

DAWN DISCUSSION PAPER #38

POLICY TRANSFORMATIONS

MALAYSIA
ORGANISING MIGRANT DOMESTIC WORKERS:
PROSPECTS AND CHALLENGES IN TIMES OF
COVID-19 CRISIS

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DRAFT for discussion

POLICY
TRANSFORMATIONS

REGION: ASIA	POLICY AREA: ● MIGRATION AND HUMAN MOBILITIES ● LABOUR POLICIES AND WORKERS' RIGHTS
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Using a feminist intersectional and interlinkages approach, this project closely examines policy changes that have taken place during the period of exceptionality produced by the pandemic, exploring how they may impact the future in four policy areas: macroeconomics; labour policies and workers' rights; migration and human mobilities, care and social protection.

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ABBREVIATIONS

AMMPO	Association of Nationalist Overseas Filipino Workers in Malaysia
CSOs	Civil Society Organisations
EMCO	Enhanced Movement Control Order
EO	Emergency (Essential Powers) Ordinance 2021
IDWF	International Domestic Workers Federation
ILO	International Labour Organization
MDWs	Migrant Domestic Workers
MAF	Malaysian Armed Forces
MCO	Movement Control Order
MYR	Malaysian Ringgit
PDRM	Royal Malaysian Police
PERTIMIG	Persatuan Pekerja Rumah Tangga Indonesia Migran
PPE	Personal Protective Equipment
R2R	Right to Redress
SOCSSO	Social Security Protection Scheme
USD	United States Dollar

ABSTRACT

Decent work deficits experienced by migrant domestic workers (MDWs) in Malaysia are characterised by high levels of informality, low wages, exposure to risk of violence and harassment, limitations to effectively organising and bargaining collectively and exclusions from full labour law and social protections afforded to workers in other sectors. These existing inequalities experienced by MDWs have been compounded during the COVID-19 pandemic. The government of Malaysia's pandemic response policies including increased enforcement of immigration laws, exclusion of migrant workers from pandemic-assistance plans, and the prohibition of rental of low-cost housing to migrant workers brought to the fore anti-migrant sentiments as MDWs were stigmatised as virus spreaders. The instituting of multiple nationwide lockdowns caused MDWs to experience extended working hours, inability to access days off, and exposure to risks of violence and of contracting the virus from employers and their family members. Live-out MDWs saw a decrease in working hours and correspondingly lower wages which impacted their food security. Against the authoritarian landscape during the pandemic, MDWs in Malaysia have displayed tremendous resilience and increased the capacity to mobilise and organise themselves, coordinate and come together to respond to the COVID-19 pandemic and inequalities experienced. MDW organisations redefined safe spaces for its communities, expanding organising to virtual spaces which provided a sense of safety to MDWs. Providing safe spaces for organising increased membership and strengthened the capacity and confidence of MDW organisations to bring employers, trade unions, embassies of countries of origin and Civil Society Organisations (CSOs) into their network of influence. MDWs evolved from participants of virtual meetings to conveners or leaders of these settings over the course of the pandemic. One clear result of this persistent organising is the expansion of the Employment Injury Scheme under the national social security scheme to cover MDWs. Another is the commitment from the Ministry of Human Resources to regulate the domestic work sector through legislation. This case study reveals that collective organising is possible, even among small and marginalised communities considered "unorganisable" and in the context of an authoritarian trend when innovative organising methods are adapted.

INTRODUCTION

Domestic work is a significant source of employment for women migrant workers in Malaysia. The domestic work sector is characterised by high levels of informality, the seemingly private nature of workplaces, low wages and the exclusion from full labour law and social protections afforded to workers in other sectors. Migrant domestic workers (MDWs) in Malaysia experience significant decent work deficits, limitations in effectively organising and bargaining collectively as well as exposure to risks of violence and harassment. Existing inequalities that MDWs are exposed to were further exacerbated during the COVID-19 pandemic.

Migrant domestic workers, especially MDWs in informal and precarious employment, were among the worst hit by the negative consequences of the public health crisis. MDWs experienced extended working hours, inability to access days off, and exposure to risks of violence and of contracting the virus from employers and their family members. Live-out MDWs saw a dramatic decrease in working hours and correspondingly lower wages. This negatively impacted their food and income security as well as the ability to remit money to families in countries of origin. (Lim, 2020) Additionally, migrant workers and MDWs were exposed to additional risks of violence stemming from their migration status. The pandemic brought to the fore anti-migrant sentiments as MDWs reported being discriminated against and stigmatised as virus spreaders. (Hector and Pereira, 2020; Fishbein, 2020). Similar anti-migrant attitudes manifested in the government's pandemic-response policiesⁱ including in large-scale arrests of undocumented migrants (Human Rights Watch, 2021; The Straits Times, 2020b) and deportations, (Reuters, 2021) increased enforcement of immigration laws, exclusion of migrant workers from pandemic-assistance plans as well as the prohibition of rental of low-cost housing to migrant workers. (Hisamudin, 2020).

By examining the hypotheses proposed by DAWN's analytical framework (Llavaneras Blanco and Cuervo, 2021) we consider that although these measures reflect the increased biopolitical control on the part of the State and the expansion of an ongoing authoritarian trend, the COVID-19 pandemic has also led to policies that are transformative and progressive for MDWs. The crisis itself has acted as a portal into labour policies that

expanded social justice for MDWs. Notably, against the authoritarian landscape during the pandemic, MDWs in Malaysia have displayed tremendous resilience and increased the capacity to mobilise and organise themselves, coordinate and come together to respond to the COVID-19 pandemic. Organising has led to the strengthening of existing MDW associations and the formation of a new one,ⁱⁱ which created a support network for MDWs to navigate everyday vulnerabilities to rights violations and those that arise from the pandemic, and to raise awareness of MDWs rights as well as enlarging spaces to claim their rights through policy advocacy. Organising has also led to substantive policy change, specifically the expansion of the coverage of national social protection scheme to include MDWs.

