminate Child Labour in Domestic Work

23 – 25 January, 2018

Santika Primier Hotel, Malang, East Java, Indonesia

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The birth of a movement....

- The first conference of Malayan Trade Union Delegates was called on the 27th – 28th February 1949.
- 160 delegates from 83 of the 165 registered Trade Unions were represented.
- 163 affiliates with 68,814 membership



As of Dec 2016 : 217 Affiliates with 267000 membership

OBJECTIVES

- ☐ To do everything to promote the interest of affiliated organizations, to improve the economic & social conditions of workers and render them assistance.
- ☐ To ensure that policies are developed & action taken to ensure full employment ,to work towards the establishment of a minimum wage a legal maximum working week of 44 hours & to establish training centers & extension of training facilities for workers.
- ☐ To support provisions for legislated Social Security measures to provide protection against sickness, unemployment, old age, injury, invalidity and retiring benefits and promotion of high standards of health, hygiene and welfare in all places of employment and seek adequate compensation for workers disabled by accidents and diseases.



MTUC's Policy & Action to Protect Migrant Workers

- In the last 15 years MTUC has made representation on behalf of migrant workers at National Triparte Forum, on recruitment policy & procedures, minimum wages and working conditions and rights to join Union.
- Since July 2007 with the support of ILO, ACILS and ITUC and FNV, MTUC was able to provide extensive practical assistance to the Migrant / Migrant Domestic Workers in the country-representing them at the labour courts to claim unpaid wages, compliance of conditions stipulated in the employment contract and challenging unfair dismissals.



MTUC's Policy on Migrant Workers

- During the MTUC Biennial Delegates Conference in 1999, the MTUC Convention adopted a resolution to create awareness amongst union leaders and members on the need to organize migrant workers and demand equal treatment for them.
- MTUC affiliates viewed these issues with great concern and felt MTUC should go all out to demand protection for these workers.

Migrant Workers Statistic as at December 2016

STATISTIK PLKS MENGIKUT WARGANEGARA DAN SEKTOR SEHINGGA 31 DISEMBER 2016

BIL	WARGANEGARA	SEKTOR						JUMLAH BESAR
		PRA	PEMBINAAN	PERKILANGAN	PERKHIDMATAN	PERLADANGAN	PERTANIAN	
1	INDONESIA	92,675	206,858	41,196	126,127	213,366	78,265	758,487
2	NEPAL	69	11,609	88,975	287,008	3,810	13,865	405,336
3	BANGLADESH	135	101,530	28,549	91,080	18,220	12,851	252,365
4	MYANMAR	103	17,147	15,096	100,003	1,607	4,536	138,492
5	INDIA	908	9,214	49,425	2,813	19,838	37,786	119,984
6	PAKISTAN	32	26,734	6,274	4,005	6,155	19,545	62,745
7	FILIPINA	36,592	3,489	5,567	4,244	4,372	4,102	58,366
8	VIETNAM	522	3,775	1,440	26,345	56	411	32,549
9	CHINA	106	6,624	5,767	904	23	17	13,441
10	THAILAND	325	597	8,900	329	460	1,763	12,374
11	KEMBOJA	2,195	170	1,020	2,162	181	267	5,995
12	SRI LANKA	895	186	910	3,587	389	231	6,198
13	LAOS	18	1	1	14	1	2	37
JUMLAH		134,575	387,934	253,120	648,621	268,478	173,641	1,866,369

Nota:

PRA - Pembantu Rumah Asing

Sumber: Kementerian Dalam Negeri (KDN)

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Right to Join Union

- MTUC had submitted an application for the registration of an Association on the 8th May 2006 and the application was rejected by the Registrar of Societies on 23rd July 2007 without any reason.
- Subsequently, MTUC had sent a report to the International Labour Organisation (ILO) on Denial of Freedom of Association for Migrant Domestic Workers by Malaysian Government on 10th April 2008. In its letter, MTUC had stated that Malaysian government had ratified Convention 98 on the Rights to Organize and Collective Bargaining. But Government's refusal to allow the migrant domestic workers to form an association to take care of their working conditions is a breach of the provisions of Convention 98.

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Organizing for others migrant worker

- AMESU - Timber Union
- NUPW more than 70 % of members foreign workers;
- MTUC – BWI – GEFONT cooperation
- ILO Triangle Project
- MTUC is going for a nation wide organizing campaign this year to organize migrant workers
- E.g. all migrant members of NUPW are enjoying same terms and conditions of local members now.

