

A decorative graphic consisting of a grid of dots in various shades of gray and red, arranged in a pattern that suggests a world map or a network of connections.

Trade Unions in Transformation

Organizing Migrant Domestic Workers in Malaysia: Ways out of Precarity

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Februar 2018

- The Malaysian Trades Union Congress (MTUC) has made improvements to organise the growing number of migrant domestic workers. Despite manifold challenges, the MTUC was successful in pushing for labour policy reforms which improve the working conditions of migrant domestic workers.
- The first successes of the Malaysian trade union movement demonstrate the relevance of collaboration with NGOs and international trade union federations. It furthermore sheds light on how trade unions can influence policy decisions on behalf of precarious workers particularly by making use of tripartite forums.
- Trade Unions in Transformation is an FES project that identifies unions' power resources and capabilities that contribute to successful trade union action. This study features among two dozen case studies from around the world demonstrating how unions have transformed to get stronger.



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Abstract

In 2005, the Malaysian Trades Union Congress (MTUC) embarked on an ambitious agenda to represent and organize domestic workers, despite them being legally and culturally considered non-workers and servants. Due to the exclusion of domestic workers from the local industrial relations and the non-traditional nature of domestic work, the formation of a functioning Domestic Workers' Association has yet to be fully achieved. The registration of the association has also been twice rejected by the State within the span of ten years. In response, MTUC focused on reforming the labour laws that excludes and restricts domestic workers to organize as workers by mobilizing its institutional and coalitional power resources. Successes were made in labour policy reforms such as allowing days off for domestic workers, depositing wages through the banks and the prohibition of the withholding of passports by employers. Internal organizational reforms were also undertaken to address the different precarities confronted by the mostly female and migrant domestic workers in Malaysia and to strengthen the capability of the union to build associational power. Based on field research and documentary analysis, this case study advances the strategic importance of understanding the dimensions of precarity specific to domestic workers; the organizational reforms MTUC underwent in addressing domestic worker issues; and how far the MTUC can reform and strategize to develop new power resources and capabilities in organizing domestic workers in Malaysia.

1. Introduction

Domestic work is one of the service sectors in Malaysia where the majority of workers are migrants: there are more than 150,000 documented, mostly female migrant domestic workers (MDWs) in the country, with the undocumented number estimated at around the same. However, organizing migrant workers into trade unions is difficult enough given the temporary and transnational nature of their employment based on temporary work contracts and work permits tied to one employer. Further difficulties for union organization arise given that Malaysia's labour laws still refer to domestic workers as »domestic servants« and have no clear policies on their conditions of work. Essentially, domestic work is yet to be recognized as work and domestic workers as workers. Despite the uphill battle, the Malaysian Trades Union Congress (MTUC) embarked on a three-pronged strategy comprising legislative reform, advocacy and an organizing agenda to expand its representation of migrant and domestic workers in Malaysia. MTUC has had to confront organizational challenges, particularly since it has structurally conditioned to organize workers in factory settings with formal employment relationships and representation through collective bargaining. With these internal and external challenges, the MTUC needed to discover, utilize and deploy different capabilities and workers' power resources in successfully meeting its organizing goals.

Given the constraints on forming trade unions for domestic workers, MTUC opted to focus in reforming labour laws that restrict and exclude domestic workers from organizing as workers. The MTUC first attempted to register a domestic workers' association in 2007 but it was immediately rejected without clear grounds. In 2008, MTUC collaborated with migrant, women's and human rights NGOs to push for the right of domestic workers for one day off per week, which has been denied for many years. The labour policy reform campaign was successful when in 2009 the Malaysian government issued a labour policy to allow domestic workers a weekly day off as well as ordering the employers to deposit their wages through the banks. Hoping to replicate the Hong Kong experience where MDWs organize during their days off, MTUC again decided to organize a domestic workers' association. In August 10, 2014, the MTUC, in collaboration with the human rights NGO Tenaganita, launched the Domestic Workers' Association once again. The association was formed to organize and represent both local and majority migrant workers from Indonesia, the Philippines, Cambodia and Nepal, coming to Malaysia. However, the road towards the recognition domestic workers in Malaysia continues to be uneasy.

This case study relates how MTUC embarked on an advocacy, organizing and legislative reform agenda for domestic workers; the obstacles encountered; the losses and small victories; and the changes that emerged

both within and outside the union. This narrative focuses on the transformations MTUC underwent in terms of how strategies and capabilities were developed in the process of expanding its representation for migrants and domestic workers. Specifically, it follows the highs and lows in MTUC's journey of building associational power through the formation of the Domestic Workers' Association and the internal and external changes that took place along the process. Finally, this study also discusses how MTUC relates with other trade unions and NGOs in Malaysia and the role of external actors (e.g. trade unions from sending countries) play in the transformation of the MTUC domestic workers organizing agenda.

The discussion in this paper follows three core sections. The first part outlines the context and conditions of migrant domestic workers and the labour relations regime in Malaysia. This section not only presents the precarious conditions but also reveals the interlocking dimensions of precarity for MDWs brought about by the nature of domestic work; the status of temporary guest workers; and the exclusionary labour relations in Malaysia. The second section discusses domestic workers' project of the MTUC and how it has fared in the last ten years, tackling how MTUC implemented their domestic workers project, its outcomes and lessons. The third section seeks to analyze the power resources MTUC utilized in its domestic workers project and the capabilities required, deployed, or reanimated. Data was collected through document analysis and empirical field research which included interviews and field visits.

2. Dimensions of Precarity for Migrant Domestic Workers (MDWs) and the Labour Relations Regime in Malaysia

2.1 The Terrain of the »Maid Trade« in Malaysia

Malaysia is the highest recipient of migrant workers in Southeast Asia. As Malaysia's economy took off in the 1980s, economic development spurred the demand for migrant workers. Migrant labour was officially estimated at more than 2 million in 2014 (Ministry of Home Affairs 2016), but an additional 1.9 million migrant workers are estimated to be working undocumented in Malaysia (Huling 2012, 642). Migrant workers have become integral to the Malaysian economy, comprising 20 per-

cent of the total workforce (Robertson 2009, 2050:1) and 90 percent of the workforce in plantation agriculture, construction and domestic service. In domestic service, local domestic workers only number a few thousands. However, the number of migrant domestic workers (MDWs) has spiraled from 70,000 in the 1990s (Gurowitz 2000, Chin 1997) to 156,000 in 2014, represented in the number of officially registered »Maids« in the country (Ministry of Home Affairs 2016). However, trade unions and NGOs argue that the figure could be close to 250,000 MDWs given the high incidence of undocumented domestic work in Malaysia. The »Maid Trade« in Malaysia is a lucrative and growing industry involving various stakeholders such as the recruitment agencies; the immigration police and officers; the host and sending governments; and the migrant domestic workers themselves. Costs associated with hiring a domestic worker run high due to high levels of demand estimated at around 30,000 domestic workers per year and a fluctuating supply of MDWs. Hiring a migrant domestic worker can cost an employer RM 8,000–15,000 (ca. 2,000–3,000 Euro) and the average monthly salaries would range from RM 600–1,200 (ca. 150–400 Euro). The wage rates for domestic workers in Malaysia are mostly determined by the market, the worker's nationality and recruitment agency in agreement with the employer. Despite the recently adopted minimum wage policy in Malaysia, domestic workers remain effectively excluded from coverage.