This case study aims to examine how MDWs in Malaysia experienced the COVID-19 pandemic, taking into consideration the multiple oppressions embedded in class, gender, migration status and racial hierarchies that shape MDWs' precarity and are in turn, embedded in Malaysia's pandemic response. It looks at how Malaysia's political-social context characterised by anti-migrant regimes contribute to (re)producing this precarity during the public health crisis. As a second line of inquiry, this case study also examines how MDWs have resisted the COVID-19 crisis amidst the ongoing authoritarian trend through organising and advocacy for progressive policy transformations. Data for this case study was collected using a mixed-method qualitative research approach; desk research on existing literature on domestic workers was conducted. To uncover and capture the lived experiences of MDWs in Malaysia during the COVID-19 pandemic, data was also collected through semi-structured interviews with key leaders from two grassroots domestic workers organisations (the Association of Nationalist Overseas Filipino Workers in Malaysia, AMMPO), a Filipino domestic workers organisation and *Persatuan Pekerja Rumah Tangga Indonesia Migran* (PERTIMIG), an Indonesian domestic workers organisation. Both were organisers for MDWs in Malaysia prior to the COVID-19 pandemic. A representative from the International Domestic Workers Federation (IDWF) was also interviewed to understand the efforts undertaken by the organisation to accompany MDWs in the formation of PERTIMIG in spite of the increase in the authoritarian landscape in Malaysia.

The case study is organised as follows: (i) an overview of MDWs in Malaysia, with a focus on the migration and labour governance regimes in Malaysia, to understand contextual and structural factors influencing the status of MDWs within Malaysian society and the gender-based vulnerabilities stemming from their identity as women and as migrants; (ii) the State's response to COVID-19 through policy making in Malaysia and the use of anti-migrant policies in pandemic response; (iii) analysis of experiences of MDWs during the COVID-19 crisis in Malaysia, addressing how anti-migrant pandemic responses impact MDWs everyday lives and broader access to their rights; and (iv) analysis of MDWs' resistance through organising and advocacy to navigate existing vulnerabilities as well as those stemming from the COVID-19 pandemic to claim their rights. Specifically, this section will look into MDWs' success in advocating for the inclusion of domestic workers into Malaysia's national social protection scheme.

CONTEXT

I. MIGRANT DOMESTIC WORKERS IN MALAYSIA

As of May 2020, there were a total of 129,980 documented MDWs in Malaysia while an estimated 200,000 are believed to be undocumented (Ke-Arah 189, 2021). Of the documented MDW population in Malaysia, ninety eight percent are women employed from lower income countries such as Indonesia, Cambodia, Thailand, India, Vietnam, Laos and the Philippines (Immigration Department of Malaysia, 2021). The number excludes undocumented MDWs employed informally or those whose visas are tied to enterprises or businesses. As with many parts of the world, MDWs in Malaysia live somewhere in the shadows of the country's restrictive immigration and labour governance regimes. Each of these regimes differentially include MDWs in its sphere of control and reproduce socially constructed roles and relationships between women and men, nationals and migrants, and rich and poor.

Immigration regulations dictate who, as migrants, are entitled to access Malaysia's domestic work market. The gendered and racialised nature of the domestic work sector is one of the most apparent attributes of Malaysia's labour migration regulations. Only women between the age of twenty-one and forty-five years from an approved list of countries, certified physically fit and passed a security clearance may be employed as MDWs, referred to as

‘foreign domestic helpers’ (Immigration Department of Malaysia, 2021). The requirement that only a woman can be employed as a MDW and that she should be of a reproductive age is the labour market’s expression that care and domestic work is an extension of a woman’s duty as a citizen (Hierofani, 2020; Anderson, 2000). Prospective employers have to meet different income thresholds and make personal bond paymentsⁱⁱⁱ to Malaysia’s Department of Immigration based on the nationality of the MDW. This places MDWs into a hierarchy of desirability; employers with greater access to financial resources will have more choices of who they engage. For example, to hire a MDW from Indonesia, a prospective employer has to have a monthly net income of MYR3,000 (USD716.59) and make a personal bond payment of MYR250 (USD59.72). Meanwhile, hiring of a MDW from the Philippines would require an employer to have a monthly net income of MYR5,000 (USD1,194.32) and make a personal bond payment of MYR750 (USD179.15) (Immigration Department of Malaysia, 2021). These criteria not only determine which racialised body is suitable for the job but also reproduce the inequities and power imbalances between a MDW and her employer as well as among MDWs of different countries of origin.

Immigration control over a MDW’s mobility extends beyond entry into the labour market to how she moves within it. Migrant domestic workers in Malaysia have limited labour market mobility and agency once employed and are required to continuously prove they are worthy of work in Malaysia, determined through the passing of medical examinations and pregnancy tests.^{iv} The Visit Pass (Temporary Employment) or the “work permit” issued upon entry into the country ties a MDW to a specific employer and a change of employer and/or employment is not allowed, except with the permission of the Immigration Department of Malaysia. The work permit is valid for a period of twelve months, and may be renewed annually for up to a period of ten years.^v This limits the ability of MDWs to leave exploitative working conditions or negotiate terms of employment. In the event of violence and exploitation, it is the Immigration Department of Malaysia (and not the worker) that has the power to “transfer” the MDW to a new employer on humanitarian grounds. This leaves MDWs with limited control over where they are placed for work, potentially exposing them to precarious situations. Further, renewal of a MDW’s work permit is done at the employer’s discretion and subject to fitness for work, evidenced in the passing of a medical examination and a mandatory pregnancy test. If the MDW is positive for pregnancy, the contract of employment is terminated and the worker is repatriated.

