

# Malaysia

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## 1. Contemporary Snapshot

The informal economy in Malaysia is diverse and has been in existence for a long time. In recent years, it has been expanding. Thus, there are now a larger number of workers whose jobs and rights are unprotected. Home-based work is not recognized as work by Malaysia's labour laws. The subcontracting of work by factories in various forms has not been addressed in terms of protection for the rights of workers. Many factories have outsourced employment in certain production lines to subcontractors, who supply labour to the production lines in accordance with the fluctuating demands of the factory. The workers are thus not employees of the factory though they work on its premises. They are regarded as employees of the agencies that arrange work for them. As their work is on a casual basis they have little or no access to legal protection.

Many services are also outsourced to subcontractors. These include call centres that service banks, telecommunication companies and airline ticketing offices.

At the core of informal work is subcontract work for factories that is done at home or in small sweatshops. These include garment production, electronics, food products and even automobile parts.

Malaysia also employs a large number of migrant workers, many of whom work in the informal economy. It is estimated that there are 2.2 million foreign migrant workers in Malaysia, accounting for 21% of the labour force. Migrant workers should also be treated as informal workers as the majority of them are on short-term contracts. Furthermore migrant workers have limited access to legal remedy to ensure that employers comply with these contracts.

**Table 1. Labour Force and Employment Data**

Updated on 31 December 2007

Employment	2006	2007 1st Quarter	2007 2nd Quarter	2007 3rd Quarter
Total Labour Force ('000)	10,628.9	10,826.7	10,970.6	10,967.9
Employed ('000)	10,275.4	10,461.3	10,601.2	10,627.2
Unemployed ('000)	353.6	365.4	369.4	340.6
Unemployment Rate (% of Labour Force)	3.3	3.4	3.4	3.1

Source: <http://www.statistics.gov.my/images/graf/gtQ32007.jpg>

As there is a dearth of information on the informal economy in Malaysia, this paper focuses mainly on home-based workers. The information obtained is also limited to a few research papers on specific and limited topics. One was focused on the home-based workers and utilization of information and communication technologies (ICT)<sup>1</sup>. The second was a regional report on homeworkers and ICTs in Malaysia.<sup>2</sup> The third was an unpublished research paper by an NGO in Malaysia<sup>3</sup> and the fourth is a study on Chinese women in industrial home-based work in Malaysia.<sup>4</sup> This paper will also briefly touch on the issues of migrant workers in the country whose numbers are increasing and many of whom are part of the informal economy.

### **Growth of Informal Economy**

Since the introduction of the New Economic Policy in 1970 there was a strong push by the government to expand the formal economy through foreign investment in industrialization. Initially it was import-substitution industrialization and in the recent past the move has been towards an export-oriented industrialization. Women entered the formal labour force especially in industrialization for export. However with the recent restructuring in response to globalization, the informal economy has re-emerged as an important component of this global production chain. Capital has adopted subcontracting and outsourcing as an option to keep costs low and remain competitive globally.

The informal economy exists in various forms as some limited studies have shown. Both the public and private sectors use informal labour. Many government departments too employ contract labour. Privatization has resulted in the extensive use of contract labour in cleaning services, ports, telecommunications and public health. The government has privatized some services that were formerly in the public sector. These include port services, garbage collection and disposal, some of the light railway services and some sections of the public hospitals such as catering and cleaning. Several attempts have been made to privatize the public hospitals but they have stalled mainly because of public opposition.

Meanwhile, it is estimated that there are about 20,000 government employees on contracts in the civil service.<sup>5</sup> This gives an indication of the extent of informalization in government service.

It appears that a large formal workforce is viewed as being 'unsustainable' by employers. They prefer to expand the scope of informal work, which appears to them to be more efficient, and more sustainable. However from the workers' point of view this type of work poses many problems and challenges.

### **Problems and Issues Facing Informal Workers and Women**

There has been a relatively low rate of participation of women in the formal labour force in the last decade: Women's participation has remained at around 44 per cent. Some effort has been taken to increase women's participation in the formal sector but little has been done for women in the informal sector.

#### *Problems of home-based work*

Homeworkers are involved in making and providing a wide range of products and services. These include traditional handicrafts and food processing cottage industries, labour-intensive work subcontracted from factories as well as knowledge-based services.

Home-based workers are usually counted as own account workers.<sup>6</sup> There is no system of registering them and thus they do not show up in statistics. They are also not regarded as workers according to the Employment Act of 1955. As a result they are not eligible for any of the terms in the Act such as weekly rest day, annual leave, sick leave, maternity benefits, Employment Provident Fund or state social security contribution by the employer.

