

COUNTRY BRIEFER

MALAYSIA

DECENT WORK FOR WOMEN MIGRANT WORKERS SERIES



BACKGROUND

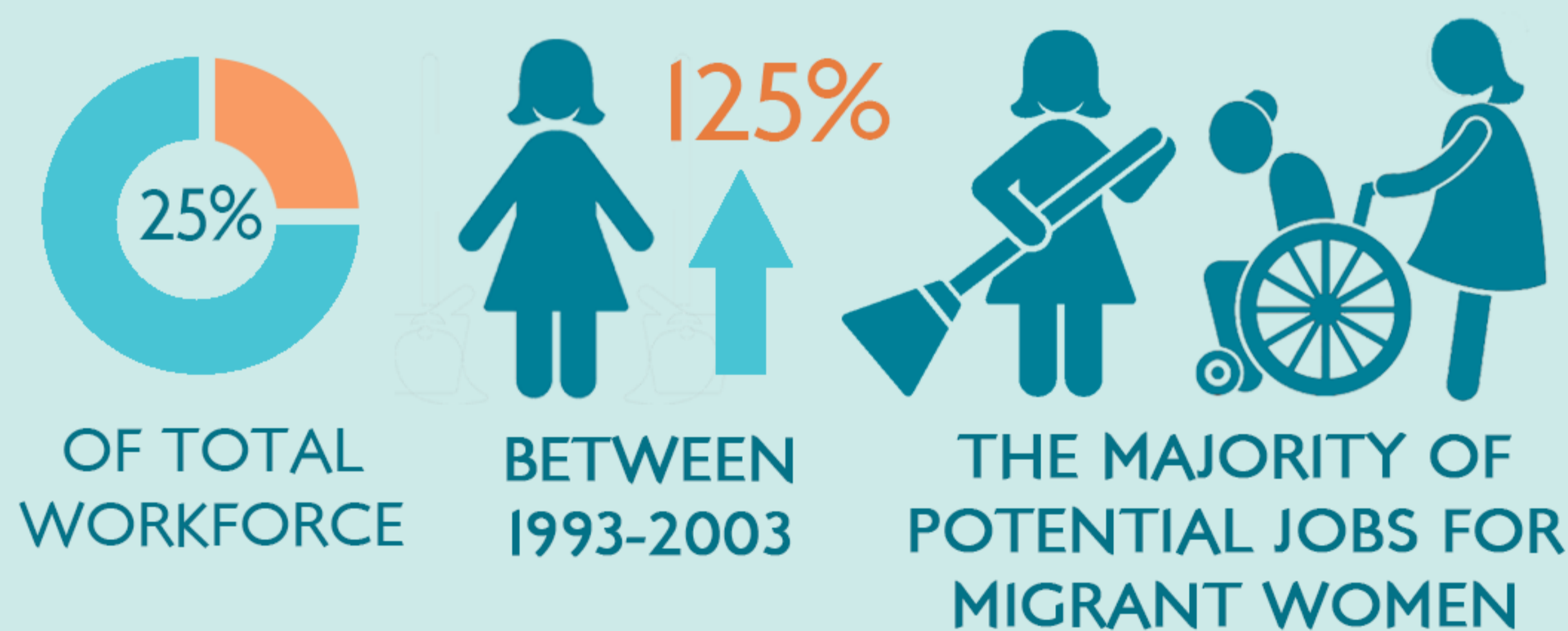


Rapid economic growth and structural changes to the economy has created labour shortages in certain parts of the Malaysian economy. Nearly all major sectors of the economy are now reliant on migrant workers and foreign labour now accounts for nearly a quarter of the total workforce.³ In recent years, there has been a large increase in the number of women migrant workers in Malaysia – the number of women migrant workers in Malaysia increased by 125 per cent between 1993 and 2013.⁴

