

Migrant Construction Workers and Global Union Federations: the Malaysian Context

by

Elena Lopez  
Bachelor of Arts, University of Victoria, 2014

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## **Supervisory Committee**

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### **Supervisory Committee**

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## **Abstract**

As increased mobility of workers challenges the ability of the traditional labour movement to protect workers' rights, global union federations such as Building and Wood Workers' International (BWI) attempt to organize migrant workers across borders. The construction sector in Malaysia is one example of a domestic industry reliant upon the labour of migrant workers. Through surveys with migrant construction workers and interviews conducted at BWI's Asia-Pacific office, the exploitation of migrant construction workers and the effectiveness of BWI's advocacy work are examined. Factors identified as facilitating the exploitation of migrant workers include the historic legacy of colonialism and post-colonial transformation, and the obstructive impact of Malaysia's contemporary laws and policies. As a global actor, BWI's strategies for incorporating migrant workers within transnational advocacy initiatives include the development of migrant support groups, SMS helplines, and local capacity building for migrant workers.

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## Introduction

*“You see it in Malaysia when you’re driving around or cruising around, where there’s construction going up in all directions, and you see the hordes of migrant workers that pour out of these projects at lunchtime, and the appalling living conditions in which they do have to live or have to survive on a day-to-day basis. Those workers don’t get a fair share of the benefits of the projects in which they build.”*



Malaysia is one of Southeast Asia's largest importers of foreign labour and these workers—both documented and undocumented—are critical to Malaysia's economy. Foreign workers are often lured into the country from South and Southeast Asian countries by the promise of good jobs and high pay, but are frequently subject to abuse and exploitation. Within the construction industry, exploitation is especially high due to a number of factors including: domestic labour shortages, the related use of foreigners to fill high numbers of semi-skilled and unskilled job openings, the organisation of the industry into closed-off and dispersed sites, and the system of indirect employment, or subcontracting. Although the Malaysia's labour laws are reasonably strong in certain regards, there are many problems with enforcement. Furthermore, foreign workers wages are often much lower than wages of nationals due to the widespread practice of employers deducting a foreign workers' levy and fee for accommodation from their wages. There is also widespread disapproval towards migrant workers at the societal level,

clearly visible in local newspaper headlines such as “Give local workers priority”,<sup>1</sup> “Resolving our addiction to foreign workers”,<sup>2</sup> “Foreign workers’ invasion”,<sup>3</sup> and “Alien influx”.<sup>4</sup>

Despite high levels of exploitation in the construction industry, especially for migrant workers, Malaysian trade unions have been ineffective in both organising and representing workers. It is in this context and the growing focus on transnational labour solidarity by activists and scholars that Global Union Federations have begun to play a role. Specifically, they play a role in trade union organising in Malaysia and in changing unions’ attitudes towards migrant workers. Although historically there have been tensions between unions and migrant workers, global union federations are attempting to overcome the historical segregation of foreign workers from national unions. Such solidarity offers possibilities such as the negotiation of International Framework Agreements, where multinational corporations agree to adhere to certain labour standards across its operations regardless of locale, and the provision of union aid in contexts where labour organizing is weak.

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<sup>1</sup> “Give local workers priority.” *New Straits Times*, August 13, 2015.

<sup>2</sup> Mazlan, “Resolving our addiction to foreign workers,” *New Straits Times*, December 23, 2015.

<sup>3</sup> Attan, “Foreign workers’ invasion.” *New Straits Times*, April 10, 2005.

<sup>4</sup> Singh, “Alien influx,” *New Straits Times*, May 14, 2006.

However, transnational solidarity is not without its challenges. Every country comes with place-specific labour challenges. The nuances of local contexts must be considered, such as differing political and legal environments, if unions want solidarity initiatives to be effective. As well, trade unions have an institutional history and sectoral focus that may lead to a path dependency that constrains a union's ability to adopt new strategies and tactics. Migrant workers, in this regard, pose an organizing challenge to unions, because they often do not enjoy the same labour rights as nationals. Furthermore, international solidarity initiatives require funds that will inevitably come from Global North unions, resulting in campaigns being shaped by the demands of funding unions in a top-down approach, rather than being shaped by the real needs on the ground.