For years, various local and international human rights NGOs in Malaysia have sought to expose the deplorable conditions for migrant workers and the inhumane treatment of the undocumented. Recently, Malaysia has been the subject of particular scrutiny after the United States downgraded Malaysia into the lowest 3rd Tier in the 2014 US Trafficking in Persons Report (TIP)¹. The US TIP references the increased reporting of thousands of foreign workers trapped in bonded or slave-like working conditions in Malaysia's growing construction, agriculture and domestic service sectors. Reports of abuse and rights violations of migrant workers and MDWs

1. The US TIP Report is an annual report from the US State Department that assess incidence of trafficking and bonded labour around the world. Countries are evaluated along a three-Tier system, the highest being Tier 1 (complying laws against trafficking), Tier 2 (on watch list due to incidence of trafficking and no effort to address the problem), and Tier 3 (not complying with anti-trafficking laws and no intention to do so). Malaysia has been in placed either in Tier 2 or 3 in the last 5 years.

have soured diplomatic relations between Malaysia and sending countries such as Indonesia, Cambodia and the Philippines. Due to high incidence of extreme physical and sexual violence towards MDWs, Indonesia and Cambodia has previously banned sending domestic workers to Malaysia in 2009 and 2011 respectively. Today, Indonesia and Cambodia discourage their domestic workers from working in Malaysia even though the bans have been lifted.

The working conditions of MDWs in Malaysia alternate based upon different levels of precariousness. Based on documentary and field research, work conditions besetting MDWs in Malaysia can be grouped around labour rights, immigration, human rights, humanitarian and welfare/social issues. Issues referring to labour rights issues include denial of rest days; unpaid wages, long working hours; illegal wage deductions, and exclusion from social protection. Those linked to immigration status include the withholding of passports; work permits tied to one employer; and criminalization upon break of contract. Different forms of physical, psychological, verbal and sexual abuse fall under human rights issues, whilst instances of food being withheld, workers being locked inside the house, and lack of health care provision fall under humanitarian issues. MDWs also report the use of cellphones being prohibited, preventing them from communicating with their families, and the suppression of their religious and/or cultural beliefs, which can be categorized under welfare

and social issues. Based on these issues, trade unions, NGOs and other civil society groups address domestic worker issues in different forms through policy reform advocacies, organizing, single-issue campaigns, service provision e.g. shelters, rescue, and case management, among others.

2.2 Dimensions of Precarity²

The precarious conditions of migrant domestic workers are situated within their identities as mostly women; their status as temporary migrant workers; and the nature of domestic work itself, which remains devalued and considered non-work in Malaysia. The precarious conditions MDWs experience emanate from three dimensions of precarity, namely work-based, status-based, and national-based precarities. In turn, these dimensions engender and reproduce the *disempowerment, disposability* and *exclusion* of migrant domestic workers in Malaysia. They are reproduced through unequal power relations within the household due to the devaluation of domestic work; the deportability of migrant workers; and the continued non-recognition of domestic work as work in Malaysia.

2. This analysis is based on the empirical data and theoretical frameworks in my PhD dissertation relating to the role of trade unions and NGOs in domestic workers' organizing in Malaysia. This has been further developed focusing on the linkage of these dimensions towards an analytical framework included in my thesis.

Table 1: MDW issues and forms of violations in Malaysia

Issues	Forms of violations
Labour rights issues	denial of rest days; unpaid wages; long work hours; illegal deductions on salaries; bad working conditions; maltreatment of employers; exclusion from labour laws and benefits; etc.
Immigration status	Withholding of passports; work permit based on one employer, one contract; criminalization of status upon breaking employment contract or running away from employers.
Human rights issues	Rape and torture, other physical, psychological, verbal abuse and gender violence.
Humanitarian issues	Food withheld; locked inside the house; no health insurance or benefit.
Welfare and social issues	Prohibited to communicate with family, outside world; suppress religious or cultural practices.

Work-based precarities refer to the contested notions on the nature of domestic work as reproductive work, widely considered as non-work and bound up with the social construction that women are born to it. Gender inequality is situated at the core of the devaluation of domestic work and invisibility of reproductive work under capitalist development (see Baker and Gill 2003). However, the high demand for paid domestic work has expanded the debate whether domestic work is »work like any other« or »work like no other« (see Smith 2012). The non-recognition of domestic work, paid and unpaid, reproduces the invisibility and disempowerment of the mostly women in the domestic service or »care« work industry.

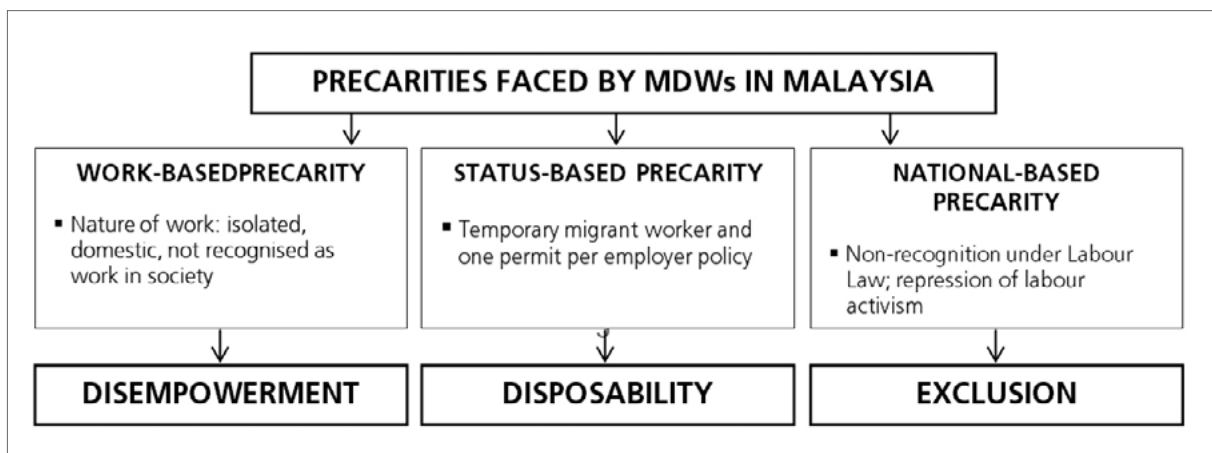
In reference to *status-based precarity*, the temporary nature of migrant or guest worker programs heightens the deportability of the workers, who are thereby increasingly burdened with what can be described as hyper-precarious terms of work under the current global neoliberal order (see Ferguson and McNally 2014). Temporary guest worker programs in Malaysia, as well as in Taiwan and Singapore, implement the »one employer, one work permit« policy. Domestic workers are often constrained in legally challenging unfair working conditions because their permits to stay can be revoked by the employer at any time, rendering them vulnerable to arrests and prosecution. This policy further commodifies domestic workers as the care work industry becomes increasingly marketized, exemplified by the privatized »maid trade« sectors in many Asian countries.