COUNTRY OVERVIEW

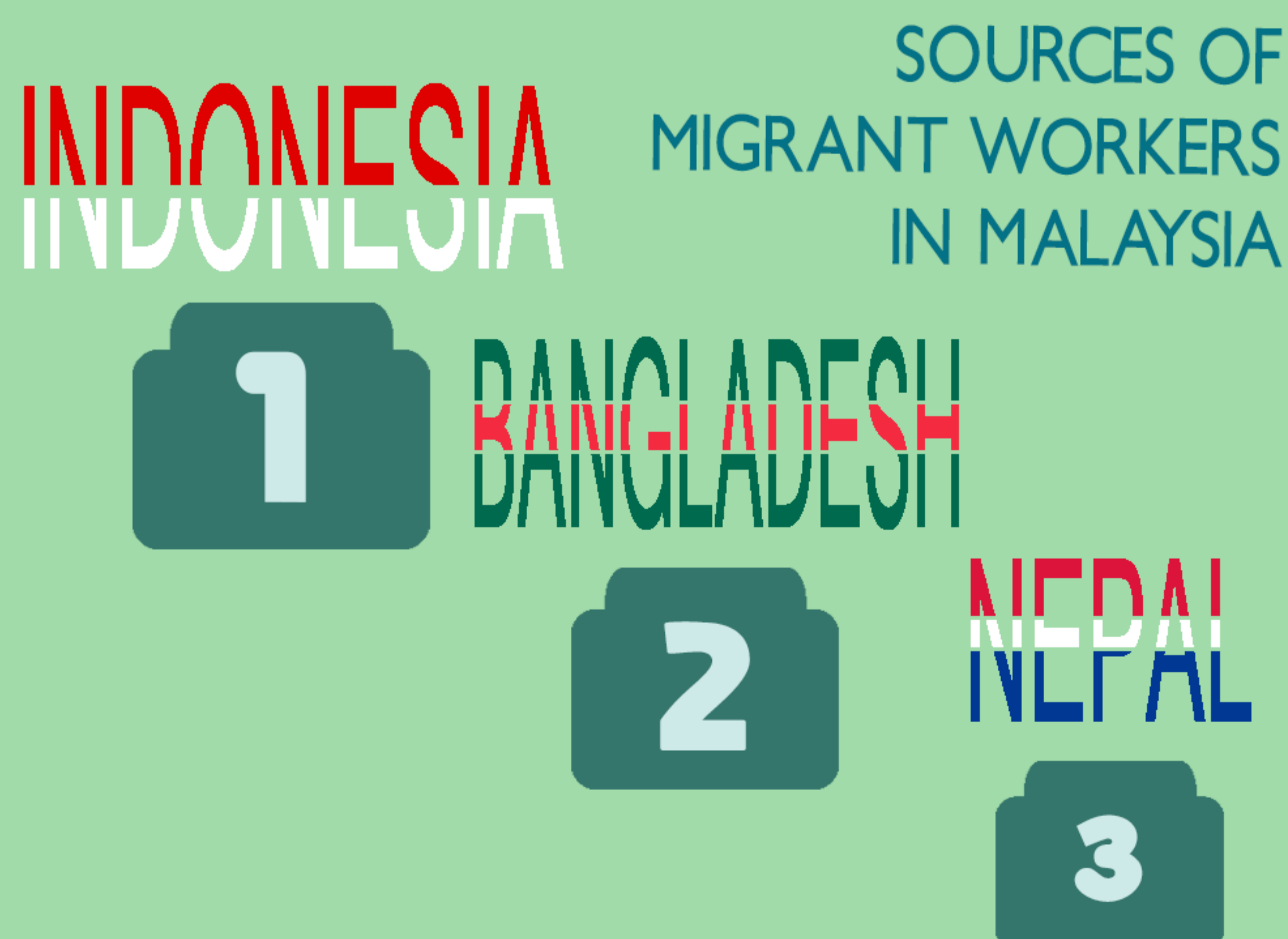
Main source countries for migrant workforce	Indonesia, Nepal, Bangladesh, Burma/Myanmar, the Philippines. ¹
Women's share of total migration	Approximately 82 per cent of total documented migrant workers in Malaysia. ^{2*}
Main sectors of employment	Domestic work, elderly care, service, electronics manufacturing, garments, palm oil plantations, construction

MIGRANT WORKERS



By applying gender-based restrictions on incoming migrant women, the government of Malaysia has facilitated the transfer of domestic work and caregiving tasks in private households from Malaysians to migrants.⁵ As a result, the majority of potential jobs for migrant women are in domestic work and caregiving. At the same time, an increasing number of women are also employed in hotels, restaurants, electronics and garment manufacturing and palm oil plantations. For instance, around 70–80 per cent of the workers in Malaysia's electronics industry are women, and many of them are migrants.⁶

Malaysia has been a preferred destination for Indonesian workers because of similar language, culture, geographical proximity as well as the extensive Indonesian migrants and social network systems developed over the years. According to the statistics from the Ministry of Home Affairs in 2019, Indonesia is the largest source of migrant workers in Malaysia with women workers concentrated in the domestic and plantation sectors. The second largest source is Bangladesh and the third is Nepal which mainly contributed to the construction sector.



* The Malaysian Federation of Employers suggests that there are three undocumented migrant workers for every one documented in Malaysia.

Working conditions for migrant workers, and particularly migrant women, fall below decent working standards set by the International Labour Organization (ILO). Domestic workers are excluded from most labour protections with the exception of the right to a notice period on termination. Recent research has pointed to Malaysia as having the most restrictive legal regime on women migrant workers in the region.⁷ Moreover, parallel to official recruitment

processes, there is also an informal system that largely operates underground and workers using these systems are far more vulnerable to exploitation and abuse due to Malaysia's strict laws on irregular migration and deportation.



THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

MINIMUM WAGE



Malaysia has enacted a minimum wage law that also applies to migrant workers, but not to domestic workers. The minimum wage in peninsular is MYR 1,200 (USD 283) per month and MYR 1,100 (USD 260) for Sabah, Sarawak and Labuan in 2020, and remained unchanged in 2021.⁸ Domestic work is not covered under the minimum wage law, which has a huge impact on women migrant workers. Minimum wage for domestic workers is often set in bilateral Memorandums of Understanding (MoUs), which leads to significant disparities in wages paid to migrant women from different nationalities. For example, the Philippines have set a minimum wage of USD 400 per month, which is higher than the minimum wage in Malaysia. Cambodia follows the Malaysian standard, with the addition of a provision for sick pay.⁹

A study conducted by ILO found that wage disparities between Filipino and Indonesian domestic workers can be between USD 100–200 per month.¹⁰ While these MoUs appear to meet better than the Malaysian standards, this is not necessarily effective in ensuring wages are paid in accordance with agreements, with data¹¹ showing domestic workers in Malaysia from both the Philippines and Indonesia being paid under the amounts agreed upon in the MoUs.