At work, Malaysia's labour laws leave the domestic work sector largely unregulated, restricting the space MDWs have to negotiate employment terms. The Employment Act 1955, the foundational legislation that governs employer-employee relationships in Malaysia refers to domestic workers as "domestic servants" and relegates them to a sub-class of worker, without many of the standard labour rights protections other workers are entitled to. Provisions within the Employment Act that regulate limitations of work hours, provision of paid days off, holidays and leave days, payment of overtime wages and maternity benefits do not apply to domestic workers. In addition, domestic workers are also excluded from other laws aimed at protecting workers from exploitative conditions, including those that govern the payment of minimum wages and national standards of employer-provided accommodation. This exclusion affirms a broader appraisal of domestic work, that domestic work is not seen as "real" work but a form of "service", and should not be subject to rational economic calculations of exchange and use values (Chin, 2003).

The absence of regulations for the domestic work sector engenders power imbalances between the employer and the MDW; it gives the employer the discretion to determine wages as well as the quality and standard of work and living conditions experienced by MDWs. This has exposed MDWs to substandard working conditions and labour rights violations, including long working hours, having no access to paid days off, holidays or leave, passport retention, undue surveillance on MDWs, restrictions on freedom of movement and isolation from others outside of the employer's home (Human Rights Watch, 2004). In severe cases, MDWs in Malaysia have been exposed to conditions amounting to forced labour and other forms of violence and harassment (Napier-Moore, 2017). The rights violations that MDWs face are often compounded if they are undocumented or are working informally. Given the power imbalances within employment relationships, MDWs who attempt to negotiate better working conditions or report errant employers, risk losing employment, a place to live, and being denounced to immigration authorities.

Traditionally, organising and collective bargaining offer a way to manage unequal power dynamics between employers and workers. There are no registered trade unions for the domestic work sector and previous attempts to establish one were unsuccessful.^{vi} As such,

spaces to organise formally are limited and migrant worker associations in Malaysia are not formally registered with the Malaysian government. Further, the characteristics of the domestic work sector means it does not conform easily to the standard industrial relations model. There continues to be a lack of recognition that domestic workers are workers and labour rights holders, and that employers' homes are sites subject to labour relations. On one hand, the maternalist dynamic of domestic work means MDWs are often seen as being 'part of the family' and undermines latent work relations (Anderson, 2000). On the other, the positioning of the domestic worker as a 'servant' as in the Employment Act 1955 implies the need to show loyalty or deference; organising could be seen as a personal affront to employers (Hobden, 2015). Domestic work is also highly decentralised; MDWs are spatially isolated from each other, dispersed in multiple households with individualised contracts between the MDW and the employer. To organise collectively, MDWs have to come together in a shared public space. This is logistically challenging because of employers' high degree of control over MDWs work hours and freedom of movement. Among MDWs who are undocumented or working informally, organising and moving in public spaces come with the added risks of arrest, detention and deportation.

Migrant domestic worker associations in Malaysia such as AMMPO and PERTIMIG have adopted a mode of organising that focuses on micro-level mobilising of MDWs to navigate barriers to organising. This begins typically with building safe spaces for MDWs to convene and share experiences with each other. Although there is a designated organiser, the structure of MDW associations is not hierarchical. The environment is gendered and MDWs have spaces to compare notes on employers and work conditions and share day-to-day lived experiences of being a woman, a migrant, and a domestic worker in Malaysia. Meetings are usually conducted on Sundays in informal settings such as restaurants, public parks, churches and homes of MDWs. Recruitment typically involves one MDW asking another to join her at these meetings. Activities during meetings are designed to form labour solidarity and resistance to exploitation. Some, like make-up and baking lessons, are meant to provide spaces and interactive opportunities for building shared experiences. Others, like workshops on labour rights, English language and public speaking classes are aimed to empower MDWs with the knowledge to develop their political consciousness and world views about their

migratory experiences, the skills and language to speak about their work conditions and self-confidence to represent themselves in settings with other stakeholders. It is in these settings that MDWs gain knowledge about their labour rights and inclusion into a service referral network which enables them to seek redress in cases of exploitation. Solidarity with the wider labour and migrant labour rights movement in Malaysia is engendered by linking MDWs with other stakeholders such as trade unions, civil society organisations, embassy representatives and government officials. This is achieved through participation in social gatherings like the annual celebration on International Migrants Day and formal dialogues with public officials and members of other civil society organisations to advance rights at work for migrant workers.

II. COVID-19 PANDEMIC AND MALAYSIA'S PANDEMIC RESPONSE POLICIES

Malaysia detected its first case of the COVID-19 infection on 25 January 2020 and has since experienced recurring infection waves. By August 2021, there were 1.4 million people in Malaysia infected with the COVID-19 virus and more than 12,000 people have died from the pandemic. From the beginning, the Government of Malaysia described Covid-19 as a national security threat^{vii} (National Security Council Malaysia, 2020); the pandemic is described invariably as something that “threaten(s) the lives of our people” (Prime Minister’s Office of Malaysia, 2020a), an “unprecedented crisis” (Prime Minister’s Office of Malaysia, 2020b), a “serious threat” (Prime Minister’s Office of Malaysia, 2020c) and a “major threat to the economic life of the people” (Prime Minister’s Office of Malaysia, 2021). Pandemic response is spoken as a “fight” that must be won (Prime Minister’s Office of Malaysia, 2021) and a collective responsibility. Measures for responding to the crisis are said to be “necessary to combat the virus” (Prime Minister’s Office of Malaysia, 2020a). In line with the framing of the pandemic as a security threat, Malaysia’s pandemic-response policy making is led by the National Security Council, chaired by the Prime Minister. A Compliance Operations Task Force consisting of fourteen agencies which include the Royal Malaysian Police (PDRM), the Malaysian Armed Forces (MAF), the Civil Defence Forces and the Malaysian Maritime Enforcement Agency, was established to monitor the compliance of COVID-19 prevention measures (Ministry of Health, 2020).