The *national-based precarity* dimension pertains to the exclusion of domestic workers in Malaysian labour laws and regulations because domestic work is still considered as »non-work« and workers as »domestic servants«. This dimension is expressed through the restrictive and exclusive policies under the Malaysian labour control regime excluding domestic workers from labour regulations, rights and social protection. These three dimensions of precarity intersect and offer the possibility of a multi-dimensional analysis on the conditions of MDWs in Malaysia. Clarifying the sources of precarities of MDWs through a multi-dimensional framework is significant to inform the actions and programs of trade unions and NGOs for MDWs in Malaysia.

2.3 The Labour Relations Regime in Malaysia

To understand the spaces and constraints for trade unions to deploy workers' power resources to address the issues domestic workers, one must naturally understand the contribution of the constitution and status of the Malaysian labour relations regime itself. Malaysia embarked on a state-led, export-oriented industrialization strategy in the post-war period, resulting in high growth rates and rising incomes. In turn, the increasing participation of the Malaysian state in the economy meant it exercised increasing control over the labour market; the country's labour relations; and the trade union movement. Whilst labour laws are in place that provide for workers' rights in the formal economic sectors, the State

Figure 1: Dimensions of precarity



Source: Own analysis based on theoretical frames and primary data from field research

intervenes significantly in the Malaysian system of industrial relations (Kuruville 1995; Aminuddin 2009). During the intensive industrialization process which began in the 1970s, labour control was seen as essential to be able to offer a cheap and docile workforce. In the drive towards high growth, trade unions were allowed to exist but trade union rights and freedoms were restricted, rather than being actively built upon (Kaur 2004).

The legislative foundations for Malaysia's industrial relations can be drawn from the Employment Act of 1955; the Trade Unions Ordinance of 1959; and the Industrial Relations Act of 1967. The legal conditions for all workers, local or foreign are provided for in the Employment Act, which includes protection of wages, 48-hour work week, overtime, rest, maternity leaves, sick leave, termination and redundancy benefits (Kaur 2004). This law, however, does not provide for minimum wages or protection of workers from unfair dismissal and still excludes domestic workers (Kaur 2004). In 2013, Malaysia implemented its first minimum wage policy, setting the rate at about RM900/month (approx. 195 Euro), but explicitly excluded all migrant workers in its coverage. A revised minimum wage order of 2016 (MWO 2016), implemented on the 1st of July that year, covers all workers in the private sector *except* domestic workers. In a statement to the Malay news media, Human Resources Minister Datuk Seri Richard Riot said »the order would involve all employees in the private sector, regardless of the number of employees they have, except domestic helpers (maids)« (see The Malay Mail Online, 2 May 2016).

The Trade Unions Ordinance allows workers, including migrant workers, to form and join trade unions in enterprises with a minimum of seven members. As of July 2016, the estimate of trade union membership in Malaysia was around 900,000 out of a 14-million-strong labour force, which places trade union density at around 6.3 percent (Interview, MTUC Director for Education Karupiah Somasundram, 13 September 2016 Kuala Lumpur). Whilst the Trade Union Laws provides spaces for labour representation, the Industrial Relations Law hampers the union's ability to build *associational power*³ by allowing employers the power to veto union registration and recognition (Kuruville 1995). Trade unions

3. *Associational power* refers to »the various forms of power that result from the formation of collective organizations of workers« (Wright 2000, 962).

are also restricted in their remit to organizing workers only within their states, workplace and enterprise, encouraging fragmentation and weakening of trade union structural leverage.

To systematically weaken the trade unions' *structural power*⁴ on the shop floor, the Trade Unions Department, under the Ministry of Human Resources, has had its powers broadened to conduct compulsory arbitration of labour disputes and thereby avoid strike action. Trade unions can negotiate on wages and benefits, but not on job changes and dismissals, rendering many unfair labour practices non-strikeable issues (Kaur 2004). Trade unions can file labour complaints, but the Trade Unions Department has the final say whether the issues are for arbitration, mediation or can be pursued in the labour courts. The potential to develop *coalitional and discursive power*⁵ is likewise structurally discouraged through the prohibition of trade unions to participate in political issues by disallowing them to spend money to mobilize members for anything related to political events.

The Malaysia Trades Union Congress' (MTUC) *institutional power*⁶ stems from the fact that it is the only officially recognized labour center in Malaysia which has a seat in the National Industrial Tribunal, a tripartite body consisting of labour, employers and the government. Whilst the MTUC has around 250 affiliate unions and around 500,000 members, MTUC Education Director Soma estimated that only just over 100,000 union members are dues-paying. The MTUC has been partic-

4. *Structural power*, referring mainly to the location of workers in the economic system, has two sub-types namely: (a) *marketplace bargaining power*, that »results directly from tight labour markets«; and (b) *workplace bargaining power*, that which »results from the strategic location of a particular group of workers within a key industrial sector«. Marketplace bargaining power is reflected when workers possess scarce skills, low unemployment and »the ability of workers to pull out of the labour market entirely and survive on nonwage sources income« (Silver 2003). Workplace bargaining power refers to power resulting from workers' location in the production process to be able to paralyze the production process such as in assembly lines with »just-in-time« delivery systems (Silver 2003, 13; Wright 2000).

5. *Societal power* includes the coalitional and discursive power where the avenues of protest are through public mobilization and influencing public discourse. Trade unions are acting as social movements influencing discourse through normative values (Webster 2015; Schmalz, Stefan 2014). *Coalitional power* refers to engaging other social movements and trade unions by forging alliances and coalitions to strengthen positions on issues (Frege, et al. 2004).