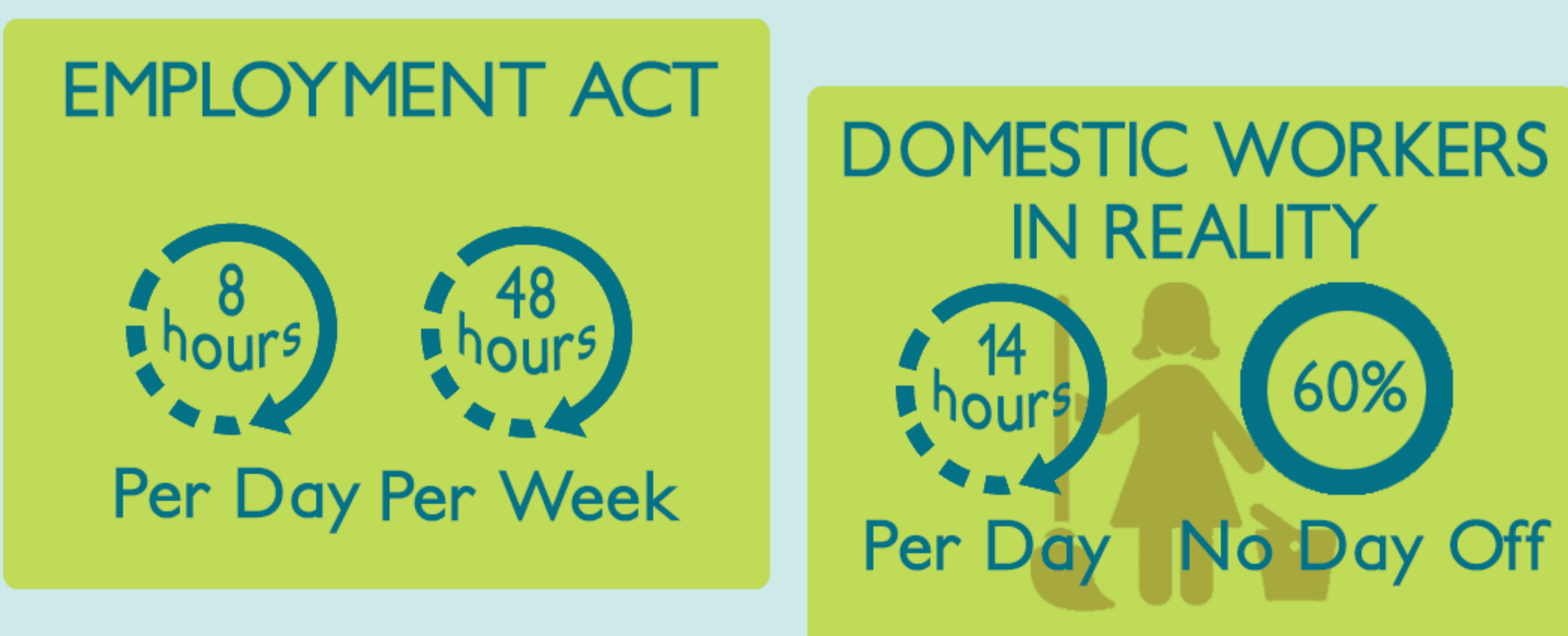


WORKING HOURS



The Employment Act, which is applicable to (non-domestic) migrant workers, sets the working hours to eight hours per day or 10 hours over split shifts and no more than 48 hours per week. However, in practice, labour laws are often ineffectively enforced for migrant workers.¹² Domestic workers are not granted a rest day per week by law, while this provision is included in standard employment contracts. An ILO research has found that average working hours for domestic workers in Malaysia is 14 hours per day and only around 40 per cent are given a day off every week.¹³

In fact, only one-fifth of employers participating in the same survey thought that domestic workers should have 24 consecutive hours of rest per week. Gendered perceptions that domestic workers are members of the household and not employees means that their rights regarding working hours, rest days, public holidays, annual leave and sick leave are not protected either by the law or by the employers.



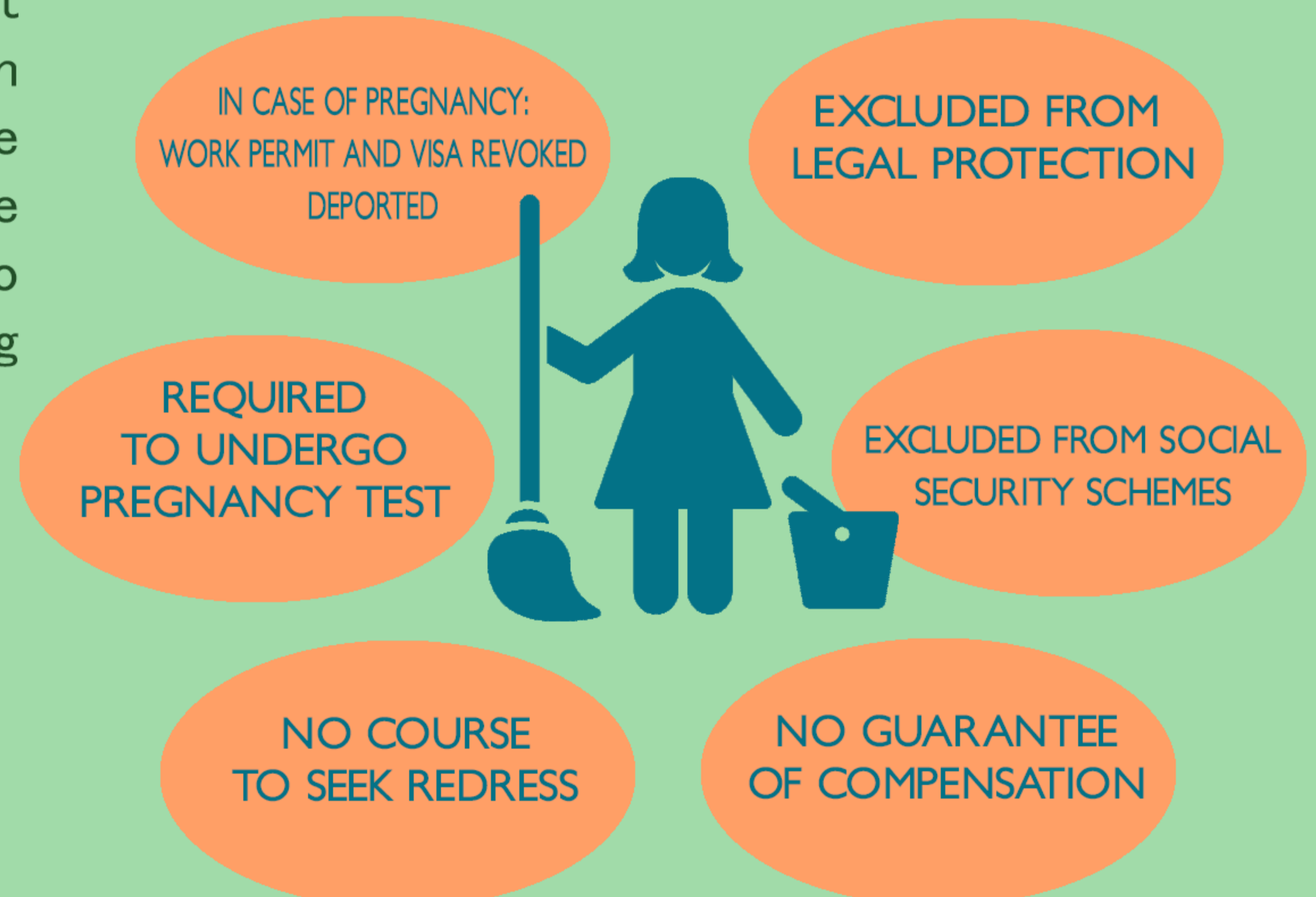
THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