Beginning on 18 March 2020, the Government of Malaysia implemented an expansive movement control regime, or the Movement Control Order (“MCO”). Three key measures defined the MCO. The first was the implementation of border controls; this is characterised by the closure of all entry points and international borders, save for approved reasons for travel.^{viii} The second was the implementation of controls on the freedom of movement within the country, marked by the closure of non-essential workplaces, public and private business establishments and schools, a broad stay-at-home order with a ten kilometre-radius limit on internal travel and restrictions on inter-district and inter-state travel. This precipitated significant loss of incomes and jobs, especially among daily wage earners and informal sector workers. The Department of Statistics of Malaysia found that the average monthly salaries and wages fell by nine per cent in 2020 to MYR2,933 (USD701.76) (Department of Statistics of Malaysia, 2021). The third was the prohibition of public gatherings and meetings and the promotion of physical distancing. In high-risk locations with COVID-19 infection clusters, an Enhanced Movement Control Order (“EMCO”) is put in place. Movement in and out of EMCO locations are prohibited and residents are subject to mandatory COVID-19 tests and are not allowed to leave their homes, except for an emergency. Depending on the number of COVID-19 cases at any one point, the Government tightened and/or loosened restrictions, using different iterations of the MCO and EMCO (Hashim et al., 2021).^{ix}

Enforcement of the pandemic-related restrictions relied on increased presence of security enforcement personnel and an expansion of policing powers in civilian spaces. In early iterations of the MCO, PDRM with the support of the MAF conducted roadblocks and stationed personnel at inter-state checkpoints and conducted patrols to exert control over day-to-day mobility. The police and other law enforcement officials were empowered to authorise requests for inter-district and inter-state travel and to issue fines for non-compliance of MCO regulations, including travelling without proper authorisation and failure to wear masks. This made everyday movement perilous.

A progressive expansion of authoritarian ambitions of the State was noticeable as the crisis evolved. On 12 January 2021, the Government declared a state of Emergency on the pretext that it needed “to have certain powers to ensure that this pandemic can be curbed effectively”

(Prime Minister's Office, 2021). The Emergency (Essential Powers) Ordinance 2021 (the "EO") which was in place until 21 July 2021, further increased powers of security personnel and while suspending accountability mechanisms. The EO gave to the MAF policing powers, allowing them to arbitrarily impose fines and detain those in violation of MCO restrictions. It also empowered the military, the police and immigration officials to "arrest illegal immigrants and anyone who encroaches on our national borders". At the same time, it provided officials with immunity against prosecution and allowed the Prime Minister and Chief Ministers to unilaterally pass supplementary budgets, including budgets on the enhancement of security measures, without the approval of Parliament or State assemblies. Democratic institutions such as the Parliament and state legislative assembly sessions were suspended as were elections for one State assembly and several vacated Parliament constituencies, removing not only a check and balance tool but also any potential challenge to the Government's hold on power.

Part of the State's securitised response to the pandemic was the positioning of migrants as sources of COVID-19 infection and consequentially security threats. The working and living conditions of many migrant workers made it challenging to practice contagion-prevention measures and the limited access to health services meant that they were vulnerable to being infected by the COVID-19 virus. The first EMCO locations of the pandemic were implemented at buildings with high numbers of migrants.^x Under the cover of EMCO, the State conducted immigration raids to arrest undocumented migrants to protect "our own innocent citizens" (Kanyakumari, 2020; CodeBlue, 2020). Images of barbed wires and security personnel guarding entrances implied that the contagion threat, in the form of migrant bodies, have to be isolated and then removed from the public. Similarly, inspections for compliance with national standards for employer-provided housing and amenities often involved raids at migrant worker accommodations (The Straits Times, 2020a). Although raids are targeted towards migrant workers in general, children and the elderly are arrested too, if found.

Enforcement activities revealed the precarity experienced by migrant workers but media images of arrests have the effect of optically linking migrants to COVID-19 risks and contributing to anti-migrant discontent (Latiff and Ananthalakshmi, 2020). Images of

migrants-as-threats were reinforced when immigration detention centres where migrants are held pending deportation became hotspots for Covid-19 outbreaks (Wahab, 2020). Over the course of the pandemic, the State tapped into anti-migrant sentiments and strengthened its use of immigration control regimes. In March 2020 despite the guarantee of non-retaliation towards migrant workers who sought COVID-19 testing or treatment based on their immigration status, the authorities conducted crackdowns which resulted in the arrest of over 2,000 people (Al Jazeera, 2021). The State continued to increase deployment of security personnel to implement large-scale arrests and detention, built up the capacity of prisons and detention centres (Chung, 2021) and suppressed dissent towards this policy (Al Jazeera, 2020). Public assistance was also sought by the Immigration Department to identify and report undocumented migrants via several immigration hotline numbers and through the Immigration Department's official Facebook page. Netizens were commended on efforts to report "these illegal immigrants." At the same time, the government took steps to silence civil society criticisms against anti-migrant and pandemic-management policies (Lakhdar, 2020).

Immigration raids were conducted in parallel with the implementation of the Labour Recalibration Programme and the Return Recalibration Programme to regularise or repatriate undocumented migrants.^{xi} The Labour Recalibration Programme, in part, sought to have migrant workers fulfil labour market gaps in key economic sectors such as construction, manufacturing and plantation; domestic work was excluded. There was no reason provided for the exclusion of domestic workers for the programme, but this is consistent with the treatment of domestic work and domestic workers within existing labour and migration policy frameworks. This betrayed the duality in Malaysia's labour migration approach. It simultaneously perceived migrant workers as security threats, but their bodies as necessary to securing the economic wellbeing of the State (Harun, 2021). As such, policies of exclusion played out in the world of work. Property owners are reminded not to rent their premises to migrants; migrants are prohibited from engaging in certain types of businesses (The Star, 2020) or be employed (Bavani, 2020). Migrant workers in essential services and domestic work are expected to work longer hours, without adequate physical and social protections. With the exception of MDWs, they also had to undergo mandatory COVID-19 screening to return to work while the same is not required of national workers (Lee, 2020).