MTUC-FNV Mobilizing Action for the Protection of Migrant Domestic Workers (2007-2014)



- MTUC has been able to offer practical help to migrant domestic workers, raise our concerns with Malaysian Government and publicize cases involving abuses, poor working conditions and the absence of proper safeguards.
- Our work among the migrants has given us a clearer picture of what is happening on the ground and have allowed us to gather statistics on abuses and mistreated by their employers, wages and working conditions.
- We submit this data to the government, thanks to which we have been able to obtain some improvements.



MTUC's Efforts to address Migrant Workers issues..

- MTUC is a member of the task force on Migrant workers set up by the Government.
- Is a member of the task force on ASEAN Declaration on the protection and promotion of the rights of migrant workers.
-
- We provide assistance to Migrant Workers by filing cases to labor and civil courts.
- MTUC holds regular meetings with the Minister of Human Resource & Director General of Labor to discuss on the **one paid day off** and other issues pertaining to domestic workers protection.
- Visits to embassies, field visits to the location and work places of domestic workers and extensive interviews and surveys of migrant domestic workers was carried out.
- Conduct survey on wages and working conditions. The purpose of this survey is to strengthen our advocacy with the government and authorities to effectively address the issues. MTUC completed the survey for the last 3 years and submitted the findings to the Minister of Human Resources for appropriate changes to the labor laws in order to introduce proper guidelines and practices.



What the Employment Act spells out for the Domestic Workers:

- In Malaysia, Domestic Workers are not protected by any legislations. In most cases even standard contracts do not exist and where it exist it is often ignored.
 - No limit to their daily or weekly working time.
 - Not entitled to a weekly rest day.
 - No minimum number of public holidays
 - No sick leave or annual leave
 - Any medical attention given depends on the generosity of the employers.

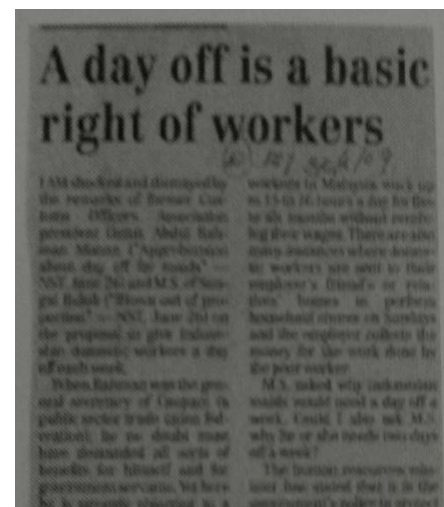


Our task is not over yet, until the Employment Act is amend to include the domestic workers and allow to form an Association!

MTUC is not merely asking for a day off for domestic workers under the Employment Act

BUT

A comprehensive provision for them in the Employment Act, with clearly defined job description which will be covered in a Mandatory Standard Contract



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Good Practices – MTUC experience

- Support from Solidarity Center
- Support of AMMPO-SENTRO, GEFONT
- Working with Government agencies, MOHR, MOHA, Immigration, MAPO, Police,
- Working with Embassies
- The Malaysian Bar Council, Other NGO's,
- Support of MTUC affiliates
- Employers
- Agents for advice (Believers in God)



Remedies

- Partnership Agreement – should be workable
- Government need to increase enforcement
- Provide budget & Training for JTK officers
- Stringent criminal penalties to enforcement officers who force MW's to pay money
- Educate officers of enforcing (ATIP)
- Victim protection has to be available and allow victims to work until case is heard with wages paid
- Greater efforts to educate MW's their rights



Introduction To Labor Migration In Malaysia – Malaysia Law & Policies

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Admission Policy - Recruitment

Direct Recruitment

- ❑ Except for Domestic Workers



Outsourcing

- ❑ 2005 : companies intending to hire less than 50 workers must use the services of Labour Out Sourcing companies.
- ❑ 2011 : there is discussion to phase out recruitment through sourcing companies
- ❑ As of 2016, less than 100 outsourcing companies

Source Country of Migrant Labour

South East Asian

- ❑ Cambodia, Laos, Vietnam, Myanmar, Indonesia, Thailand & Philippines



Central Asia

- ❑ Uzbekistan & Kazakhstan



South Asia

- ❑ Sri Lanka, Nepal, Pakistan & Bangladesh

Work Permit

- Age, Nationality, gender, skills, sectors of occupation and duration of the work permits are stipulated in the work permits.
- Maximum renewal is 5 years
- Restrict a worker to the employers stipulated under the work permit
- The work permits is not transferrable.
- Any worker violating the conditions set in the work permits renders him/her undocumented

Cost : Levy

- The Government imposes a yearly levy paid upon application and renewal of the work permit.