SOCIAL PROTECTION



Migrant workers in Malaysia are often employed in high-risk jobs and therefore are regularly subjected to workplace injuries. The largest number of injuries and deaths at work are reported in the manufacturing, construction and agricultural sectors, all of which are heavily dependent on migrant labour. Moreover, migrant workers are discriminated against in the system of compensation for workplace injuries, compared to nationals. The Workmen's Compensation Scheme was amended in 1993 to establish the Foreign Workers' Compensation Scheme, which offers lump sum payments for permanent disability or death at much lower amounts than the regular payments offered to nationals. In the case of undocumented workers, many of them are afraid of seeking treatment since there are no guarantees of safety from arrest when attempting to access medical facilities.

The situation is particularly dire for migrant domestic workers since they are excluded from both the Employee Social Security Ordinance and the Workmen's Compensation Act. As a result they are not covered under any social security schemes. Migrant domestic workers have no guarantee of compensation in the event of a workplace related injury and no course to seek redress in the event of abuse. Moreover, migrant women workers are required to undergo pregnancy tests on an annual basis, and in case of pregnancy their work permits and visas are revoked and they are deported.¹⁴



RIGHTS AT WORK



The Employment Act provides that employees have the right to between 14 and 22 days of paid sick leave. However, domestic workers are not covered by provisions related to sick pay.

An amendment of the Employment Act 1955 introduced criminal offences specific to sexual harassment in the workplace, aiming for the protection of women. The amendment has been enforced with effect beginning 1 April 2012. The changes still remain inadequate in terms of coverage due to the fact that working relationships based on contract and subcontract work (which largely involves women workers) are ignored in the definition. There are proposals to amend the Employment Act that may address this definition. These are supported by the Guideline in Handling Sexual Harassment in the Workplace in the Public Service and the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace.

EMPLOYMENT ACT

RIGHT TO
14 - 22 DAYS
PAID SICK LEAVES
FOR EMPLOYEES

DOMESTIC WORKERS



NO PAID SICK LEAVES

THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

FREEDOM OF ASSOCIATION



Section 8 of the Employment Act of 1955 and the Trade Unions Act 1959 guarantee the right of all workers, including migrant workers, to join trade unions but not hold any leadership positions in the unions. Migrant workers also have the right to form trade unions. However, in practice, migrant workers are often unable to practice these rights.¹⁵ Often contracts also explicitly prohibit migrant workers from joining a trade union or any form of association, which is in violation of the law.¹⁶

EMPLOYMENT ACT &
TRADE UNION ACT

↓
GUARANTEE
RIGHTS TO
JOIN & FORM
TRADE UNION
LEADERSHIP POSITION



PROHIBIT
MIGRANT WORKERS
TO JOIN TRADE UNION
OR ASSOCIATION

While the Malaysian Trade Union Congress (MTUC) has twice applied for government registration of a Domestic Workers Association, they have been rejected repeatedly without any explanation from the government.¹⁷ MTUC has started taking bilateral action with sending countries in order to improve protection of migrant workers. For example, in February 2018, MTUC developed a joint plan of action with the Vietnam General Confederation of Labour (VGCL) to improve protection of Vietnamese migrant workers in Malaysia.¹⁸

MTUC



REJECTED

LABOUR INSPECTION



Labour inspections are the mandate of the Ministry of Human Resources (MOHR), but the Ministry lacks the resources to respond to complaints from migrants and inspect their workplaces. Only 350 labour inspectors are available for monitoring conditions in over 400,000 workplaces across the country. Migrants also often work in sectors that are either hard for inspectors to reach (such as remote palm oil plantations) or fall outside of the scope of inspections (such as private homes in the case of domestic workers).