III. EXPERIENCES OF MIGRANT DOMESTIC WORKERS DURING THE COVID-19 CRISIS IN MALAYSIA

Malaysia's pandemic response strategy has had a grave impact on both live-in and live-out MDWs. Successive stay-at-home orders and the closure of educational institutions forcing many MDWs' employers and their children to remain at home. This increased substantially the hours that MDWs spend with employers within the confined space of the employers' homes and access paid day-off, if they had one. This has two key implications for live-in MDWs; the first is the increase of surveillance and control employers have on a MDW's time and consequently her everyday freedoms. Secondly, it worsened the precarious work conditions of MDWs and further devalued domestic work.

Employers' standards of hygiene and cleanliness in their homes changed due to infection risks. Migrant domestic workers were not only expected to shoulder the additional burden of meeting those hygiene standards but were also prevented from leaving their workplace or to fraternise with others for fear that they would bring the COVID-19 virus back to employers' homes. The closure of schools meant that MDWs had to provide for the needs and additional care of children who were at home. Migrant domestic workers also spoke about being assigned the responsibility of caring for the sick and elderly at home without being given adequate personal protective equipment (PPE) such as masks and gloves. This placed them in a position of heightened risk of being in contact with someone who has contracted COVID-19.^{xii} As the domestic work sector is not subject to the legal limits of regular and overtime work hours set by the Employment Act^{xiii} as well as the requirements for minimum wage^{xiv} and overtime pay, MDWs are rarely compensated for the additional hours of work or risks they took on.

Additionally, MDWs and their employers were specifically excluded from pandemic-related economic assistance provided by the state. Some employers who have lost their jobs or have themselves experienced salary deductions have transferred this financial burden onto their domestic workers through wage deductions, or non-payment of wages. For live-out MDWs, the risks to income security were present for those who were unable to travel to their employers' homes due to movement restrictions or who had lost jobs due to the fear of COVID-19 contagion risks. Live-out MDWs themselves spoke about the fear of contracting COVID-19 from sick family members in employers' households due to the lack of provision

of PPE. Live-out MDWs had work spent their income to purchase PPEs for their work.^{xv} The loss of income among live-out MDWs had, at times, led to food deprivation, inability to pay rent and eviction from their homes (Wahab, 2020b).

Migrant domestic workers who were able to obtain their full wages on time, however, were not able to remit money home to their families due to the lockdown measures. Remittance services remained closed during the partial or full lockdown periods and many MDWs did not have the know-how on remitting money online. This had a knock-on effect on the ability of families of MDWs to meet their basic needs in the countries of origin (ILO, 2020).

Outside the world of work, MDWs were grappling with challenges in accessing support services. Interviews with MDWs organisations PERTIMIG, IDWF and AMMPO confirmed that they received a sharp increase in complaints from MDWs of termination of employment, food deprivation, long working hours, abuse and violence, eviction and deportation during the pandemic. MDWs who faced violence and harassment found it increasingly difficult to leave situations of abuse and violence and access assistance due to the lack of freedom of movement. The increase in violence and harassment experienced by MDWs was happening at a time when social, healthcare and access to justice services were reprioritised to respond to the Covid-19 pandemic. Non-governmental organisations which provide services to migrant workers were deemed as non-essential services and were not allowed to operate during the MCO periods.

Barriers to accessing services was likely intensified with the increase in police presence and other emblems of law enforcement in public spaces. Police roadblocks, patrols and random stops to check for compliance with Covid-19 prevention made day-to-day movements for MDWs a perilous venture. Interviews with MDW organisations in Malaysia revealed that MDWs who experience violence or other situations of crisis were hesitant to seek out support services. As mentioned in sections above, the securitised nature of Malaysia's pandemic response had positioned migrant workers, especially undocumented workers, as security and public health threats. Therefore, not only are migrant workers at risk of being arrested and detained during large scale immigration raids, there is tacit awareness on the part of law

enforcement that migrant workers make obvious (and easy) targets for law enforcements for random stop-and-checks. Given the wide discretionary powers granted to security personnel, most migrant workers are powerless to object to police stops or document checks. Interviews with participants in this research representing 230 MDWs in Malaysia reported that MDWs in particular were deterred from and deliberately avoided leaving their homes, including for organising activities.

“It is very unsafe out there for us. Not just because of Covid. If we go out, we become the target of the police and usually have to pay them something. If we don’t, we risk getting harassed or arrested.” (Nadeera 2021, personal communication, 12 September)

The result was that MDWs, already isolated from most social connections because of the nature of their workplace, are now locked-in by the pandemic. Central to this precarity is the reliance of MDWs on their migration status for access to support services and to validate their standing in Malaysian society. Consular services and immigration offices have remained closed throughout most of the lockdown periods. Whenever re-opened, consular services and immigration departments experience surges in applications relating to permit and passport renewals. Migrant domestic workers often relied on their employers to prepare the paperwork and go through the administrative processes of ensuring they are able to legally work and stay in Malaysia. During the pandemic, MDWs or their employers were not able to renew their documents in time putting them at risk of arrest, detention and deportation for failure to comply with immigration requirements. Many MDWs also had expired contracts and were unable to return home due to the closure of international borders. This group of workers experience continuation of work with their employers without pay and many had their permits expire while waiting for their flights to countries of origin. State policies to regularise undocumented migrant workers under the Recalibration Programme excluded undocumented MDWs, most of whom are women. These deliberate exclusions underscore the continued gender-based discrimination and inequalities experienced by MDWs.