6. *Institutional power* or the Jena approach expanded labour power sources to take into account the organizational power of trade unions that were able to institutionalize social compromises in the past and are able to »stipulate them for future economic cycles, as well as for times of altered societal power relations, sometimes even establishing them by law« (Dörre, Holst, and Nachtwey 2009, 37).

ularly affected by decreasing union membership; low collection of union dues, amounting to only RM1 per worker per year; and the implications of global trade agreements on Malaysian labour law (Interview, MTUC Secretary-General Gopal Kishanam and Education Director Karupiah Somasundram, 13 September 2016 Kuala Lumpur). As the officially recognized labour center, the MTUC has largely tended to try to strengthen its voice within the national tripartite council by pushing policy reforms to broaden representation of migrant workers, as well as to amend the Employment, Trade Unions and Industrial Relations Acts. The MTUC is also spreading its organizing wings in construction, agriculture and domestic service through strategic alliances with international trade unions, global union federations and human rights/migrant NGOs.

3. The MTUC and Its Domestic Workers Organizing Project

Through a collaborative project with the International Labour Organization (ILO), the MTUC embarked on domestic workers' organizing and labour policy reform agenda in 2005. The MTUC then formed a Domestic Workers Desk which provided an all-female staff to coordinate the activities and programs of the project. Among the component programs of the Domestic Workers Project were advocacy for labour policy reforms; campaigns on domestic workers' issues; and organizing. The MTUC leadership concentrated on labour policy reforms for domestic workers within the tripartite mechanism, using institutional leverage complemented by coalitional and discursive power resources drawn from collaboration with NGOs. Learning from the experience in Hong Kong where MDWs organized during their days off, the MTUC pushed for the »day off« policy in coalition with NGOs and achieved the policy change in 2009.

The many obstacles in registering a domestic workers' association serve to limit the MTUC's associational power resource, and so it has been prioritizing the campaign to amend the Employment Act to recognize domestic workers using its institutional leverage. The formation of an association was intended to complement the policy reform advocacies and representation of the MTUC. The MTUC has already attempted twice to register a Domestic Workers' Association (DWA). The first attempt in 2007 was soundly rejected by the ROS (Registry of So-

cieties⁷), the latter being rejected a year after it was undertaken in August 2014. As with the first application to register at the ROS, no reason was given. In the official web portal of the ROS, it is clearly stated that voluntary or non-profit organizations and clubs formed for mutual support must register with the department, yet the portal does not disclose information on the criteria for approval or rejection of an application. The domestic workers' project continued until recently through the support of labour organizations such as the FNV (Netherlands Trade Union Federation) and ITUC (International Trade Union Confederation), yet the project ended in 2015 and currently the Domestic Workers Desk has ceased operations without a workable staff. In the meantime, the MTUC Women's Committee has assumed responsibility for the domestic workers' program within the union (Interview, MTUC Secretary-General Gopal Kishanam, 13 September 2016 Kuala Lumpur).

3.1 Factors and Changes Leading to Domestic Worker Organizing in the MTUC

The MTUC's decision to represent migrant and domestic workers represented a major shift from its traditional labour agenda focused mainly towards what had been viewed as the archetypal worker: male, Malay, and in a formal employment relationship. Changes in the trajectory of the MTUC to represent the so-called »informal« or non-traditional workers could be attributed to the following factors: a change of mindset among Malaysian trade unionists; the change of leadership within the union structure; crises in membership coverage; the search for new relevance; new project or funding opportunities; and international or transnational pressures, such as the US Trafficking in Persons Reports downgrading Malaysia. Whilst initially, the MTUC started the domestic workers' organizing through an ILO project agreement in 2005, the program ushered in changes within the union's structures and program objectives. Institutionally and structurally, the MTUC eventually integrated the domestic workers agenda within its program objectives together with its migrant workers program. The changing mindset here refers to the broadening of

7. The Registrar of Societies of Malaysia is under the Ministry of Interior tasked to »(...) administer and enforce the Societies Act 1966, Societies Regulations 1984 and policies pertaining to societies; control and supervise societies so as not to become incompatible with peace, welfare, security, public order, decorum or morality of Malaysia (...)« (see <http://www.ros.gov.my/index.php/en/soalan-lazim>).

the MTUC's concept of the worker from the established archetype of a formal sector wage earner. Another misconception being addressed in this project concerns the prevalent view that migrant labour is a threat to local jobs due to increased competition on the labour market. Even today, vestiges of these ideas remain entrenched in many sections of society, such as among local politicians and even within the labour movement, but are gradually being tempered within the MTUC due to influence from and exposure to the international trade union movement. Intending to remain relevant in the changing times and to address issues of the precarious workers, the MTUC recognized the need to train their eye to the so-called emerging *new proletariat* including women, migrants, and workers in informal employment.

Likewise, the changing mindset emanates from pressures for the MTUC to reanimate itself given the changing national and global political-economy and social contexts. Reanimating the organization entails increasing membership and strengthening organizational structures to be able to confront issues beyond their comfort zone such as increasing contractualization, outsourcing, and migrant labour. On these fronts, the MTUC strives to adjust its organizational structures by creating specific desks for migrant and domestic workers; tackles implications of globalization on so-called »knowledge workers« in the IT and call center sectors; and internal discussions on dues-payment. However, financial independence remains a serious organizational challenge for the MTUC to overcome. In the last few years, the MTUC has also actively pursued coalitional politics with other trade unions in Asia; played a leadership role in the Asean Trade Union Council (ASETUC); and resolved its tensions with some NGOs in Malaysia.

3.2 Gains and Small Victories through Institutional and Coalitional Power Sources

Based on interviews with key informants from the MTUC, MLC-UNI⁸, and NGOs during previous field re-

search in 2013 and 2014, there were gains and small victories leading to the organization and representation of domestic workers. In coalition with several NGOs, the MTUC Domestic Workers Desk initiated campaign advocacy projects to pressure the government both inside and outside the tripartite mechanism to change the labour laws excluding domestic workers. Through these issue-based coalitions and cooperation with other civil society groups, particularly important successes include case representations; the weekly day off labour policy order; special permits to remain for migrants with pending labour cases; and the MTUC's formal submission of legislative amendments to the Employment Act of Malaysia. In building and maintaining links with NGOs and international trade unions, the MTUC maximizes its representation to the government in pushing labour policy reforms, and lends its expertise in handling cases in the labour courts. The concrete benefit it gains from NGOs such as Tenaganita include the latter's public campaigns against the Malaysian state regarding its inaction against human rights violations by highlighting the abused and exploitative conditions of migrants and domestic workers in Malaysia. Tenaganita likewise leads the public campaign and discourse on »Domestic Work is Work«, an attempt to frame the discourse on abuses of domestic work beyond labour reforms but also within the human rights and political-social framework.