Levy charged for employment of migrant workers by sector and location (MYR)

Sector	Levy (Peninsular)	Levy(Sabah & Sarawak)
Manufacturing	1250	1010
Construction	1250	1010
Plantation	590	590
Agriculture	410	410
Service	1850	1490
Service(Island Resort)	1250	1010

Source : MOHA(2015)

Health Examination

- All Migrant workers (semi skill or unskilled) are required to under go mandatory health screening (Fomema)
- The fee for medical screening
 - ▷ RM180 for male worker
 - ▷ RM190 for female worker.

Insurance Scheme

■ The Workmen Compensation Act 1952

- ▷ Employers are required to insure Migrant workers at annual premium of RM72 for each worker
- ▷ Compensation for death during working hours is RM25,000.
- ▷ Compensation for permanent loss of amenity during or after working hours is RM23, 000.

■ Hospitalisation and Surgical Scheme for foreign workers

- ▷ Premium of RM120 a year.
- ▷ Coverage up to RM10,000.
- ▷ Admission without any payment of deposit .
- ▷ Only need to produce passport.

Laws Applicable To Migrant Workers

EMPLOYMENT ACT 1955

SABAH LABOUR ORDINANCE (SABAH)

SARAWAK LABOUR ORDINANCE (SARAWAK)

WORKMEN COMPENSATION ACT 1952

WAGES COUNCIL ACT 1947

INDUSTRIAL RELATIONS ACT 1967

TRADE UNION ACT 1959

OCCUPATIONAL SAFETY AND HEALTH ACT 1994

CHILDREN AND YOUNG PERSON ACT 1966

WORKERS' MINIMUM STANDARD OF HOUSEING AND AMENITIES ACT 1990



By virtue of
Section 60K of
the Employment
Act 1955 all foreign
workers working under
a valid Temporary Visit
(Employment) Pass
are covered by the
various labour
laws in force

Status of Migrant Worker

- Legal (documented)

- Recruited in proper manner and placed in employment as stated in the work permit.

- Illegal (undocumented)

- Entered the country legally but eventually their work permit has expired or cancelled.
- Entered the country legally but violated the conditions set in the work permits.
- Entered the country illegally and worked without an employment permit
- Refugees
- Stateless persons

MTUC-MRC ILO Project Objective

Supported by



To provide support services to Migrant workers. MRCs centres are established in Northern Region, Central Region & Southern Region of Malaysia

To conduct workshop on organizing migrant workers

To increase migrant workers participation in union activities

To enhance bilateral cooperation with countries of origin

To use evidence based documentation for policy advocacy

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MRC Location in Malaysia



1. Northern Side : Penang
2. Central Side : Kuala Lumpur / Selangor
3. Southern Side : Johor

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MTUC-MRC Activities

Case Management –
Rescue & Conflict
Resolution,
Documentation,
Case Monitoring &
Analysis



Dissemination on
Labour Rights on
Arrest & Detention



Represent Claimant
at Industrial Dispute &
Labour Claims

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MTUC-MRC Activities

Collaboration with
Labour Attaches of
Sending Countries
for Effective Case
Management



Networking with
Local & Sending
Country – Civil
Society /Trade Union
Partners



Training on Labour
Related Laws & Union
Rights

Advocacy For Promotion &
Protection of Migrant Workers

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MTUC-MRC Activities



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MTUC-MRC Activities - Organizing



Case Management : Referral and Intervention



Referral For Case Intervention

Labour Department

- ☐ Filing complaint for investigation on Labour Violation.
- ☐ Filing claims for unpaid wages/overtime/wrongful deduction & dismissal.

Immigration Department

- ☐ Reporting violation pertaining to Immigration Law such as withholding passport/failure of employer to renew work permit
- ☐ Application for visa pending court case and clearance for repatriation.
- ☐ Blacklisting employers and recruitment agents.

Hospital

- ☐ Physical and Sexual Abuse
- ☐ Health related admission
- ☐ Follow up on medical treatment and psychiatric session

Police

- ☐ Lodge first information report on criminal violation and withholding of passport.
- ☐ Intervention for rescue in Labour Trafficking cases
- ☐ Follow up with status of case.

Industrial Relation Department

- ☐ Breach of Contract
- ☐ Collective Bargaining
- ☐ Trade Union Activities

Sending Country Referral

- ☐ Facilitate safe repatriation
- ☐ Follow up
- ☐ Advocacy



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Case Management



Migrant Workers Challenges in Accessing Legal Mechanism

Challenges at work place .

- Dismissal
- Employer may cancel her/his work permit.
- Force to vacate her/his hostel.
- Force repatriation.

Social Challenges

- No place to stay.
- May not have sufficient saving
- Highly dependant on friends for support

Challenges in accessing Legal redress

- Cases takes time as both parties need time to prepare for their cases.
- Workers need assistance in Legal Representation.