IV. MIGRANT DOMESTIC WORKERS' RESISTANCE THROUGH ORGANISING AND ADVOCACY TO NAVIGATE EXISTING VULNERABILITIES AND THE INCREASE IN AN AUTHORITARIAN LANDSCAPE IN MALAYSIA STEMMING FROM THE COVID-19 PANDEMIC

The sections above have situated MDWs within Malaysia's highly discriminatory and oppressive labour and immigration management regimes. We also discussed how the isolated and dispersed nature of the domestic work sector, the oppressive work and living conditions that MDWs experience and the everyday risks of arrests and detention by law enforcement shrank the autonomous space for MDWs to connect with others, form social networks and to collectively organise. This section considers the processes and strategies MDW organisations adopted to resist the barriers to collective organising and leverage the impact of this resistance.

REDEFINED SAFE SPACES FOR COLLECTIVE COMMUNITIES

Prior to the COVID-19 pandemic, MDW organisations hosted weekly or fortnightly meetings as a way for providing MDWs with a safe space for them to meet, to connect and to develop a sense of community with others outside of their employers' homes. This relied on MDWs making the journey to the meeting place; the level of attendance each week varied based on the distance or cost of travel and the ability of MDWs to access their day-off. Because the domestic work sector is not regulated, many MDWs do not have a fixed paid day-off and the ability to leave the workplace is often subject to the employer's discretion. Attendance among undocumented MDWs was inconsistent because many feared being stopped by law enforcement officials while traveling to and from meetings. During the pandemic when the restrictions on everyday movements and full or partial lockdowns were in place, MDWs began conducting these meetings virtually. This altered not only the medium for connecting among MDWs but redefined what the shared public sphere is for MDWs seeking to collectively organise.

Virtual meetings offered more than just a safe space for sharing and connecting among MDWs. By removing the need to travel to physical meeting spaces, MDWs were able attend gatherings without the physical risk of arrest and detention. In effect, virtual meetings allowed MDWs to regain control and exercise agency; the decision to participate in virtual meetings became a matter of choice, and not fear nor self-preservation. Notably, mobilising and organising online came with the challenge of ensuring accessibility to meeting platforms

among MDWs. The lack of access to internet data, poor internet connectivity and long work hours were cited as hurdles for online participation. These challenges were not insurmountable. With the support of IDWF, a MDW coordinator was recruited and stationed in Malaysia to spearhead organising efforts. Frequent consultation between the coordinator and IDWF led to strategic and locally relevant decision making on community mobilising such as how to create spaces for MDWs to safely gather. A few months into the nationwide lockdown, MDWs mobilised to form a committee that was tasked to empower other members within the MDW organisations to convene online. Committee members taught others how to access and use virtual meeting platforms like Zoom through mobile phones to participate in meetings. Because meetings were just usually a click away, MDWs could participate while they were at work and when they did not have a day-off.

The increased sense of security widened the public sphere for collective organising for MDWs. Because virtual meetings could be organised with fewer resources, MDW organisations could convene them more regularly and target a greater number of MDWs from a wider geographical reach. Virtual meetings also proved to be a power equaliser among MDW organisations and other labour migration stakeholders or actors. During the pandemic, MDW organisations coordinated regularly with CSOs and strategically joined meetings with civil society coalitions working on advancing the rights of domestic workers in Malaysia. Inclusion of MDWs into coalition meetings exposed them to the politicised languages of rights at work, collective organising and labour solidarity and provided a useful frame of reference for self-representation by MDWs.

Two CSO coalitions MDW organisations participated in are of note; the first is the Right to Redress Coalition (“R2R”) which focuses on labour law reforms, including the amendment of legislation such as the Employment Act while the second is Ke-Arah 189 which is a coalition of CSOs advocating for domestic worker rights in line with the ILO Domestic Workers Convention, 2011 (No.189). Migrant domestic workers said that being a part of a coalition offered psychological empowerment, especially when they had to represent themselves to perceived power holders such as government agencies. On their own, MDWs said they felt intimidated to speak up. When participation is mediated through a virtual platform and together with other CSOs, MDWs used various policy meeting platforms, to represent their

interests, through verbal interventions as well as through virtual functions such as polls, chat boxes and comment boxes. For example, through its participation in policy dialogues organised by Ke-Arah 189 where Malaysian government representatives were present, MDWs presented arguments based on lived experiences to advocate for the inclusion of MDWs into existing social protection schemes.

STRENGTHENED COMMUNITY CONSCIOUSNESS IN A TIME OF CRISIS

Having been included into safe virtual spaces, MDW organisations sought to expand this space to include others. Regular participation in virtual meetings enabled MDWs to develop both the individual and community consciousness that were needed to pave the way for collective campaigning and mobilisation. As this consciousness developed, MDW organisations strategised to bring other power holders such as employers, trade unions, embassies of countries of origin and CSOs into their network of influence. MDWs evolved from participants of virtual meetings to conveners or leaders of these settings over the course of the pandemic. MDWs convened meetings, on their own or in collaboration with other CSOs, and carved out new spaces to speak locally and regionally on experiences of domestic workers and to articulate iterative demands for regulations for the domestic work sector and the inclusion into social protection schemes, especially to governments of countries of origin and destination. “Now that the government understands how connected we are with MDWs on the ground, they specifically invite us to meetings and consultations. Our input helps them make relevant policy decisions for MDWs because it is informed by MDWs themselves. One of our successes was evident with the inclusion of social security for MDWs” (Representative of PERMITING, August 2021).