MOHR → LACK OF RESOURCES

350
LABOUR
INSPECTORS



400.000
WORKPLACES

Official mechanisms for resolving complaints about labour rights violations are also inadequate for holding employers accountable. Aggrieved workers can file a complaint with the Labour Department and for cases of unlawful dismissal, objections can be registered with the Industrial Relations Department. Yet, domestic workers are not entitled to use these mechanisms. The number of cases pursued by migrant workers is negligible compared to the number of actual violations. The common practice of outsourcing labour recruitment means that it is often difficult to identify the employer who bears legal responsibility. Moreover, since legal action often takes a long time (six months or more), migrant workers are often forced to return home before its completion. The threat of revocation of work permit or deportation, especially for migrants with irregular legal status, is another key reason why migrant workers do not register grievances.

OFFICIAL COMPLAINT MECHANISM

INADEQUATE
TO HOLD ACCOUNTABILITY



THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

REGULATION OF RECRUITMENT AGENCIES



Policies aimed at liberalisation of migrant labour recruitment has led to the proliferation of intermediaries and outsourcing in the Malaysian labour market.

As a result of a 2005 policy on “Foreign Worker Supply and Management System according to the Outsourcing method”, outsourcing companies can sponsor migrant workers in place of employers.

THE OUTSOURCING METHOD



REMOVE CONTRACTUAL RESPONSIBILITY FROM DIRECT EMPLOYER TO THE OUTSOURCING AGENCY



EMPLOYER



Companies that employ fewer than 50 foreign workers are also required to hire them via an outsourcing company, according to the 2012 amendment to the Employment Act of 1955. This legal provision makes the role of the intermediaries fundamentally different from recruitment agencies in other countries since it removes the legal liability of the direct employer for the workers. There is no contractual agreement between employers and migrant workers; employees only have a contractual agreement with the outsourcing agency.¹⁹

Experts contend that the legal vagueness on the responsibility the outsourcing agencies bear for the workers has led to the increased vulnerability of migrant workers to abuse, and has made it more difficult to establish accountability in case of human rights violations. Moreover, these outsourcing agencies have also been responsible for creating a proliferation of illegal migrant workers in Malaysia.²⁰

OUTSOURCING AGENCY

PROLIFERATION OF ILLEGAL MIGRANT WORKERS

INCREASED VULNERABILITY TO ABUSE

In order to reduce the cost of hiring, the Malaysian Ministry of Home Affairs has experimented with direct hiring of migrant domestic workers under the Maid Online System in 2017. The Maid Online System provides a web portal for Malaysian employers to directly hire domestic workers from abroad without using intermediaries. However, there is concern that this sort of activity may give rise to trafficking by unscrupulous recruitment agencies, leading to forced labour situations.

In addition, the Maid Online System was introduced without consultations with origin countries. Both Indonesia and the Philippines – the major sources of migrant domestic workers in Malaysia – do not approve of direct hiring on the ground that they have no record of the arrangement, and by consequence their capacity to protect their domestic workers suffers.