As early as 2008, Tenaganita⁹ and the MTUC established a working relationship when Glorene Das Amala, then program coordinator and currently the Executive Director of Tenaganita, asked Khalid Atan, then Secretary-General of the Timber Employees Union (TEU), to take on a case of a migrant worker, which ultimately was a success for the MTUC. Khalid would later become the President of the MTUC in 2011 and continue the working relations with Tenaganita in forming and launching the Domestic Workers' Association in 2014. The MTUC continues to represent labour cases referred by Tenaganita and other NGOs in the labour courts, such as those relating to the non-payment of workers for migrant workers, its expertise in case management becoming an asset in representing MDWs.

8. The UNI-affiliated Malaysia Labour Centre (UNI-MLC) is the second largest national trade union formed in 2003–2005 among trade unions affiliated to the Union Network International (UNI), a global union federation (GUF) in the services sector. Presently, UNI-MLC has about 75 local unions and claims a union membership of about 300,000 in the media, graphical and packaging, banking, commerce and retail sectors. UNI Malaysia Labour Centre locates itself as an alternative and more independent national trade union focused on organizing workers in the services (i.e. communications, media) and manufacturing sectors as well as in the electronics, the sectors increasingly populated by migrant workers.

9. Tenaganita is a human rights NGO. In 1995, it directly engaged the government on migrant worker issues in Malaysia through an investigative report of dehumanized conditions of migrant workers in detention centers. The executive director at that time, Irene Fernandez, was arrested and sued by the government.

The MTUC's legal representation of migrant workers has resulted in a substantive benefit for migrant domestic workers, especially those with pending labour complaints. In the past, any migrant worker who sought to complain of unpaid wages or unfair labour practices against their employers would de facto terminate their employment contract. By law under »one-employer, one-work permit« policy, migrant workers could be immediately arrested and deported by immigration officials, even if they had pending labour cases. Through its collaboration with the BWI (Building and Woodworkers International) and the Malaysian Bar Council, the MTUC succeeded in a case allowing migrant workers to stay in Malaysia while their cases are being heard by paying RM100 per day of stay. This ruling provided the precedent for MDWs to have the right to remain in Malaysia while their labour cases are being heard, although the high costs associated with staying in Malaysia without income for these precarious migrant workers limit the positive impacts of this ruling somewhat.

An important policy reform that the MTUC was instrumental in promoting involves the labour policy orders issued in 2009 on the right to »one day off per week« for domestic workers and the regulation for their wages to be deposited into banks. The MTUC had pushed the »day off« policy order within the national tripartite structure, and is continuing to do so until this labor policy order becomes law. This policy change is part of the comprehensive amendments to the Employment Act currently being negotiated by the MTUC through the tripartite mechanism. Despite reports of non-enforcement of the »day off« policy due to its conversion into a »paid day off«¹⁰, employers so far largely comply with the order to pay domestic workers' wages through the banks. However, more often than not employers open joint bank accounts with their domestic workers, thereby still controlling their wages and limiting the effectiveness of this reform. Furthermore, the MTUC has also consistently campaigned within the government to address the rampant practice of employers confiscating the passports of their migrant workers, a particular problem for domestic workers. In 2014, the Malaysian government issued a strong public statement in 2014 that withholding of passports is illegal and employers found violating will face steep legal sanctions (Chin 2014, The Star Online).

10. Employers offer to pay their domestic workers for not taking the »day-off« but MTUC and NGOs contend that this defeats the purpose of providing rest for DWs.

The MTUC, in collaboration with international and local trade unions and NGOs, has consistently invoked the US Trafficking in Persons Report (US TIP) and the Passport Act of 196611 in its dealings with the government to call for more concerted action to halt the practice of passport confiscation.

The inclusion of domestic workers' rights and benefits in the MTUC's legislative proposals to amend Malaysia's labour laws can be considered a substantive gain given its historic lack of involvement concerning migrant workers' issues and even opposition to them being addressed. Using its institutional power, the MTUC is presently negotiating within the tripartite mechanism to recognize domestic workers as full workers through amendments on the core labour laws in the country, as well as engaging in a wider campaign in which societal power resources are more explicitly utilized. The first step in opening the remit for organizing domestic workers and building the MTUC's associational power in this sector was the aforementioned reform on days off, but there remained much to do with regarding to building new capabilities.

3.3 Building Associational Power: Finding and Developing New Capabilities in Organizing MDWs

At the outset of the domestic workers organizing project, the MTUC lacked expertise on migration and domestic service issues as well as lacking skilled organizers familiar with the conditions of domestic workers. The Domestic Workers Desk relied primarily from the expertise of non-government organizations involved in these issues during this period, particularly those of Tenaganita. A female member of staff from the MTUC handled the Desk's main programs and, together with other civil society groups, coordinated its campaign activities, policy reform advocacy, and awareness-raising events. Later, the Desk collaborated with self-organized Filipino migrant workers' organizations, religious groups, Malay professional civil society groups, as well as the embassies of sending countries on their programs relating to migrant domestic workers. The Desk would conduct training, advocacy campaigns with these groups, but never independently.

11. This law states that no other person must hold another person's identity documents.

Internally, the MTUC decided to set up a Migration Desk under its Education Department in 2008, a few years after the Domestic Workers' Desk was developed (Interview, MTUC Director for Education Karupiah Somasundram, 13 September 2016 Kuala Lumpur). This restructuring was meant to meet the growing issues of migrant workers, but also in part address the need to develop expertise on issues relating to migration and MDWs. While the two desks functioned independently of each other, there was palpable symbiotic relationship between the two programs tied by similar concerns. Within the MTUC, the Education Department as well as the Migration and Domestic Workers Desks provided the anchor for migrant workers' concerns gaining more institutional recognition. The creation and coordination of the two Desks with the Education Department expressed flexibility and an openness to reform traditional organizational structures within the union. The support of the leadership in this period was crucial to realize these internal reforms.

Within the MTUC, the leadership plays a crucial intermediating role in building consensus among the union ranks. On the one hand, the hierarchical and leadership-oriented structure of the MTUC restricts the articulation of different voices and internal differences, but on the other, the MTUC maintains faster transmission of programs and the executive power of the trade union leadership. Due to this pre-existing internal trade union culture, elections to leadership positions in the MTUC are highly contested¹². The leadership of the recently deceased Khalid Atan¹³, formerly president and secretary-general of the Timber Workers' Union, manifested resurgence in the agenda of organizing domestic workers. The Domestic Workers Desk did not initially enjoy widespread support from the leadership, merely considered as a concession to a project that can bring funds to the union. During Khalid's term, he rallied internal support for the domestic workers, even personally presiding over the inauguration of the Domestic Workers Association in 2014. Khalid was the MTUC president from 2011 until 2016. He lent his position and power within the tripartite mechanism and outside to speak about the plight of migrant domestic workers. During his tenure,

the MTUC became more active in organizing migrant workers in the agriculture, forestry and construction sectors particularly in coalition with the BWI. Khalid was instrumental in forming the Nepalese Migrant Workers Union in Malaysia, which affiliated to the MTUC in Malaysia and the Nepalese trade union center GEFONT at the same time. This cross-border coalition and collaboration was intended to be replicated with the migrant domestic workers in Malaysia.