This thesis focuses on these issues by answering the following research questions: What are the factors that lead to the exploitation of migrant construction workers in Malaysia? How have some of BWI's activities and advocacy work in Malaysia helped overcome migrant workers' exploitation and how might their strategies in the future advance that project? To answer these questions, I demonstrate how the legal and political context in Malaysia has led to public policies and private sector practices designed to restrict the labour movement, which has negative implications for the construction sector and its high employment of

migrant workers. In Chapter 1, my literature review focuses upon the construction sector, the exploitation of migrant workers through law, transnational labour solidarity, and new strategies for organizing. As well, I outline my research design, where I address methodology, methods, positionality, and ethical considerations.

In Chapter 2, the socio-political context and legal environment of Malaysia are analysed as factors in the perpetuation of migrant worker exploitation. I examine how the historical legacies of colonialism and post-colonial economic transformation have restricted the Malaysian labour movement. This restriction makes it difficult to cultivate labour solidarity within the Malaysian context and facilitates the continued exploitation of migrant workers. I then demonstrate how Malaysia's contemporary laws and policies restrict migrant workers' rights, and the ability of trade unions to advocate for them. To support my argument, the 200 surveys I conducted with migrant construction workers in Kuala Lumpur reveal the extent of their exploitative working conditions and dire financial circumstances because both the Malaysian state and Malaysian employers ensure that migrant workers' rights are constrained. The survey instrument allowed for the collection of quantitative data regarding a population of which very little is known.

In Chapter 3, I examine one of the global institutions engaging with Malaysian trade unions: global union federations (GUFs). GUFs are important actors

in trade union internationalism today. Building and Wood Workers' International (BWI), a GUF representing the building, building materials, wood, and forestry sector, engages in transnational solidarity activities within Malaysia, where it has a regional office. BWI aims to promote the development of unions around the world, promote and enforce workers' rights, and promote sustainable development in terms of economic viability, environmental protection and social responsibility. Furthermore, BWI is attempting to integrate migrant workers into its membership and create a transnational union.

While BWI is relatively young, having been established in 2005, it was born out of a merger of two global union federations; one of its predecessors, International Federation of Building and Wood Workers (IFBWW), had established a long-time regional office in Kuala Lumpur, which exists today as BWI's office. The Malaysian government, despite not being supportive of the labour movement, has positioned itself as being welcoming to "expatriates": the highly-skilled, well-paid, professional migrant workers. As a global union federation with funding from the Global North, BWI and its employees are welcome to operate within its borders—ostensibly if they do not explicitly undermine the government.

Through my analysis of BWI's campaign material and semi-structured hour-long interviews with employees it is apparent that effective migrant worker

advocacy is an institutional goal, but to do so successfully requires new strategies to unite both migrant workers and local unions. The goals of BWI's Global North-driven transnational campaigns must be balanced with local needs and adapt to the local context in order to be effective locally. BWI goes beyond the typical strategy of global union federations—the negotiation of global framework agreements—in order to make better use of its status as a global actor to support migrant worker organizing. Supporting the development of migrant support groups, SMS helplines, and local capacity building for migrant workers are all strategies for ensuring transnational solidarity extends to migrant workers. The question of whether BWI, as a global union federation, is effective at migrant worker advocacy has implications for union renewal and migrant worker organizing. At a time where unions are associated with decline rather than growth, strategies that can effectively advocate for migrant workers could reverse this decline. My thesis contributes to the body of literature on migrant worker advocacy by examining how BWI faces this challenge in Malaysia, as an organization that is explicitly committed to labour migration issues. The challenges range from the lack of rights and protections afforded to migrant workers by the Malaysian state, the variegation in the nationality of the migrant labour force, and the relative inaccessibility of

construction sites. BWI's multi-scalar approach depends upon reciprocities with local actors in order to be effective in its pursuit of migrant worker advocacy.

There are several reasons for choosing Malaysia as a case study, despite the apparent specificity of my research subject. One is that scholarship on labour organizing tends to focus on successes and on contexts where labour was once powerful. While these are important cases to research, it is also necessary to look at cases where labour is restricted. In many contexts, the labour movement never saw a heyday, and thus the anxiety over labour's weakening loses sight of the reality that there are places where labour was never strong. These places are equally worthy of study, especially if there is an emancipatory aim behind the research.

Another reason is that labour migration from the Global South to the Global North has different characteristics than South-South labour migration, but migration research tends to focus on these South-North flows. Malaysia is one of the largest net importers of labour in Southeast Asia, yet there is little data on its millions of foreign workers. As well, the enforced temporariness of labour migration poses different challenges than immigration does. While it is important for the labour movement to consider strategies to encourage and incorporate immigrants in organizing initiatives, immigrants are in a less precarious position than temporary labour migrants. Organizing these migrants is replete with challenges,

because they generally lack the same legal rights and protections as citizens and permanent residents.