Home-based women workers often face harassment by local officials for using residential premises for production without proper licences.

All these factors together serve to keep the home-based workers invisible and their economic contribution is not regarded as work by the government, factories or employers. Their contribution to the economy is not recorded and reflected in national accounting and budgeting. Another reason for the invisibility of home-based work is that productive work is carried out alongside domestic care work. Their domestic tasks are deemed to take precedence and thus they are regarded as 'housewives' rather than workers even by themselves.

A survey by the Malaysia-based network, eHomemakers, in 2006, yielded the following findings:<sup>7</sup>

The majority of the homeworkers previously worked in labour intensive factories but took up home-based work after childbirth when confronted with a gender insensitive environment unsupportive of mothers with small or disabled children and aged parents. This confirms the earlier research finding by Loh-Ludher (2002) that home-based work offers women an opportunity to be gainfully employed when they are either unable to participate in, or have to withdraw from, the formal labour force after childbirth.

The home-based workers face another problem—that of negotiating contracts with the subcontractors or factories. The main difficulty is that they have to negotiate contracts individually. They are therefore in a weak bargaining position. There are no standards or legal measures on which they can base their contracts. If they are cheated they have hardly any access to legal redress.

Home-based workers also have great difficulty in organizing themselves. They perceive their work as being illegal or semi-legal. Consequently they are reluctant to draw any attention to themselves. Much of their relationship with the sub-contractors is based on personal ties. In an unpublished study by Persatuan Sahabat Wanita in 2005 it was found that the home-based workers had work given to them by village heads, relatives or people known to them.<sup>8</sup> These personal connections make it difficult for them to organize themselves to better their conditions. They are usually reluctant to share information about their work contracts. As a result factories exploit home-based workers by paying them extremely poor rates.

Moreover, there are health and safety risks for home-based workers and their families. There is little or no consideration for making their work safe. There are no lighting or ergonomic considerations. Production material is also stored haphazardly.

### **State of the Labour Movement**

The Malaysian trade union movement is subject to laws that allow the Registrar of Trade Unions to control it. Registration must go through a civil servant who disallows a trade union when there is strong employer lobby against it. This is the case with the National Union of

Electronics Workers that has failed to get approval for registration. The laws also do not permit more than one national union in an industry. The classification of the industry is the sole prerogative of the Registrar of Trade Unions. The laws also make it practically impossible to hold a legal strike. Industrial action is limited to legal action that can only be taken after negotiations under the auspices of the Labour Department or the Industrial Relations Department have failed. Permission is granted to proceed to legal action either by mutual consent of workers and employers or the Industrial Relations Department chooses to refer the matter to court.

The effect of such legislation and the policies the Registrar has pursued since independence in 1957 have served to produce a generally compliant trade union sector that has rarely challenged the government on its labour policies. The trade union movement has not been able to stop the amending of labour laws to take away existing benefits of workers, such as overtime rates. The union movement has not been able to stop or even effectively regulate privatization. It has done little to improve the conditions of work for migrant workers who constitute a large percentage of the Malaysian workforce. Membership in trade unions has never exceeded ten per cent of the work force. Out of a labour force of about 11 million today, only about 7 per cent are unionized.

Table 2 (below) shows a decline in trade union membership since 2002.

Tables 3 and 4 (below) show that although the total number of unions both by sector and industry have increased since 2002 the total membership figures have fallen.

This reflects the decreasing trend in the formal workforce overall—something which is not yet reflected in official government statistics, which do not disaggregate levels of informal employment (yet). The lower level of formally employed workers within a sector can be accounted for by increased use of contract and part-time workers and home-based workers; at the same time there is lower overall employment in the last several years within certain sectors like construction and agriculture/fisheries.<sup>9</sup> The lower union membership also reflects the increased employment of foreign workers, who upon employment must sign contracts which forbid them to join unions. In 2001, foreign workers composed 9% of the workforce; in 2004, this rose to 12%; and as of January 2008, they composed 21% of the workforce.<sup>10</sup> Foreign workers are strongly represented especially in manufacturing, petroleum, construction and household help positions.