When interviewed in 2014, Khalid was optimistic that the DWA (Domestic Workers Association) registration would be approved and cited the 2014 US Trafficking in Persons Report (US TIP) as a factor for the government to allow the registration of the domestic workers organization. Conducted by the US State Department, the TIP annual report concerns deceitful and coerced recruitment of domestic workers to Malaysia. Through the Report, civil society groups in Malaysia, including trade unions, use transnational issues to carry broader labour and human rights issues in challenging political constraints within the country. The continuation of Khalid Atan's focus on domestic and migrant workers largely depends on whether the officials elected in 2016 will continue to do so, as his Secretary-General, Gopal Kishanam, and acting President, YB Abdullah Sani bin Abdul Hamid, sought reelection as of November 2016.

The MTUC's involvement with domestic workers' issues within the union and outward openness to coalesce with other civil society groups has contributed to the development of its intermediating capability both internally and externally. Outside the union, the MTUC has always been regarded as an important actor due to its institutional leverage as part of the tripartite mechanism in the country, which has allowed it to also form coalitions with other social actors. Most NGOs would expect more from the MTUC in terms of policy reform and political engagement with the government. However, the MTUC would firmly remain in its position to deal mostly with representation concerns and domestic workers' labour complaints, rather than involve itself in rescues, shelters and case handling of non-labour issues, choosing instead to focus more on its expertise in handling labour cases and pursuing reforms to labour law. This delineation of role and function of the MTUC has contributed in shaping the roles of different civil society groups in addressing domestic workers' issues. These roles generally fall as follows: the human rights NGO Tenaganita focuses on

12. On November 2016, the MTUC holds its national elections for the executive leadership of the organization. The candidates for president, secretary-general and other elective positions must campaign for a minimum of three months, meeting and going around every MTUC affiliate across the country.

13. I interviewed Khalid in 2014. He unfortunately died in early 2016.

handling cases on the worst forms of abuse, including rape and torture; humanitarian and religious groups provide shelters; women's organizations are active in rescue missions for domestic workers who are victims of gender violence; and the Malaysia Bar Council focuses on questioning immigration policies and practices that restrict the freedoms of migrants in the courts. This consensus built around this delineation of roles may have developed through the MTUC being clearer about its own understanding of its role as a trade union and its forethought not to engage in service provision beyond its expertise.

3.4 Collaborating with Local and International Organizations: Developing Capabilities and Challenges to MTUC

Drawing upon its institutional power resources, the MTUC submitted a memorandum of amendment to the tripartite commission to change the Employment Act to recognize domestic work as work and thereby regulate the working conditions of domestic workers, as well as allowing trade unions to represent them. Two major legislative reforms are expected to come soon, the »one day off« policy for domestic workers as well as the requirement for a standardized employer contract. The MTUC, Tenaganita and the Malaysian Bar Council are currently part of the drafting committee to amend Act 265 Part XI on »Domestic Servants« of the Employment Act. Furthermore, *»they will not be called »Maids« anymore but domestic workers in the Employment Act«* (Interview, MTUC Director for Education Karuppiah Somasundaram, 13 September 2016 Kuala Lumpur).

Using coalitional power resources in organizing migrant workers in the construction and agricultural sectors, the MTUC works with global and regional based trade unions such as the ASEAN Trade Union Council (ASETUC), the ITUC and the BWI-Asia Pacific Regional Office. Since Khalid Atan took office as General Secretary, joint projects in organizing migrant workers in agriculture, forestry and construction have been at their peak. This has also had an impact on organization in the domestic sector. As well as the aforementioned collaboration with GEFONT, a watershed moment has also been seen recently through a Memorandum of Understanding with a labour center in another migrant-receiving country, in this case the Filipino organization SENTRO. The MTUC and SENTRO signed the agreement on the

3rd of February 2016. The agreement covers the direct organizing of Filipino migrant domestic workers through SENTRO in Malaysia in cooperation with the MTUC.

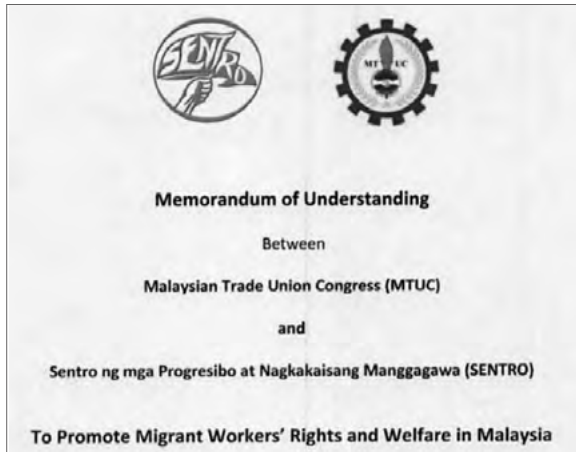
The memorandum outlines the joint commitment of the two national unions in organizing migrant domestic workers in Malaysia. The MTUC agrees to assist SENTRO in its organizing and education work for MDWs in Malaysia. In turn, SENTRO shall deploy a Filipino organizer in Malaysia under the MTUC and assist in organizing not only Filipino domestic workers but also the other nationalities. The Filipina domestic workers organizer, Luella Mirafuentes, has since taken residence in Malaysia in April 2016 and is also active in Hong Kong under a similar collaboration between SENTRO and the Hong Kong Confederation of Trade Unions (HKCTU) regarding domestic workers. The MTUC's programs in broadening its representation of migrant workers have also been strengthened through alliance with trade unions in the Southeast Asian region through the ASEAN Trade Union Council. Its coalitional sources of power had in fact expanded beyond its borders earlier on. Since October 2015, the MTUC and the KSBSI, the Indonesian national labour center, have collaborated on programs through the ILO to strengthen their communications and focal points of contact between the two countries (Interview, former MTUC Migration Desk officer, Florida Sandanasamy, 14 September Kuala Lumpur). In 2017, the International Domestic Workers Federation (IDWF) intends to extend its programs in MDW organizing in Malaysia as well as in four other countries in Asia: the Philippines, Cambodia, Indonesia and Vietnam.