Finally, this research aims to contribute to the body of literature on migrant construction workers and fill a gap in knowledge regarding global union federations. Migrant construction workers are not as popular a topic of research as, for example, migrant domestic workers, despite their numbers and the similarly gendered nature of construction work. By analysing the actual experiences of construction migrant workers in Malaysia, I hope to illuminate the challenges of migrant worker advocacy, and to illustrate possible ways forward for inclusive, effective advocacy work even in contexts where labour is restricted.

## Chapter 1: Literature Review and Research Design

### *1.1 The construction sector*

The construction sector comes with inherent difficulties in terms of worker organizing. The project-based nature of construction work results in transitory worksites and irregular employment. Furthermore, across the globe it tends to be a sector reliant on the use of migrant labour. Jill Wells' account of labour migration and international construction provides an overview of the development of the international market for construction labour. The international context of construction work is characterized by corrupt recruitment practices and competition between workers of different nationalities. Wells outlines the emergence of this international market in Europe, the Middle East, and Southeast Asia. The Middle East was instrumental in the development of this market due to its construction boom, which required huge numbers of international contractors. Of particular note is the emergence of Southeast Asia as a destination for migrant construction workers. Wells argue that this is due in part to the 1970s construction boom in the Gulf region leading to the existence "in the region [of] a labour force mobilised for work in the Middle East and constantly searching for new opportunities", because declining wages and increasing recruitment fees left the Middle East a less profitable destination for migrants.<sup>5</sup> This leads to a siphoning effect in Southeast Asia as construction workers migrate to economies in the region offering higher wages, and in turn are replaced by other migrants from less-

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<sup>5</sup> Wells, "Labour migration and international construction," 300.

developed economies also searching for higher wages, creating an international economic hierarchy.<sup>6</sup> Furthermore, the international construction industry is flexible and mobile in response to the boom-bust cycles of construction, though it remains restricted by the dictates of national governments that must be willing to allow foreign labour.

The pan-European labour market's flexibility allows for an increasing number of workers employed via subcontractors or temporary employment agencies. Lisa Berntsen analyzes migrant construction workers in the European labour market and their opportunities for effective collective action. She argues that although these European migrant workers are considered skilled and operate "within an industry that is relatively well regulated and amenable to migrant labour", their working conditions are still substandard and irregular.<sup>7</sup> This is a result of the precariousness of transnational employment relations. The construction industry in Europe is characterized by small firms with limited fixed capital; coupled with the impermanent nature of construction work, the development of stable employment relations is curtailed.<sup>8</sup> Furthermore, the development of collective organization among migrant construction workers in this context is hindered by the lack of opportunities and the perception of union indifference.<sup>9</sup> Migrant construction workers spend relatively little time together due to the project-based employment contracts being generally less than a year. Instead,

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<sup>6</sup> Ibid., 302.

<sup>7</sup> Berntsen, "Reworking labour practices," 473.

<sup>8</sup> Ibid., 479.

<sup>9</sup> Ibid., 480.

acts of reworking are resorted to create incremental changes; however, this strategy does not disrupt the broader power relations of the system, but rather contributes to its continuation.

Michelle Buckley links the construction industry with the drive for urbanization as a capital accumulation strategy. She builds upon David Harvey's theorization of the secondary circuit of capital, which is characterized by the funnelling of "unproductive excess capital ... into large, long-tenor investments in the built environment, a distinct realm of surplus accumulation in the capitalist space-economy".<sup>10</sup> Construction workers are the primary productive force behind this urban capital. Buckley analyzes the case study of Keralite migrant workers' experience of the 2009 economic crisis as it impacted Dubai, to draw attention to how "construction labour markets have been directly implicated in international urban strategies to absorb surplus capital in recent years".<sup>11</sup> The precarity experienced by the Keralite migrant workers was not solely due to the innate characteristics of the construction industry, but also due to new sources of instability deriving from the linkages of finance capital and urban development. Thus, Buckley argues that the precarity and insecurity of the construction industry cannot be resolved through policy and legal reform, because it will remain tied to the secondary circuit of capital and its commensurate instability.

While migrant workers are often thought of in terms of crossing national borders, Sarah Swider provides an important account of the internal migration of

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<sup>10</sup> Buckley, "From Kerala to Dubai and back again," 252.