MAID ONLINE SYSTEM



TRAFFICKING

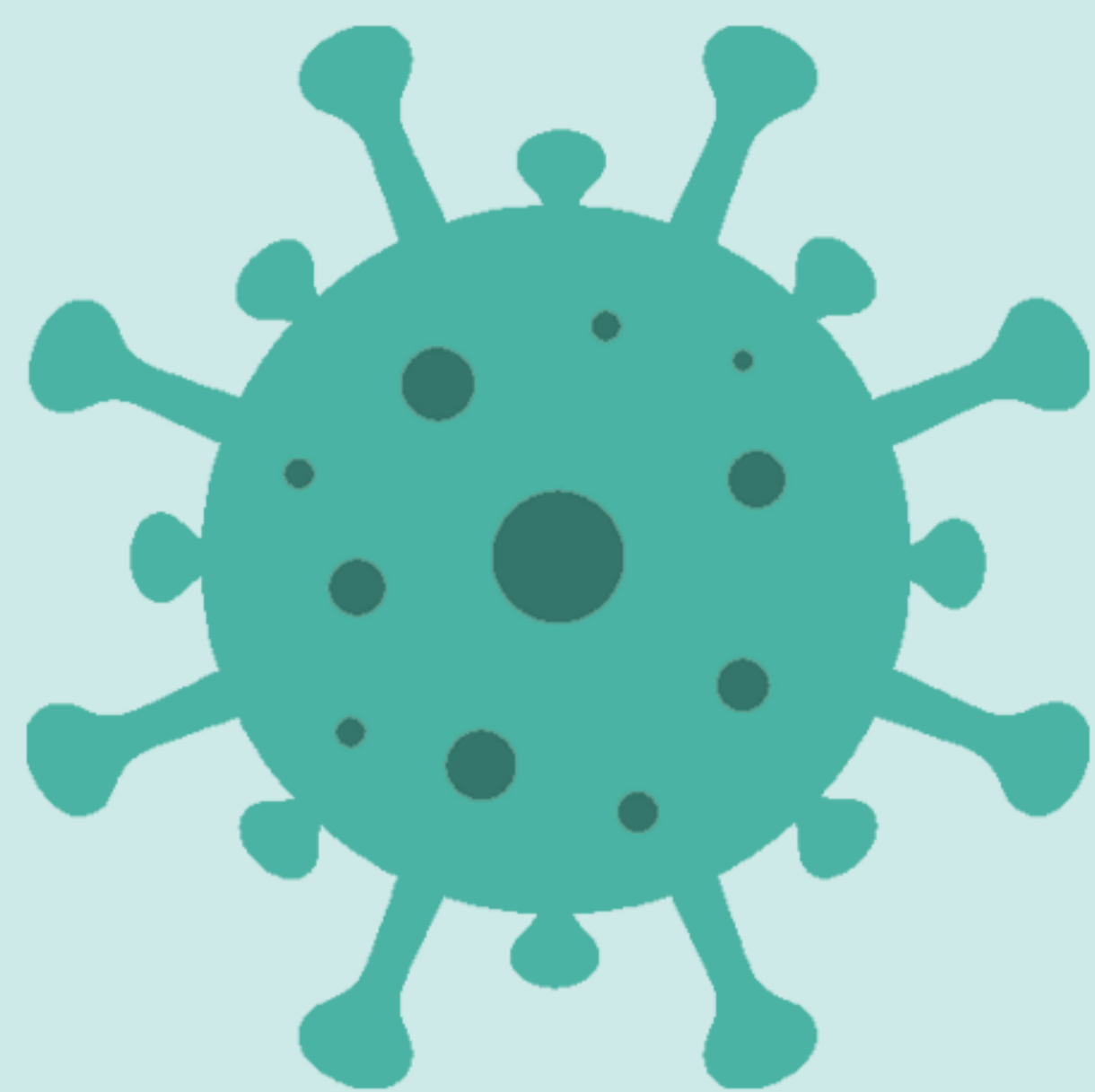
FORCED LABOUR

LACK OF PROTECTION

THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

IMPACT OF COVID-19

PANDEMIC ON WOMEN MIGRANTS WORKERS IN MALAYSIA

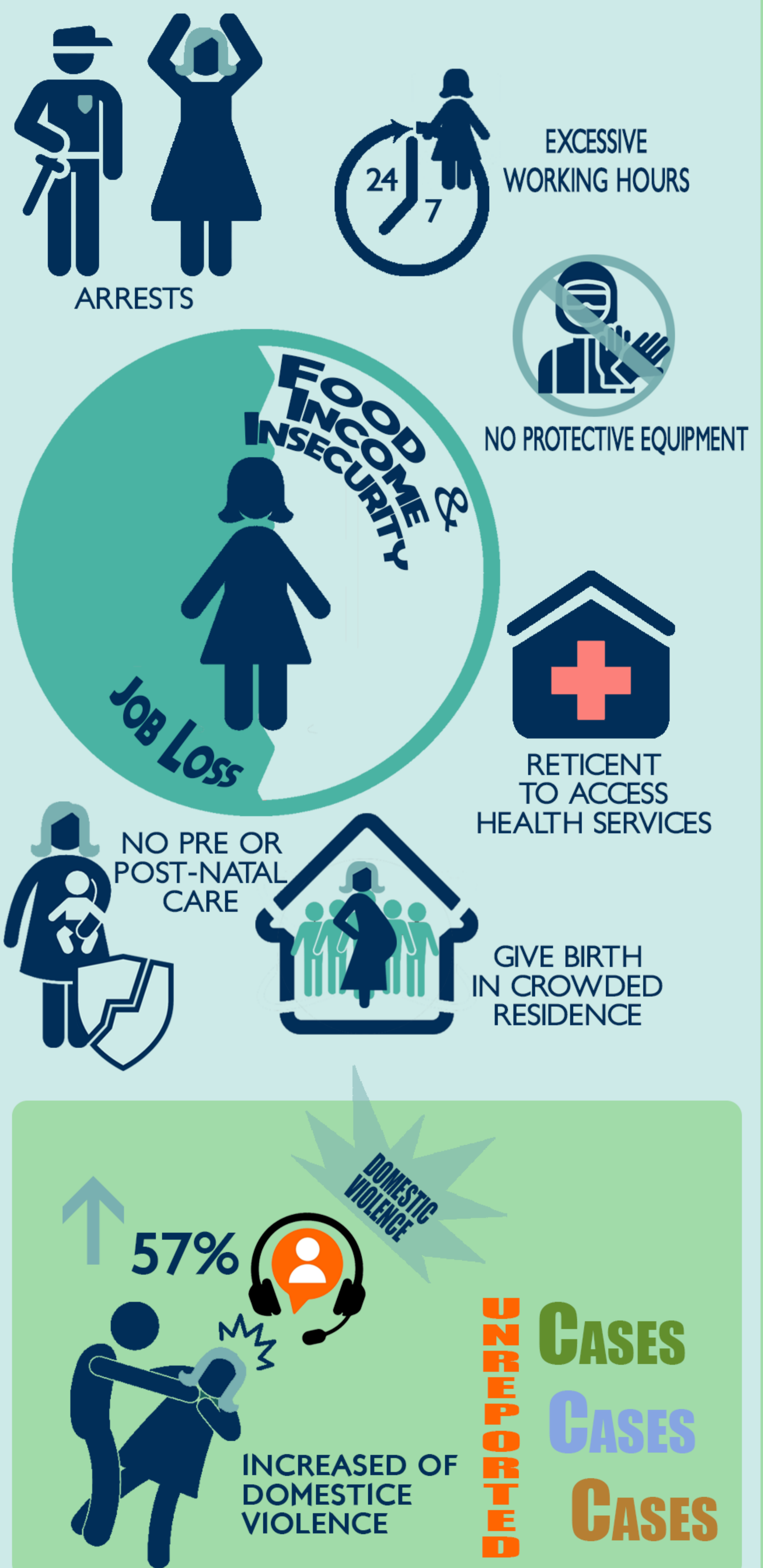


The lockdown measures imposed by the government of Malaysia have led to the closure of businesses. Consequently, migrant workers lost their jobs and especially undocumented women migrants were the worst affected by food and income insecurity. Reports indicate that many businesses did not fulfill their salary obligations. Anti-migrant xenophobia was also stoked by claims that foreigners are not observing social distancing and migrants faced crackdowns and mass arrests.²¹

Even after lockdown was eased, there have been reports of labour rights violations such as excessive working hours and workers being forced to work without personal protective equipment and without physical distancing rules in the workplaces.