**Table 2: Membership of Trade Unions in Malaysia**

Year	Trade Unions	Membership
2002	581	807,260
2003	609	789,163
2004	611	783,108
2005	621	761,160
2006	631	801,585

**Table 3: Number of Trade Unions by Sector in Malaysia, Year 2002 - 2006**

Sector	2002	2003	2004	2005	2006
Private	373	380	380	390	396
Government	128	127	130	127	130
Statutory Body and Authority	80	88	87	91	92
Employers <sup>11</sup>	14	14	14	13	13
<b>TOTAL</b>	<b>595</b>	<b>609</b>	<b>611</b>	<b>621</b>	<b>631</b>

**Table 4: Number of Trade Unions by Industry in Malaysia, Year 2002 - 2006**

Sector	2002	2003	2004	2005	2006
Agriculture, forestry and fishery	48	55	54	54	55
Mining and quarrying	2	2	1	1	1
Production	149	145	144	146	150
Electricity, gas and water	28	39	39	39	39
Construction	11	11	11	11	11
Commerce	12	18	18	18	19
Transportation and telecommunication	53	58	61	61	61
Services	278	281	283	291	295
<b>TOTAL</b>	<b>581</b>	<b>609</b>	<b>611</b>	<b>621</b>	<b>631</b>

Trade unions have seen an increase in women members as Table 4 shows. This partly reflects the expansion in Malaysia of the sectors that employ large numbers of women, such as service and manufacturing, since 2002.

**Table 5: Number of Trade Union Membership by Gender in Malaysia, Year 2001 - 2006**

Year	Number of Trade Unions	Total Membership	Male	Female
2001	592	785,441	472,401	313,040
2002	595	807,802	504,305	303,497
2003	609	789,163	479,607	309,556
2004	611	783,108	474,470	308,638
2005	621	761,160	464,308	296,852
2006	631	801,585	484,016	317,569

Source: Tables 2 to 5 from <http://jheks.mohr.gov.my/BI/english/indexBI.html>

The trade union movement has also been slow to respond to protect the rights of workers in the informal sector. Labour laws were written for the formal sector. As the informal economy has expanded in recent years it has escaped the notice of the union movement. In unionized factories some contract workers receive benefits equal to those of the permanent workers. However over a long period of time these benefits get eroded as employers increase the number of contract workers, those hired from agencies or homeworkers and reduce the ranks of permanent workers.

### **Informal Women Workers**

#### *Profile of informal women workers*

According to Lee Loh-Ludher, in her article entitled 'Women in the Informal Sector in Malaysia',<sup>12</sup> the typical urban or rural woman in Malaysia's informal sector has a primary level education and belongs to an average household of five members. The woman entered the sector after she married and began bearing children; now she contributes substantially to her household income. Approximately one third of such women have incurred debt to provide capital for their businesses. Most urban women have worked previously in the formal sector.<sup>13</sup>

The Malaysian home-based worker's profile conforms to the needs of capital in the global restructuring process. Home-based workers are former factory workers, the majority of them in their 40s. Thus they are familiar with a factory and production discipline environment and are largely reliable in terms of quality output. Also they are not a sought-out category in the labour market given their age. Furthermore, these workers possess limited education and come from poor households that require additional remuneration to improve their quality of life and standard of living. Thus the 'human capital assets' of home-based workers pushes them towards a vulnerable job environment, but one that favors capital.<sup>14</sup>

#### **Box 1. A Case Study**<sup>15</sup>

Mrs. L is a 45-year old home-based worker with only Standard Six education and has been making shoes for more than 30 years in Ampang, Kuala Lumpur. Through these years, she has worked for four sub-contractors. She started sewing shoes at the age 14 and she remembered getting paid 2 ringgit (3.8 ringgit = US\$1) She was paid a little over 2 ringgit during peak periods in the 1990s but now she earns 1.5 ringgit per pair.

Mrs. L makes about 12 to 13 pairs of shoes a day by working for more than nine hours. Sometimes, when the order is large and urgent, she works longer hours including weekends and public holidays. Besides, she has to attend to her duties as a housewife.

She chose this job because it gives her the flexibility to attend to household chores and care for her children and work at the same time. She herself pays all the expenses of doing the work, including purchase of a second-hand sewing machine, monthly electricity charges, thread, machine oil and scissors. After all these job-related costs, which are not compensated for in the piece rate, her net monthly income is just 500 ringgit.

Mrs. L says the piece rate has not been increased for over 20 years. She thinks her employer and the shoe company are making huge profits when she compares the piece rate paid to the homeworkers and the price of shoes in the market. Some shoes are tagged at 80 ringgit per pair in the market. She would have demanded higher piece rates and social protection plans but is afraid she might lose her job if she questioned her employer. However, she would welcome government intervention to get her a better deal.

She complains of headaches and skin irritation caused by the thinner and glue. Some of her friends use masks when applying the glue due to its strong smell. Though she thinks the use of glue is safe, she remembers that a home-based worker got badly injured when the glue caught fire and burnt her skin, obliging her to spend more than 10,000 ringgit on burn treatments.