Some of the policy demands that stem from the organising of MDWs and their allies include provision of a paid day off, the recognition of domestic work as work, inclusion of domestic workers in social protection policies, and a separate legislation enacted for the protection on domestic workers. Additionally, domestic worker organisers and leaders met online and in-person with employers to explain their organising efforts. This was done to gain employers’ trust and support so that the virtual safe space for organising and advocacy could be expanded to include more MDWs. There was also increase in the use of the media as an ally

for MDWs in making their plight and demands known to the public. MDW organisations reached out and provided much-needed grassroots perspective on the situation of MDWs during the COVID-19 pandemic. Issues such as the deprioritisation of domestic workers' welfare and increase risks experienced by domestic workers during the COVID-19 pandemic have been featured in alternative media channels changing negative perceptions and public attitudes on domestic work and domestic workers.

While community consciousness among MDWs was strengthened in virtual spaces, it is in physical spaces where the impact of organising was most apparent. MDWs, especially those undocumented, experienced food and income insecurities during the pandemic but were excluded from State-sponsored aid packages. As there was already a community of sharing among MDWs, community organisers learnt that food aid provided by embassies of countries of origin in selected locations did not reach MDWs. In response, MDW organisations said they coordinated with other CSOs to mobilise financial resources for distribution of food aid and PPE. For example, PERTIMIG established a new hotline and used online social media platforms such as WhatsApp and Facebook to receive requests for and coordinate the distribution of food aid. Through these platforms, PERTIMIG not only accepted requests of assistance from MDWs in need but had also received referrals from other CSOs. To mitigate risks of arrests associated with travelling during the pandemic, PERTIMIG sought a letter of authorisation from the Embassy of Indonesia to facilitate their movement; food distribution was managed and distributed door-to-door by MDW leaders within the same locality. When it was not possible to distribute food personally, MDWs used private sector food delivery services. Through this food aid distribution, organisers were able to conduct micro-level organising through sharing of information on labour rights through distribution of pamphlets and brochures and speaking to MDWs they met on organising efforts.

SUSTAINED RESISTANCE AND POLICY CHANGES

The organising of MDWs during the COVID-19 pandemic led to several key outcomes. The first was the growth in membership and participation of MDW organisations and the development of collective leadership where individuals within MDW organisations work together towards a shared goal of empowerment of MDWs. Participation in virtual meetings as well as the food aid distribution led to the emergence of domestic worker-activists among

MDWs, who have the capacity to articulate their interests and contribute to the advocacy agenda. For example, PERTIMIG was established in December in 2019 with thirty members before the height of the pandemic in Malaysia and grew to having over 130 active members over the course of the pandemic. In June 2021, PERTIMIG hosted its first founding congress online to establish a leadership structure and constitution. Through participative democracy, members nominated, campaigned, delivered public speeches and voted virtually for their elected leaders. That the leaders were domestic workers themselves meant that the organisation could sustain itself through self-organisation and its advocacy would be informed by actual experiences of MDWs.

Secondly, Malaysia's restrictive industrial relations do not allow for migrant workers to establish trade unions of their own or for migrant workers to hold leadership positions within existing trade unions. Although MDW organisations could not be formally registered as an association or a trade union in Malaysia, the mobilising and organising through food aid drives and the persistent participation in various meeting platforms raised the profile of MDW organisations. This made it apparent to State and non-State stakeholders that the participation of MDW organisations and MDWs themselves was critical to the legitimacy of policies related to the domestic work sector. MDW organisations were invited by the R2R and Ke-Arah 189 coalitions to contribute to policy dialogues on labour laws and domestic workers' rights with countries of origin embassies or high commissions and the Government of Malaysia because they represent the unmediated voices of MDWs. For example, the Ministry of Human Resources published the proposed Employment (Domestic Employee) Regulations 2019 to gather inputs into the proposed legislation (Ministry of Human Resources, 2019).^{xvi} In response to this, PERTIMIG, AMMPO and a CSO organised a joint consultation with national and non-national domestic workers to discuss and provide recommendations for inclusion into the law. After the consultation, a document detailing the recommendations from the meeting was submitted to the Ministry of Human Resources for consideration. On several occasions, Malaysia's Ministry of Human Resources accepted invitations by MDW organisations and CSO coalitions, to attend consultative meetings on the expansion of domestic workers' labour rights within the Employment Act 1955, including the removal of the term "domestic servant" from the law. In these meetings, the Ministry of

Human Resources have, committed verbally to providing domestic workers with a paid day off, enacting a standalone legislation for the protection of domestic workers and the inclusion of domestic workers under the social security protection scheme (SOCSO).^{xvii}

Third was that MDWs experiences during COVID-19 showed that MDW-led advocacy can contribute to tangible and lasting policy outcomes. Migrant domestic worker organisations leveraged invitations to participate in policy dialogues or meetings to advocate for policy changes based on lived experiences. Iterative advocacy demands related to domestic workers have gained in prominence and buy in from the government to improve the working conditions of MDWs became increasingly apparent. In particular, IDWF, AMMPO and PERTIMIG, together with other CSOs, advocated jointly for the inclusion of domestic workers in the social security schemes in Malaysia. The advocacy efforts and approaches as detailed in the preceding paragraphs led to the eventual expansion of the social security coverage for domestic workers, including MDWs, beginning 1 June 2021 (PERKESO, 2021). With this expansion, MDWs would be entitled to coverage under the Employment Injury Scheme which provides compensation to an employee against any accident and/or occupational disease arising out of and in the course of employment.^{xviii} Employers shoulder the rate of contribution of 1.25 per cent of a MDW wages for the scheme. Although this expansion represents an important step forward in securing decent work for MDWs and increasing access to labour rights accorded workers in other sectors, there are notable exclusions. MDWs who hold temporary employment permits are excluded from the Invalidity Scheme which provides benefits for invalidity or death unrelated to employment and the Employment Insurance System which provides for unemployment benefits.^{xix} After this change in policy, the MDW organisations continued to engage in consultations with other CSOs and relevant Malaysian government agencies on how to socialise the expansion of social security coverage to domestic workers among employers and workers.

