

Tenaganita

# FIGHTING BEHIND CLOSED DOORS THE DEMAND FOR RECOGNITION AND THE LEGAL PROTECTION OF DOMESTIC WORKERS IN MALAYSIA

MALAYSIA

## WOMEN MIGRANT WORKERS IN MALAYSIA

Malaysia is a notable destination for migrant workers from Indonesia, Burma/Myanmar, Sri Lanka, Cambodia, India, the Philippines, Laos, Thailand and Vietnam. Migrant workers have long been an integral part of Malaysia's economy. Official data shows that the number of regular migrant workers in Malaysia is 1.9 million, comprising 15 per cent of the total workforce; while the International Organisation of Migration (IOM) estimates irregular or undocumented migrant workers in the range from 1.4 to 3 million, highly concentrated in manufacturing, agriculture, construction, forestry and services sectors<sup>1</sup>.

About seven per cent of migrant workers in Malaysia

<sup>1</sup> IOM (2019) World Migration Report 2020 Retrieved from [https://publications.iom.int/system/files/pdf/wmr\\_2020.pdf](https://publications.iom.int/system/files/pdf/wmr_2020.pdf)



are employed as domestic workers. They provide essential care services to keep families safe, clean and comfortable, and enable the caregivers, mostly local women, to participate in the labour force.

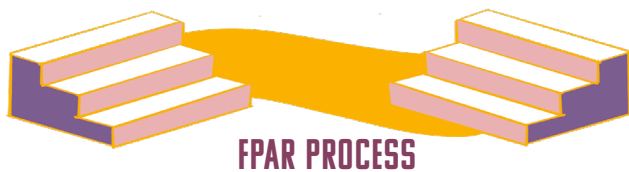
Despite their tremendous contribution, domestic workers still earn some of the lowest wages in the labour market and remain unrecognised, undervalued and invisible. In the Malaysian Employment Act 1955, domestic workers were classified as servants, maids and helpers, and excluded from the coverage of national labour law and social protection. As a result, female domestic workers are particularly vulnerable to exploitative working conditions and experience various forms of violence and abuse.





## **Underpaid and unpaid work**

Domestic workers in Malaysia are omitted from the minimum wage protections, as the existing Employment Act 1955 does not explicitly state the standard of the remuneration for domestic workers. The FPAR findings show that the majority of the interviewed domestic workers had experienced unfair deductions from their salaries for accommodation, uniforms, food, work permits as well as late payment of wages and unpaid wages. Some of the employers refused to pay the wages as they had paid for the recruitment and placement costs. An Indonesian migrant domestic worker, one of the interviewees in the FPAR, received no wages and compensation from the employer during her 8-month employment period. Suffering from constant food deprivation, she was found seriously underweight and diagnosed with fluid in her brain after she was admitted to the hospital. After she received surgery, she flew back empty handed to her hometown in Indonesia.



This Feminist Participatory Action Research (FPAR) was conducted by Tenaganita to identify the human rights violations faced by domestic workers in Malaysia and mobilise domestic workers to advocate for legal recognition and protection through national legislation. The data was collected through focus group discussions, in-depth interviews and observation between January 2020 and February 2021. The Migration FPAR was conducted with the migrant domestic workers from five migrant worker groups based in Kuala Lumpur and Selangor, including the Association of Nationalist Overseas Filipino Workers in Malaysia (Asosasyon ng mga Makabayang Manggagawang Pilipino Overseas – AMMPO), St. John's Cathedral (SJC) Church, Saint Francis Xavier's (SFX) Church, Assumption Church and a group of workers from 1 Utama Shopping Mall.

## **Precarious and exploitative working conditions**

The domestic work sector is characterised by private workplaces with no boundary between work and private life. From the FPAR findings, many of the workers reflected that they have faced long working hours of more than 12 hours per day, food deprivation, no days off or leave for months or even years. They are isolated and confined in their employer's house, forced to work in many homes or places without any choices. One interviewee shared that she started work at 5 a.m. and finished at 11 p.m. at the earliest on a daily basis. Among the 90 interviewees, half of them revealed they were being forbidden to communicate with their families in their hometowns.