There is no employment contract but she gets paid once a month. There is a pay slip but with no detailed information about the company or the employer. The employer keeps a record of the number of pieces completed in a small pocket book and computes her salary monthly. She earns around 600 ringgit per month without any benefits such as contributions to the Employees Provident Fund and Social Security. Unlike workers in the formal economy, she is not entitled to paid leave, public holidays and sick leave nor does she have medical insurance coverage.

## **2. Summary of Labour Laws and Their Application to Informal Work**

Malaysia has a set of labour laws that apply to workers in general. The main ones are as follows.

### **Employment Act 1955 (Amended 1981, 1998)**

The Employment Act is the main legislation which applies to employees in Peninsular Malaysia and the Federal Territory of Labuan earning a salary not exceeding 1,500 ringgit per month. Those whose salary ranges between 1,500 ringgit and 5,000 ringgit can consult the Labour Court, if they are seeking justice, or making inquiries.

The Act specifies the minimum standards for workers covered by it. These include hours of work, overtime rates, employment contracts, leave, maternity benefits, retrenchment, dismissals, deductions from wages, rest days and complaint and compensation procedures. This law is enforced by the Labor Department which is empowered to take up cases of non-compliance. The procedure is fairly simple and it has been perhaps the most useful complaint mechanism for workers. However the department is severely under-resourced and workers need to be organized to get the department to attend to issues of non-compliance.

### **The Labour Ordinance, Sabah and Sarawak**

The Labour Ordinance is considered the Employment Act of Sabah and Sarawak and is largely similar to the Employment Act which applies to Peninsular Malaysia and the Federal Territory of Labuan, with some differences. Until 2005 this Ordinance provided lower benefits to workers in these two States. However since then amendments have been made to standardize them. The

main difference is that the ordinance covers workers earning up to 2,500 ringgit and their public holiday entitlement is more than in Peninsula Malaysia.

### **Industrial Relations Act 1967**

This law regulates the relationship between employers and workers and their trade unions in the event of disputes and industrial relations. The regulations include voluntary negotiations between employer and the trade unions; conciliation procedure with the help of the Industrial Relations Department and arbitration of cases in the Industrial Court.

### **Employees Provident Fund Act 1991**

The act makes it compulsory for employers who do not offer pension schemes to make compulsory contribution to the Employees Provident Fund account. The common applicable rate of contribution is as follows:

- Employers - at least 12% of the employee's monthly salary
- Employee - at least 11% of the monthly salary

### **Employees' Social Security Act 1969**

This Act covers workers who earn less than 2,000 ringgit. The Act makes it compulsory both for the employer and the employee to contribute every month to social security. Once registered under the scheme the worker remains part of it even if the earnings rise above 2,000 ringgit. The Act streamlines two social security schemes for workers, the Employment Injury Insurance Scheme and the Invalidity Pension Scheme, which provide medical coverage and financial protection in case of disability or death arising from workplace injury. However this Act protects the employer who cannot be sued for compensation by the worker. The fund has become a major source of financing for the government as it is often difficult for workers to receive adequate compensation for injuries and amounts paid out are a small fraction of what is received in contributions.

### **The Occupational Safety and Health Act 1994**

This Act covers the whole of Malaysia for specified industries: Manufacturing; Mining and Quarrying; Construction; Agriculture; Forestry and Fishing; Utilities; Transport, Storage and Communication; Wholesale and Retail Trades; Hotels and Restaurants; Finance, Insurance, Real Estate and Business Services; and Public Services and Statutory Authorities.

The Act applies to both the private and public sectors. Only merchant shipping and the armed forces are exempted. Under this Act, the National Council for Health and Safety investigates complaints and makes policies to improve occupational health and safety. However, the Act works only when the mandatory Health and Safety Committee in each workplace implements the law in the workplace. It does not provide for a mechanism for complaints to be taken to a department for enforcement. As a result, the Act has done little to address health and safety concerns in the workplace. Most committees are nominated by the employer and even when there is a trade union, the workers' representatives lack knowledge about health and safety to effectively raise standards in the workplace.

## Labour Laws and the Informal Sector

The labour laws do not provide for any kind of protection for informal workers. The only people who are covered by the law are documented migrant workers and contract workers who have proper papers and details about their employer. Though the laws provide for migrant workers there are other conditions which make it difficult for them to seek redress. The main obstacle is the immigration laws which an employer can use to send back a worker who is taking legal action against him. Most contract workers do not have proper documentation. This prevents them from taking action against errant employers.