Undocumented migrant workers are reticent to access health services, which is crucial during a pandemic, due to fear of arrest and detention. This is particularly hazardous for women migrant workers. Cases have been reported where women migrant workers were forced to give birth in crowded residences (known as kongsi) without help of a midwife or any medical assistance. Neither mother nor child received any pre or post-natal care, which puts them in serious risk.

In addition to the lack of income, food and access to health facilities, women migrant workers also experienced higher risks of gender-based violence. The Malaysian Ministry of Women and Family Development reported a 57 per cent increase in calls to its helpline for survivors of domestic violence. However, rights groups point out that the number might be much higher among undocumented migrant workers who are less likely to seek help due to their undocumented status and language barriers.²²



LAW AND POLICIES ON MIGRANT WORKERS' RIGHTS

The Immigration Act provides the rules for admission and stay of migrant workers in Malaysia and enforcement has been mandated to the Immigration Department of the Ministry of Home Affairs (MOHA). The Employment Act (1955) is the main legislation on labour matters in Malaysia, including migrant labour. However, domestic work is currently excluded from the Employment Act.

STANDARD EMPLOYMENT CONTRACT

By Malaysian law, all legal migrant workers must have signed a basic contract of service that must stipulate at the minimum: terms on wages, rest days, overtime, leaves and other benefits.

WORK PERMIT

The work permit system in Malaysia ties migrant workers to their employers/sponsors. Migrant workers are not allowed to leave the country for any reason or change jobs without the explicit permission of their sponsors. Work permits are renewed every year by the sponsors and it is completely up to their discretion whether they do so or not. Any worker with an expired work permit has to leave the country immediately or else be forcibly removed. If a worker is convicted of being in the country without a work permit or expired work permit, then they are penalised with a fine of at least USD 3,150 and/or imprisonment of a term not exceeding five years before being deported.²³

HEALTH CHECKUP

As part of the approval process to enter the country, migrant workers have to go through mandatory health checks, where they are automatically disqualified from working in Malaysia if any of 15 medical conditions are detected, including HIV/AIDS and pregnancy. Women migrant workers have to go through yearly pregnancy tests during their stay in Malaysia and if a worker is found to be pregnant, she is deported at her own expense.²⁴

FOREIGN WORKER LEVY

This levy only applies to foreign workers in formal sectors such as manufacturing, construction, plantation, services, agriculture, mining and quarries. Migrant workers themselves were responsible for payment of the levy on employment of foreign workers (USD 445 for workers serving in Malaysia for less than ten years and USD 2,407 for ten years and over). However, in October 2018, the Malaysian government changed its policy, making employers responsible for paying the entirety of the levy.²⁵

LAW AND POLICIES ON MIGRANT WORKERS' RIGHTS

PATH TO PERMANENT RESIDENCY OR CITIZENSHIP

Unskilled or semi-skilled migrant workers are prohibited from marrying local Malaysians and they are denied any path to permanent residency or citizenship.

POLICING

Ikatan Relawan Rakyat Malaysia (RELA) is a paramilitary civilian volunteer corps which is charged with eliminating illegal immigration to Malaysia. According to the 2005 amendment to Malaysia's Essential Regulations, part of Malaysia's security legislation, RELA is allowed to arrest an individual or enter and search any premises, public or private, without a search or arrest warrant.²⁶ RELA has nearly four million members nationwide and they have the authority to enter people's homes at will and often terrorise migrant workers and their families. They have also been accused of stealing money, valuables, extortion, violence and illegal detention of migrant workers. Since they operate under the auspices of the Ministry of Home Affairs, they enjoy a large amount of legal immunity for their actions. RELA is very poorly regulated, given minimum training (3-14 days) and there are no education requirements or background checks on those wishing to join.²⁷

DETENTION

Foreign workers who are caught without the appropriate documents are detained in special detention facilities. Human rights advocates have alleged that these centers fall far short of international standards – the facilities are extremely overcrowded, unhygienic and detainees lack bedding, access to clean water, food and medication. Skin diseases and parasites are often found among detained migrant workers.²⁸

Since 2006, the Malaysian Government has been operating immigration courts within some of the detention centres, making them a one-stop-shop where migrants are detained, tried and punished for illegal entry and stay. The Malaysian Bar Council has strongly criticised these courts as they do not provide migrant workers a clear understanding of the charges against them or adequate legal support. Often 15-20 migrants are tried together in these courts, grouped by their offence, and if they are found guilty then they are deported at their own expense. Experts have stated that these practices are contrary to international standards of due process.²⁹

MEMORANDUM OF UNDERSTANDING (MOU'S), BILATERAL AGREEMENTS AND BANS

Malaysia has negotiated bilateral MoUs to manage labour migration dating as far back as 1984. These MoUs are particularly relevant to women migrant workers as exploitation of domestic workers is a key issue that many of these MoUs have tried to address. Malaysia has signed MoUs with Sri Lanka, China, Thailand, Bangladesh, Pakistan, India, Vietnam, Cambodia, Philippines and Indonesia.³⁰ In October 2018, Malaysia signed an MoU with Nepal, which stipulates that recruitment agencies shall bear all the costs of migration and that migrant workers are spared visa and ticket costs.³¹

Despite having MoUs in place with sending countries, widespread abuse by employers, such as withholding of passports, unfair wages and inadequate rest periods, have led to migration bans to Malaysia by sending countries. For example, Cambodia imposed a ban on domestic worker migration to Malaysia in 2011 based on the reports of abuse of female domestic workers. Similarly, Indonesia imposed a ban on domestic worker migration to Malaysia from 2009 to 2011.³²



In practice, MoUs have been found to have mixed results in protecting migrant workers' rights. For example, the MoU with Bangladesh was found to have reduced worker-paid recruitment costs by 8-10 times in the plantation sector. However, uneven implementation of MoU provisions means that deception and abuse of migrant workers persist. Also, in terms of the right to keep the passport and documentation, the Passport Act 1986 provides that it is an offense for any person to have another's passport in their possession, however, some MoUs provide that an employer may hold an employee's passport and documents with the employees' permission. This provides scope for the employer to argue that withholding a passport is done with consent (ILO, 2018).