### Prone to multiple forms of violence:

According to the FPAR findings, domestic workers reported that they have experienced different or multiple forms of abuse, including physical, psychological, sexual abuse or economic abuse, food deprivation and forced labour. Due to isolation, lack of privacy and power imbalance between employers and workers, migrant women workers are particularly at high risk of multiple forms of human rights violations. In some extreme cases, workers reported that they had experienced all six forms of abuse at once. For instance, one Cambodian migrant worker was traumatised after her employer attempted to rape her. She was overworked, had limited mobility and her passport was confiscated by the employer.



### Recruitment agency's fraud and malpractice:

Forging personal administrative documents, withholding passports, control over mobility and employment choices are some common fraudulent practices from recruitment agencies and brokers. One case documented in the FPAR highlighted how recruitment agencies manipulated the recruitment process to maximise their profit without fulfilling their responsibility - Aminah, a migrant domestic worker, did not receive her visa and permit after she paid the agency fee. She finally used up all her money to come to Malaysia without proper documents and continued to work for her employer without salary and food.



### Violation of freedom of religion and belief

The employers do not respect domestic workers' religious practices by forbidding them to perform their prayers or not respecting their religious practice and food taboos. The FPAR findings show that some Muslim workers had experienced being forced to take off their headscarves, and their Bible was taken away by the employers.



### Limited access to justice

Due to language barriers and lack of information, many domestic workers are not able to access the authorities for assistance and solutions. Migrant workers with irregular status grapple with the additional risk of arrest and detention even if they are the victims of exploitative working conditions. The Malaysian labour courts only accept and handle cases for workers with legal status. However, one ongoing appeal case may change the status quo - Nona, an undocumented migrant worker, filed her case to claim her four years of unpaid wages from her ex-employer. The Labour Court rejected the case due to her irregular status. With the support of civil societies, Nona has filed an appeal to challenge the court's decision on rejecting her case based on her status.



### WOMEN'S ACTIONS THROUGH FPAR

Through the FPAR, Tenaganita continued to provide support services for the survivors of trafficking in person and other forms of violence. Tenaganita runs a shelter as temporary accommodation for women and children survivors to stay in a secure, warm and trusted environment, to ensure they have access to health care services, psychological and counselling care as well as legal support and intervention.

In the International Migrant Domestic Workers Day in June 2020, Tenaganita together with civil societies in Malaysia launched the "Domestic workers are workers" (Kakak Juga Pekerja) Campaign to change laws that exempt domestic workers from protection under the Employment Act (EA) 1955, leaving them classified as "servants" and claimless to basic rights such as rest days, sick leave and maternity benefits.



## RECOMMENDATIONS

- **The Malaysian government should make an amendment in the Employment Act 1955 or enact a separate legislation that contains crucial protections for domestic workers as follows:**
- **Inclusion of 'Domestic Worker' in the legislation:** Domestic workers should be included in the coverage of national law protection.
- **Reasonable work hours:** New legislation must limit work hours by setting the maximum hours for work and providing domestic workers with a balanced work-life environment and adequate rest periods.
- **One paid day off per week:** Weekly paid rest days should be given to domestic workers so they can rest, have a social life, find spiritual refuge, register for informal education, or send/remittance money home. However, domestic workers can also decide to rest inside their room for the full rest day and be entitled to abstain from working.
- **Health benefits:** Employers should provide medical insurance with a comprehensive package for the migrant domestic workers upon arrival in Malaysia.
- **The Malaysian government should ratify ILO Convention 189 on Decent Work for Domestic Workers, and ILO Convention 190 on Violence and Harassment.** It should also implement legislation through national courts that ensure authorities protect the fundamental human rights and well-being of domestic workers.

## About Tenaganita

Tenaganita is a Malaysian human rights organisation dedicated in assisting, building, advocating and protecting migrants, refugees, women and children from exploitation, abuse, discrimination, slavery and human trafficking. Tenaganita seeks to promote and protect the rights of marginalised and vulnerable individuals who have no voice in this globalised world.

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## About APWLD

The Asia Pacific Forum on Women, Law and Development (APWLD) is the region's leading network of feminist organisations and individual activists. For 35 years, we have been carrying out advocacy, activism and movement-building to advance women's human rights and Development Justice. This FPAR is part of APWLD's Migration Programme. APWLD worked with and supported seven partner organisations from six countries to conduct Migration FPAR in Asia and the Pacific between 2019 and 2021.

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