Meanwhile, home-based workers have contact with only the subcontractor. In addition workers in the informal economy are not registered with any government agency. While the statistics department has promised to come up with a plan to gather data about the informal sector, it has yet to be done. This is the first obstacle in the struggle for labour rights for informal workers. Information about who they are, where they work, what kind of work they do, what are their working conditions and who employs them is badly lacking.

### 3. Responses, Initiatives and Struggles

There are few initiatives and struggles to protect the informal workers in the country. The most prominent struggle is the effort by the Malaysian Trade Union Congress (MTUC) to formulate laws to protect migrant labour and to ensure that their working conditions are not inferior to those governing Malaysian workers. Negotiations are still taking place on this issue.

Persatuan Sahabat Wanita Selangor, a women's support group, has done a brief study on women in this sector to trace the nature of work, the numbers of homeworkers and their working conditions in selected areas in Peninsula Malaysia. It is hoped that this mapping project will contribute to organizing women in this sector. The MTUC is also engaged in an effort to organize domestic workers into a trade union. This will require not only organizing the domestic workers but also dealing with the legal obstacles that may exist in forming a trade union of this type.

The challenge for the informal workers is to become more visible so that they are recognized as an important part of the labour force but lacking legal protection. The visibility needs to be built by giving these workers greater exposure in the mass media which can highlight their plight and vulnerability. Women's groups too can be mobilized to work in this vulnerable sector. For example, one non-governmental organization, Pertubuhan Pertolongan Wanita or Women's Aid Organisation (WAO) brought media attention to women migrant workers who were seeking protection at a shelter. The Immigration Department sought to forcibly evict these women from the shelter and to imprison them without regard for the violence these women had suffered. They were able to get some measure of protection because of the intervention of WAO, which has also highlighted the situation of migrant women workers who were sexually abused while under protective custody of the police. Without the intervention of women's organizations the abuse that migrant women workers face will not come to light.

Such measures by workers and other organizations are still at an initial stage. It is hoped that with greater and more accurate information about the informal sector in the country organizing efforts will increase and result in the provision of much needed protection for workers in this vulnerable sector.

## ENDNOTES

1. Loh-Ludher, L. (2007) *Homeworkers Online: Utilization of ICT for home-based work in Malaysia*, *The Electronic Journal of Information Systems in Developing Countries*, Vol. 32. See [www.ejisdc.org/ojs2/index.php/ejisdc/article/viewFile/466/234](http://www.ejisdc.org/ojs2/index.php/ejisdc/article/viewFile/466/234).
2. Chong Sheau Ching, *Homeworkers and ICTs in South-east Asia*, Corpcom Services Sdn. Bhd., (E-Homemakers) Malaysia, [www.idrc.ca/panasia/ev-67367-201-1-DO\\_TOPIC.html](http://www.idrc.ca/panasia/ev-67367-201-1-DO_TOPIC.html)
3. Lee, S. H. (2005) unpublished research for Persatuan Sahabat Wanita Selangor
4. Loh-Ludher, L. 'Chinese Women in Industrial Home-based Subcontracting in the Garment Industry' in *Kuala Lumpur, Malaysia: Neither valued nor costed* (based on field work done in 1992-1996).
5. *The Star*, 28 October 2008.
6. Own account workers are sometimes also referred to as dependent workers. They receive work from an intermediary, subcontractor or employer according to specifications. They are usually paid on a piece-rate basis.
7. See <http://www.aseanfoundation.org/documents/homeworkers/Malaysia%20-I-%20Fin%20Report.pdf>
8. Lee, S. (2005).
9. See *Malaysia Economic Report 2007/2008* at [http://www.treasury.gov.my/index.php?ch=22&tpg=165&ac=2053&tpl\\_id=93&lang=eng](http://www.treasury.gov.my/index.php?ch=22&tpg=165&ac=2053&tpl_id=93&lang=eng).
10. 'Malaysia to cut foreign workers', <http://www.cnn.com/asia>, 20 January 2008.
11. In Malaysia, employers' associations are a form of trade union and are registered and recognized as such. The rules for forming and joining a trade union are the same whether for employees and of employers.
12. See <http://info.bahai.org/article-1-7-6-12.html>.
13. Berma, Madeline and Faridah Shahadan (1991) *Meeting Women's Needs in Development and Family Welfare in the Informal Sector: A Proposal for Action*. Unpublished paper.
14. Kalis Gopal and Charles Santiago (2005), 'Informalization and Individualization of Formal Work – The case of Home Based Workers in Malaysia', unpublished paper for the ILO Subregional Office for East Asia.
15. *Ibid.*