Challenges in Claimant's documentation and Immigration Policies.

- Once a work permit is cancelled the worker's status from documented becomes undocumented
- Once undocumented the worker requires a letter from Courts / Embassy/ to legalize his stay pending court case.
- Immigration Practice is to issue a special pass that only allows him to stay for maximum 90 days but cases may take longer than that.
- Immigration Policies do not allow them to seek alternative employment pending the outcome of their cases.
- Cost of Special Pass is RM100 for 30 days.

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MTUC experiences and Challenges in Case Managements

- Most complaints received are related to Employment dispute and documents such as withholding of passport and non-renewal of work permit.
- Migrant workers walk in with multiple complaints. Thus needs multiple interventions
- Most migrant workers fear to complaint as she/he may risk termination and be chased out of their hostels.
- Migrant Workers are also challenged in seeking redress as Immigration Policies do not allow them to stay longer than 90 days.
- Migrant Workers are denied right to work while waiting for the outcome of their cases. Sometimes they have no means of support while waiting for the conclusion of their cases. Thus they resolve to early settlement by accepting a lesser claims

MTUC experiences and Challenges in Organising workers for union recognition

- Migrant workers are often threaten not to take part or involve in Organizing activities.
- Some employment contract prohibits migrant workers to be a member of Union or Association. Though this is in conflict of Labour Laws, but workers still fear losing their work.
- Migrant workers are only allowed to be a member but are not allowed to hold position.
- Cases have shown that workers who have participated in Union activities have been dismissed and repatriated within 24 hours, preventing them from seeking redress for reinstatement.
- Out sourcing services weakens Union Activities.

Areas of Collaboration with Labour Attaches

MTUC

Case Management

- Representation for Labours claims and reinstatement
- Safe Repatriation
- Identifying force labour practices and rescue of victims

Sharing information on government policies and practices.

Labour Attaches

Case Management

Safe Repatriation

Verification of Nationality

Issues of Travel Documents

Translation In court proceedings

Shelter (Indonesia and Philippines)

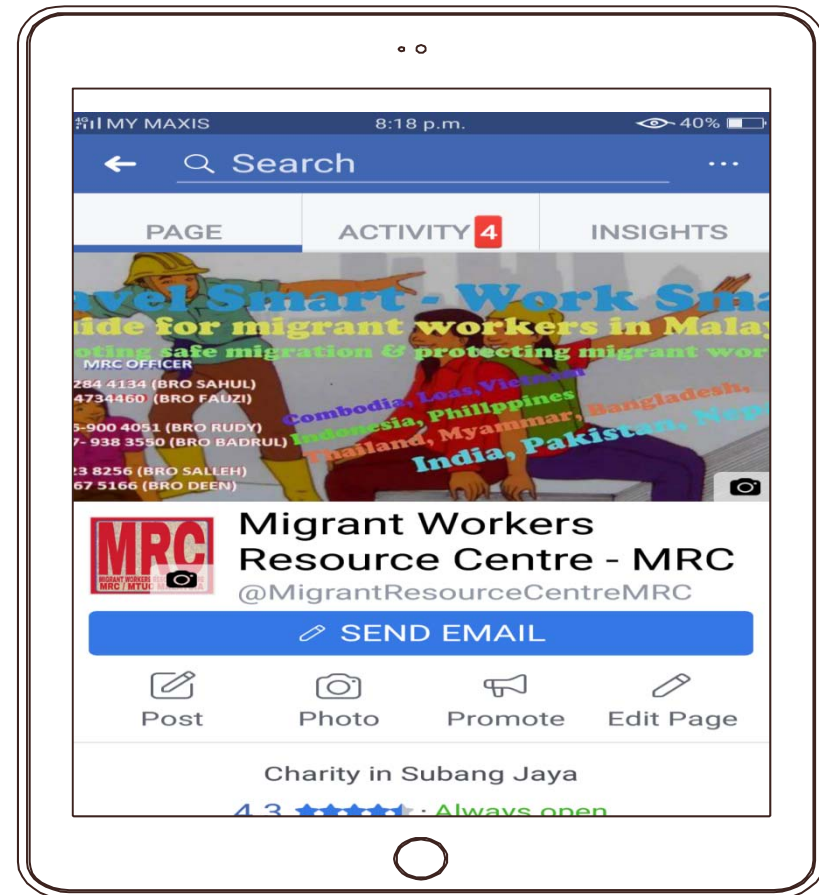


“Migrants are an asset to every country where they bring their labour. Let us give them the dignity they Deserves as human beings and the respect they deserve as workers”





THANKS!



Any questions?

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