<sup>11</sup> *Ibid.*, 257.

construction workers in China. As Swider notes, the “iron rice bowl” policy that provided benefits to China’s urban workers from birth to death was broken in 1978 when economic reform began, and China’s increasing urbanization resulted in the entry of thousands of farmers into the workforce as precarious workers.<sup>12</sup> Swider’s ethnography of migrant construction workers documents the diversity of work relations within informal precarious work, because the workers interviewed and observed were similar in characteristics but had drastically different experiences. She also links the experiences of migrant construction workers to China’s emerging labour regime, which requires labour control and urbanization. Swider contends that these workers do not unionize because as informal workers, they are “a fragmented and heterogeneous workforce” due to being unregulated and widely dispersed.<sup>13</sup>

Without formal employment, it is difficult to pursue legal action through legally-recognized unions, and unions tend to ignore the needs of informal workers. Therefore, migrant construction workers forego traditional organizing, focusing instead on “regular and persistent acts of everyday resistance, ... [and] hidden, quiet, and often individualized forms of protest to incorporate sporadic, visual, dramatic episodes of collective organizing and protest”.<sup>14</sup> Unlike the workers Chun references in her work, migrant construction workers cannot use symbolic leverage to rebuild their associational power, because they already exist outside the existing rules and procedures. Instead, public dramas and protests of disruption are aimed not at

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<sup>12</sup> Swider, *Building China*, xii.

<sup>13</sup> *Ibid.*, 17.

<sup>14</sup> *Ibid.*, 102-103.

creating collective organizations, but at “[putting] workers in the public eye and provide potential protection from capricious state repression, which allows protests to grow and sustain over time”.<sup>15</sup> Although the migrant construction workers in China do not represent an organized workforce, Swider cautions us to not underestimate their destabilizing potential for the state.

Turning specifically to Malaysia, its construction sector is characterized by its reliance upon foreign labour. In the 1980s and 1990s, labour shortages in the construction industry were especially acute, due to a combination of “the unattractiveness of manual construction work to local youths, an expanding manufacturing sector that offered better employment conditions, labour attrition, increasing opportunities for tertiary education, a lower birth rate and out-migration of Malaysia workers to high wage countries such as Singapore and Japan”.<sup>16</sup> The 1980s and 1990s were characterized by mega infrastructure projects driven by Prime Minister Mahathir Mohamad’s Vision 2020<sup>17</sup> and the 1998 Commonwealth Games, which necessitated the hiring of migrant construction workers to avoid hindering economic growth.<sup>18</sup> The construction sector was an economic driver during this time period and its demands for a growing labour force was answered by migrant labour. Between 1980 and 1985, the sector experienced an annual average growth rate of 8 per cent, exceeding the 6 per cent growth rate of the GDP.<sup>19</sup>

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<sup>15</sup> *Ibid.*, 138.

<sup>16</sup> Abdul-Aziz, “Foreign workers and labour segmentation in Malaysia’s construction industry,” 789.

<sup>17</sup> Vision 2020, written in 1991, outlined a modernization programme for Malaysia to become a fully developed country by 2020. For more, see <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan003223.pdf>.

<sup>18</sup> Chia et al., “Economic development and construction productivity in Malaysia,” 884.

<sup>19</sup> Narayanan & Lai, “The Causes and Consequences of Immigrant Labour in the Construction Sector in Malaysia,” 33.

Furthermore, the time period's labour shortage was compounded by the out-migration of Malaysian construction workers during the 1980s recession and who did not return in sufficient numbers to answer the growing labour demand in the construction sector.<sup>20</sup>

The construction sector in Malaysia is not immune to the boom-bust cycles that characterize the international construction industry. In Malaysia, the cyclical nature of the industry correlates with fluctuations in Malaysia's economy.<sup>21</sup> For example, the recession of 1983-1986 "saw a drastic downsizing of public expenditures and a dampening of private sector activities, both of which affected construction adversely", until full economic recovery saw phenomenal growth in the construction sector between 1991-1995, which was then abruptly curtailed by the 1997 financial crisis.<sup>22</sup> Fah Choy Chia et al. characterize the construction industry in Malaysia as dominated by small enterprises, with 69 490 registered contractors in 2012.<sup>23</sup> In 2016, the construction sector contributed 4.5% of Malaysia's GDP.<sup>24</sup>

Accurate statistics regarding the numbers of migrant construction workers in Malaysia are unavailable due to the significant numbers of undocumented workers and the lack of documentation regarding the exit of regularized workers from Malaysia. Narayanan & Lai note that the nature of construction work results in the size of the workforce varying during different periods in a year due to the project-based nature of construction work, posing a further challenge to obtaining accurate

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<sup>20</sup> Ibid., 36.