V. CONCLUSION

The COVID-19 pandemic response policies by the Government of Malaysia have led to greater biopolitical control on the part of the State and the expansion of the ongoing authoritarian trend. This amplified existing decent work deficits experienced by women migrant workers in the domestic work sector. The COVID-19 pandemic however, has also led to policies that are transformative and progressive for MDWs. The crisis itself has acted as a portal into labour policies that expanded social justice for MDWs. The organising of MDWs in Malaysia has shown that the pandemic can offer opportunities for resisting gender-based inequalities and intersectional discriminations along with a migratory policy that reinforces the exclusion and criminalisation of migrants, as well as situations of exploitation and extreme precarity and yield tangible policy outcomes. Specifically, the move from in-person organising to convening in virtual spaces expanded and created new safe spaces for MDWs to come together, to develop collective leadership and to work more closely with other allies to represent themselves in various policy platforms and expand access to their rights as workers.

One clear result of this persistent organising is the expansion of the Employment Injury Scheme under the national social security scheme to cover MDWs. This is notable in the context of the COVID-19 pandemic because of the added risks to infection that MDWs face in their caregiving roles in employers' homes. Another is the commitment from the Ministry of Human Resources to regulate the domestic work sector through legislation. Although this has yet to materialise at the time of writing, government buy-in is apparent and opens up the space for continuous policy exchanges that is informed by MDW voices. This is not to say that organising during the pandemic is without its challenges or that the everyday risks that MDWs face are eliminated. Rather, this case study revealed that collective organising is possible, even among small and marginalised communities that face significant structural obstacles and in the context of an authoritarian trend when innovative organising methods are adapted.

ENDNOTES

ⁱ It should be noted that enforcement of anti-migrant policies such as arrests and deportations of migrants, especially undocumented migrants in Malaysia occurred before the pandemic. These policies are not specifically targeted at MDWs or migrants of specific nationalities. However, enforcement of these policies intensified during the COVID-19 pandemic. The first large scale raids and arrests of migrants during the pandemic occurred on and around May 2020.

ⁱⁱ The *Persatuan Pekerja Rumah Tangga Indonesia Migran* (PERTIMIG) was formed in December 2019. However, it held its first Founding Congress on 13 June 2021 for members to elect its own leadership.

ⁱⁱⁱ Employers of migrant domestic workers are required to pay a personal bond as a form of guarantee in the event that the migrant domestic worker absconds. The scale for the personal bond ranges from MYR250 to MYR1,500, based on the nationality of the worker employed.

^{iv} Malaysian immigration requirements mandate that every migrant worker has to undergo a medical examination annually for the first three years of employment in Malaysia. After the first three compulsory medical examinations, each migrant worker is required to undergo a medical examination once in every two years of their stay in Malaysia i.e., the 4th, 6th, 5th and 10th year. Every test has to be completed three months before the expiry of the work permit.

^v Migrant workers who are “skilled workers” who have been in Malaysia for ten years may extend their work permits for a period of three years. This does not apply to domestic workers.

^{vi} In 2007, the Malaysian Trades Union Congress attempted to register a national domestic Workers’ Association but the application was rejected without clear reasons. In 2014, second attempt to register the Domestic Workers’ Association at the Registry of Societies of Malaysia was similarly rejected.

^{vii} Malaysia perceives national security as “being free from any threat, whether internally or externally, to its core values”. Previously identified national security threats were the insurgency by the Communist Party of Malaya, the ‘Indonesian Confrontation’, the 13 May 1969 ethnic conflict, and the incursion by the army of the Sulu Sultanate into Sabah in 2013. The National Security Policy identifies “illegal immigrants and refugees” as a factor that can “threaten the peace and security of the nation”.

^{viii} In March 2019, the Government of Malaysia announced that it will close its for international travellers. However, exceptions apply for Malaysian citizens returning from abroad, permanent residents, holders of diplomatic and official passports and long-term pass holders working in the country’s essential services sector. These restrictions were subsequently relaxed as the pandemic progressed.

^{ix} The Government of Malaysia implemented various phases of the MCO since the start of the pandemic.

^x The first EMCO were implemented in Selangor Mansion and Malayan Mansion, where many residents were non-nationals.

^{xi} The Recalibration Programme comprises two main programmes – the Labour Recalibration Programme and the Return Recalibration Programme. The earlier is a process to regularise undocumented migrants for employment while the latter is aimed at facilitating the voluntary repatriation of undocumented migrants to countries of origin.

^{xii} Interviews with PERTIMIG and AMMPO.

^{xiii} Malaysia Employment Act (1955) provides that normal work hours should be capped at eight hours a day and six days a week.

^{xiv} See the National Wages Consultative Council Act 2011, which Minimum Wages Order (2020) which established the mechanism for setting of minimum wage. The latest minimum wage rate is set by the Minimum Wages Order 2020 (P.U. (A) 5). Like all its predecessors, the explicitly excludes “domestic servants”.

^{xv} Interviews with IDWF and PERTIMIG.

^{xvi} At the time of writing, the proposed Employment (Domestic Employee) Regulations 2019 have not been passed into legislation.

^{xvii} Interviews with MDW organisations, August 2021.

^{xviii} Benefits under the Employment Injury Scheme include cost of medical treatment for employment-related injuries/diseases, temporary and permanent disablement benefits and allowances, access to physical or vocational rehabilitation centres, funeral benefits and education benefits.

^{xix} Domestic workers who are Malaysian nationals, permanent residents and temporary residents are not excluded from the Invalidity Scheme and the Employment Insurance Scheme. These schemes require contributions from both the employer and the employee.

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