International collaboration on the US TIP and US-Malaysia Labour Consistency Plan Agreement strengthens the MTUC's institutional power, and coalitional power resources have additionally been strengthened through collaboration with BWI, SENTRO, GEFONT and other trade unions from migrant-sending countries. Pursuing the formation of a domestic workers' association despite the obstacles also play an important role in building a full power resource repertoire for the MTUC through gaining associational resources.

3.5 Framing Domestic Workers Issues

Initially, the issues facing migrant domestic workers in Malaysia were framed in terms of human rights violations due to the high incidence of abuse. In the second

Figure 2: Bilateral Memorandum MTUC–SENTRO (Philippines)



half of the Domestic Workers Desk project, the campaign advocacies were framed in a more political tone of »domestic workers as workers« or »domestic work as work«. The involvement of the MTUC in domestic workers' organizing was initially framed as an essential role as part of the international trade union movement and upholding the international image of Malaysia. The Malaysian government and its institutions as well as the trade unions intend to present an image to the world of a pluralist and multi-ethnic Malaysia. Taking advantage of this international sensitivity, civil society groups mostly invoke transnational issues and international instruments to pressure the government to improve conditions of migrant workers as well as repeal the restrictive labour laws and regulations. However, *»the government is not transparent and forthcoming with information and do not inform us whether our proposals are heard«* (Interview, former MTUC Migration Desk officer, Florida Sandanasamy, 14 September Kuala Lumpur).

In framing their struggles and advocacies relating to domestic workers, the MTUC invokes the US TIP Report to pressure the government, while human rights NGOs tend to use CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) as one of the few international conventions that Malaysia has managed to ratify thus far. For domestic workers, the trade unions and NGOs continuously campaign for the ratification of C189 (Decent Work for Domestic Workers). However, it is doubtful that Malaysia will ratify the convention given that it is an important migrant-receiving country. Education Director Soma adds the further proviso that

»It is not enough to ratify the convention; the local laws have to be changed. It will not change anything if the local laws are not changed; the laws in this country are not that supportive« (Interview, MTUC Director for Education Karuppiah Somasundram, 13 September 2016 Kuala Lumpur). External pressures and interactions play crucial roles in shaping how the MTUC develops its framing capability. To address the hostility and fear of local workers towards migrant workers, the MTUC framed their migrant organizing strategy as a way to protect the wages and benefits of local workers from sliding down. Likewise, the MTUC asserts that improving the wages and conditions of jobs usually taken on by migrants will eventually encourage local workers to take on these jobs, and that organizing migrant workers can also be a source of union dues to secure financial independence and build structural and associational power sources.

Regarding the increasing demand of migrant domestic workers in Malaysia, *»We need to bring down the dependency on migrant domestic workers but the state created this policy so that Malaysian women can work«*, said Florida Sandanasamy (Interview, former MTUC Migration Desk officer, Florida Sandanasamy, 14 September Kuala Lumpur). As a policy advocacy from the MTUC Migration Desk, the MTUC proposes that child care centers be provided by employers and salaries of domestic workers be raised so that local Malays will not shun this work. The gender dimension in this policy proposal is worth attention, but it was not clear how far the MTUC was successful in bringing this policy agenda to the tripartite labour mechanism. The MTUC's involvement in organizing domestic workers elicited internal debates such as the challenge of collective bargaining when there is no organized body of employers for this sector. Thus, MTUC is opening the idea of the union as a service-provider for domestic workers such as placement and recruitment services. As a strategic proposal, the MTUC can ensure the enforcement of the standardized employment contract (Interview, former MTUC Migration Desk officer, Florida Sandanasamy, 14 September Kuala Lumpur) as well as regulate the work conditions of MDWs.

3.6 Challenges And Prospects: Success Factors And Lessons Learned

The MTUC mainly uses its institutional and societal sources of power to expand representation of domestic workers, seen as a prerequisite for building associational

power in the sector. Indeed, past experiences with the unsuccessful registration of the DWA have demonstrated the MTUC's difficulty in building associational power. In utilizing its institutional power, the MTUC was able to change the rules of the game, namely altering those laws which disallow organizing of informal workers such as the lack of »days off« for domestic workers and regarding the right-of-stay for migrant workers pursuing labour complaints. In the MTUC key informants view, they have enormous potential to use coalitional power with local political parties, especially now that the Acting President of MTUC, YB Abdullah Sani bin Abdul Hamid, is currently a member of the parliament in Malaysia. However, MTUC officials say that they are not taking advantage of their associations with political organizations or parties. The Trades Union Act of Malaysia does not allow trade unions to engage in political activities i.e. associate with political parties or conduct political events, thereby curtailing coalitional power within the country, but they can form workers' organizations deemed »non-political« such as associations and civic organizations and thereby tap into an associational power resource.

The MTUC attempts to broaden its societal power resources as the organization opens up spaces for collaboration with NGOs with whom relations have not always been smooth in the past, such as with professional workers' groups, women NGOs, religious groups, and academic institutions. International collaboration with trade unions from sending countries and with global union federations has substantive potential to strengthen its institutional and societal power resources. The Malaysian government remains particularly concerned with its image in the international arena and sensitive to media reports on its performance. The MTUC's links with international organizations, including ASETUC, the ILO and NGOs, contribute in cementing its position as the official representative of labour, not only abroad, but even more so on a national level. Engagement in the political sphere seems to be growing within the MTUC, possibly influenced by the changes in Malaysia's political environment more generally, seen particularly in the resurgence of political activism in recent years through Bersih, the Coalition for Clean and Fair Elections. Not seen for many years, the MTUC held an outdoor mobilization during its 2016 May 1st celebrations.¹⁴

14. See <http://www.labourbulletin.com/2016/05/malaysiamay-day-much-more-than-holiday.html>

The transformation of the Malaysian labour movement and labour relations landscape may also come from unexpected and external factors. On February 2016, the Malaysian government entered into a bilateral labour agreement with the United States called »Labour Consistency Plan« as prerequisite to Chapter 19 of the Trans-Pacific Partnership Agreement (TPP). The agreement demands that Malaysia comprehensively reform its labour laws on major aspects regarding union organization and collective bargaining; forced labour; employment discrimination; enforcement; and transparency of state information on labour law. As much as eight acts within current Malaysian labour law need to be amended and drafting has commenced to comply with this agreement, which the MTUC is involved in. Importantly, among the major amendments are a number which have substantial impacts on the conditions of migrant workers in Malaysia such as an amendment of the Passport Act to prohibit employers from withholding passports of foreign workers; the right to decent housing; recruitment fees and levies shouldered entirely by employers; freedom of movement; and standard employment contracts. Further changes in the Trade Union Act particularly relating on trade union organizing and collective bargaining have also been demanded in the agreement. The US-Malaysia Bilateral Labour Agreement seeks to limit the discretionary powers of the Director-General of Trade Unions (DGTU) in reviewing, suspending, withdrawing or canceling trade union registration; to remove restrictions of forming unions only on »similar« trades, occupations and industries; to allow foreign workers to hold trade union leadership; and to remove all restrictions on trade union membership including »employee of a political party«. The Labour Consistency Plan signals drastic change in the labour relations system of Malaysia at the same time demand change from trade unions. *»This agreement impact substantially on the conditions migrant workers because they can now join and hold union positions after three years, have annual increment of salary, and will be covered with health insurance and decent housing«* (Interview, MTUC Director for Education Karupiah Somasundram, 13 September 2016 Kuala Lumpur). The MTUC intends to follow-up the compliance of the government in this agreement to improve the conditions of migrant workers.