Additionally, a fundamental problem with MoUs is that they provide different conditions and protections to different groups of workers instead of improving conditions in the sector as a whole. As a result, they can create discrimination based on nationalities. For example, Filipino domestic workers are generally considered to have the most rights and highest pay as a result of the strong negotiating position of their Government when signing MoUs.³³ A 2016 ILO study found that wages differ significantly based on the nationality of migrant domestic workers, which is at least partly due to differences in wage rates set in bilateral MoUs.³⁴



STATUS OF RATIFICATION OF INTERNATIONAL INSTRUMENT AND CONVENTIONS

NAME	ADOPTION STATUS
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)	✗
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)	✗
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD)	✗
CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)	✓
INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICMW)	✗
ILO 29 FORCED LABOUR CONVENTION	✗
ILO 87 CONVENTION ON FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE	✗
ILO 97 MIGRATION FOR EMPLOYMENT CONVENTION	✗
ILO 98 CONVENTION ON RIGHT TO ORGANISE AND COLLECTIVE BARGAINING	✓
ILO 100 CONVENTION ON EQUAL REMUNERATION	✓
ILO 105 ABOLITION OF FORCED LABOUR CONVENTION*	✗
ILO 111 DISCRIMINATION IN EMPLOYMENT AND OCCUPATION CONVENTION	✗
ILO 143 MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS) CONVENTION	✗
ILO 156 WORKERS WITH FAMILY RESPONSIBILITIES CONVENTION	✗
ILO 181 ON PRIVATE EMPLOYMENT AGENCIES CONVENTION	✗
ILO 183 MATERNITY PROTECTION CONVENTION	✗
ILO 189 DOMESTIC WORKERS CONVENTION	✗
ILO 190 VIOLENCE AND HARASSMENT CONVENTION	✗

✓ Ratified

✗ Not ratified

* Denounced on 10 January 1990

REFERENCES

NO.	LIST OF REFERENCES
1	UN. (2015). International migrant stock 2015. Retrieved from https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.asp
2, 19, 23, 27, 28, 29	Asian Migrant Center. (2016). Malaysia. Retrieved from https://www.asianmigrantcentre.org/malaysia
3	ILO. (2015). Labour market trends analysis and labour migration from South Asia to Gulf Cooperation Council countries, India and Malaysia. Retrieved from https://www.ilo.org/kathmandu/whatwedo/publications/WCMS_377416/lang--en/index.htm
4	IOM. (2015). Women's Labour Migration from Asia and the Pacific: Opportunities and Challenges. Retrieved from https://publications.iom.int/system/files/pdf/mp_i_issue12.pdf
5, 12, 15, 32, 33	ILO. (2016). Review of labour migration policy in Malaysia. Retrieved from https://www.ilo.org/asia/publications/WCMS_447687/lang--en/index.htm
6, 16	War on Want. (2012). Restricted Rights: Migrant Women Worker in Thailand, Cambodia and Malaysia. London , United Kingdom: Author
7, 24	Fair Labour Association. (2018). Triple Discrimination: Women, pregnant and migrant. Retrieved from https://www.fairlabor.org/sites/default/files/documents/reports/triple_discrimination_woman_pregnant_and_migrant_march_2018.pdf
8	https://tradingeconomics.com/malaysia/minimum-wages
9, 11, 30	https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_749704.pdf
10, 14, 17, 34	ILO. (2018). Towards achieving decent work for domestic workers in ASEAN. Retrieved from https://www.ilo.org/asia/publications/WCMS_631089/lang--en/index.htm
13	ILO (2016) Worker, helper, auntie, maid? Working conditions and attitude experienced by the migrant domestic workers in Thailand and Malaysia. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_537808.pdf
18	ILO. (2018). Malaysian and Vietnamese trade unions to collaborate on protecting migrant workers' rights. Retrieved from https://www.ilo.org/asia/media-centre/news/WCMS_618220/lang--en/index.htm
20	Teh. (2018). "Agents to blame for huge number of illegal foreign workers." Retrieved from https://www.nst.com.my/news/exclusive/2018/07/395563/agents-blame-huge-number-illegal-foreign-workers
21	ABC News, "Millions of Indonesian migrant workers face hardship in Malaysia amid coronavirus fallout", 26 July 2020.
22	ILO, "Reaching women migrant workers in Malaysia amid the COVID-19 health crisis", 19 June 2020
25	Rahim. (2018). Guan Eng: Back to original plan that employers pay full cost of RM10k skilled foreign worker levy. Retrieved from https://www.thestar.com.my/news/nation/2018/09/25/finance-ministry-full-cost-of-rm10000-skilled-foreign-worker-levy-to-be-borne-by-employers/
26	https://www.hrw.org/news/2007/05/09/malaysia-disband-abusive-volunteer-corps
31	ILO. (2018b). Nepal, Malaysia ink bilateral labor deal. Retrieved from http://apmigration.ilo.org/news/nepal-malaysia-ink-bilateral-labor-deal



Asia Pacific Forum on Women, Law and Development

Email : apwld@apwld.org

Website: www.apwld.org

DESIGN & LAYOUT BY ALIZA

**Produced with the support of Sida,
Norad, Foundation for a Just Society
and Wellspring**