The MTUC welcomes the legislative reforms which improve opportunities to organize workers but worries about other implications, such as, as MTUC Director for

Education Karuppiah Somasundram put it, *»multiplying trade unions, in-fighting will increase, and unions will initially be weaker«* (Interview, 13 September 2016 Kuala Lumpur). Somasundram holds the strengthening of other trade unions such as the UNI-MLC to be important, as they can provide better services if the MTUC cannot cope with the changes. There is a need for further development in competencies on workers' education and organizing. *»MTUC needs more commitment to organize workers«*, in a statement from Florida Sandanasamy, a former staff member on the Migration Desk. Specifically, in the MTUC staff and officials' view, the union needs more to improve its groundwork skills, activities at the grassroots level, political involvement and advocacies for the equal protection and non-discrimination of migrant workers.


4. Conclusions and Recommendations

The idea of recognizing domestic workers as workers took some time to be accepted within the MTUC and it will most likely take more time before the premise is accepted within the general mindset of the Malaysian population. Constraints on the MTUC's associational and structural power resources steered the trade union to focus on its institutional leverage within the national tripartite mechanism and coalitional power resource within the local and international communities. Located within the MTUC's domestic workers agenda is a desire to pave the way towards broader representation of domestic workers through labour legislative reforms and campaign advocacies with NGOs before organizing domestic workers into trade unions or associations can be fully successful. Thus, for the most part of the MTUC Domestic Workers Desk operations, the major focus has been pushing to amend labour policies covering migrants and domestic workers. Complementary to its pressures within the tripartite mechanism, the MTUC has built and is continuing to build collaboration with local NGOs and international trade unions, thereby strengthening its coalitional power resource. The issuing of labour policy orders pertaining to the weekly day off for domestic workers; depositing their wages through banks; and the government warning against withholding passports, can be considered small victories for the MTUC's domestic worker agenda. The advocacy for day off policy reform was deemed crucial to open the space for organizing domestic workers towards a formal orga-

nization. Taking the lesson from Hong Kong's success in organizing MDWs into associations functioning as trade unions, the MTUC hoped to create a similar organization to strengthen the representation of domestic workers in Malaysia through mutual support and self-organization. However, the MTUC's deployment of associational power in registering a DW Association has been twice obstructed, leading the organization to focus on institutional and societal power resources.

Expansion of the MTUC's international collaboration within Asia and globally contributed in building its framing and articulating capabilities in constructing the DW agenda considering the local and international linkages of stakeholders. The union's experience in crafting a DW representation agenda likewise contributed in consolidating the MTUC's intermediating and framing capabilities by flexing its organizational structures to accommodate non-conventional trade union work such as union work beyond collective bargaining for migrants and domestic workers. However, overall the MTUC remain constrained in its structural, associational and discursive power resources given the restrictive labour relations regime in Malaysia. Despite the constraints, the MTUC has undergone significant changes to develop its capabilities and deploy its acquired and developed power resources. The motivations and catalysts for change referred to in this study are changes in the mind-set towards the role of trade unions on migrant labour, leadership, and reforms in organizational structures.

Organizing and representing domestic workers in Malaysia is a new terrain in trade union work for the MTUC. Hence, it is important to dissect the dimensions of precarity of MDWs to determine the necessary capabilities and power resources the MTUC need to develop to the success of its agenda. A clear understanding of the work-based, status-based and national-based precarities of migrant domestic workers (MDWs) in Malaysia can feed into the strategies of organizing and services provision for the MDWs. Whilst the MTUC currently relies on its institutional leverage in changing the laws for domestic workers, this mostly addresses the national-based dimension of precarity for domestic workers. The usage of societal power resources, particularly in using campaign advocacies to recognize *»domestic work as work«*, tangentially addresses the work-based dimension on the non-recognition of domestic workers as workers. Based on the information collected in this study, the MTUC



has not yet fully developed capabilities to deploy discursive power to address the disempowerment of MDWs caused by non-recognition of domestic work.

As a recommendation to the MTUC and similar trade unions with constrained structural and associational power and organizational challenges, it is important to give attention to leadership and organizational culture reforms to smoothen structural reforms within the union. Taking into consideration the changing political economy and labour market in Malaysia, the union members and leaders need to produce a clear and autonomous political vision and agenda based on their context. The lack of an independent political agenda from the MTUC possibly emanates from the fear of political reprisals by the state and its strict political control over the all civil society groups in Malaysia. A renewed political vision needs to include a broader perspective on the »worker«; commitment to end competition between migrant and local labour; and recognition of gender equality within the MTUC. However, external pressures to reform Malaysia's labour relations, particularly from the US, and societal pressures to change such as the Bersih movement are crucial opportunities for the MTUC to seize upon. These opportunities provide spaces to de-

velop associational power sources by increasing its organizing capacity and massively increase its membership. The restructuring of the dues-payment system within the MTUC is likewise crucial in attaining financial autonomy from the state and strengthen its organizational independence. Financial autonomy and resilience should be a high priority for major reforms within the MTUC. This can only lead to its migrant and domestic worker organizing programs becoming more sustainable; these programs bring in new dues-paying members and thus, contribute to the financial sustainability of the organization more generally. Building associational power towards increased membership can significantly consolidate the union's institutional power sources within the tripartite mechanism. Likewise, there is still hope for the MTUC to develop structural power by building upon its industry-based unions and strive for industry-based bargaining at the national level. Coalitional and discursive power resources can also be strengthened through the MTUC's political independence by collaborating with political as well as labour allies within Malaysian civil society. However, without a clear political vision and agenda, the MTUC might just drift around aimless amid the political-economic and social changes and may lose the gains attained so far in its domestic workers' agenda.



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Imprint

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ISBN
978-3-96250-101-3