<sup>21</sup> Chia et al, "Economic development and construction productivity in Malaysia," 886.

<sup>22</sup> Narayanan & Lai, "The Causes and Consequences of Immigrant Labour in the Construction Sector in Malaysia," 33.

<sup>23</sup> Chia et al, "Economic development and construction productivity in Malaysia," 875.

<sup>24</sup> Bank Negara Malaysia, *BNM Quarterly Bulletin*, 56.

data with a fluctuating workforce.<sup>25</sup> According to Malaysia's Department of Statistics, in 2015 there were 1,290,474 persons working in the construction sector.<sup>26</sup> Malaysia's Ministry of Human Resources provides statistics showing that in 2016 there were 402,740 documented migrant workers in the construction sector, meaning that approximately 31% of the construction sector's workforce is migrant workers. This suggests that the composition of the construction sector has remained relatively constant in recent decades. For example, statistics from Malaysia's Immigration Department indicate that from 1992-1995 the construction sector was 30.6% migrant workers.<sup>27</sup> According to Mydin et al., the construction sector's dependency on migrant workers results in the slow modernization and the reduced productivity of the industry because construction companies prefer to hire unskilled foreign workers cheaply rather than use technological improvements.

The Construction Industry Development Board of Malaysia (CIDB), through which the government regulates the construction industry, promotes the adoption of Industrialized Building Systems (IBS), which utilizes prefabricated components and on-site installation while minimizing the use of unskilled labour.<sup>28</sup> However, Malaysians tend to eschew construction sector jobs for being too physically demanding in favour of higher education.<sup>29</sup> Mydin et al.'s surveys of Malaysian construction sites revealed that despite the implementation of IBS systems on some

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<sup>25</sup> *Ibid.*, 37.

<sup>26</sup> Malaysia Department of Statistics, "Economic Census 2016 – Construction," <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=MEt40GRoaHNLQs2VzZLSmpwYWk4Zz09>.

<sup>27</sup> Abdul-Aziz, "Foreign workers and labour segmentation in Malaysia's construction industry," 790.

<sup>28</sup> Mydin et al., "Trends and Reliance on Foreign Labourers in Malaysia: Conventional Construction versus Industrialized Building System Construction," 1.

<sup>29</sup> *Ibid.*, 2.

construction sites, the overall trend from 2000 to 2013 shows that the employment of migrant construction workers has been on the rise, indicating that the construction sector is still heavily dependent on foreign labour.<sup>30</sup> Abdul-Aziz notes that foreign workers are associated with poor workmanship, but this is likely because the migrants employed have limited construction experience and that the temporary nature of legal migration to Malaysia prevents the development of a skilled migrant labour force.<sup>31</sup>

The top three sending countries were Indonesia with 223,032 migrant construction workers, Bangladesh with 90,457 and Pakistan with 31,189. Workers from Nepal, Myanmar, India, the Philippines, Vietnam, China, Thailand, Cambodia, Sri Lanka, and Laos also make up the migrant workforce in the construction sector.<sup>32</sup> Like elsewhere, the construction sector in Malaysia employs high numbers of migrant workers because it is a labour-intensive sector with variable and unpredictable demand.<sup>33</sup> Unlike Malaysian workers, migrant workers make up a flexible workforce that can be dismissed and deported. The construction sector is one of the key growth industries that remain heavily reliant on 'low-skilled' migrant workers to maintain their competitiveness.<sup>34</sup> Blanca Garcés-Mascareñas argues that Malaysia's reliance on migrant labour has contributed to the consolidation of a dual labour market where local workers perceive certain sectors as being dirty,

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<sup>30</sup> *Ibid.*, 7.

<sup>31</sup> Abdul-Aziz, "Foreign workers and labour segmentation in Malaysia's construction industry," 792.

<sup>32</sup> Ministry of Human Resources, eBook i-STATISTICS Bil 2/2016, 30, [http://myhos.mohr.gov.my/ebook/istatistik2\\_2016/bil2\\_2016.pdf](http://myhos.mohr.gov.my/ebook/istatistik2_2016/bil2_2016.pdf).

<sup>33</sup> Kaur, "Managing Labour Migration in Malaysia: Guest Worker Programs and the Regularisation of Irregular Labour Migrants as a Policy Instrument," 350.

<sup>34</sup> ILO, *Review of labour migration policy in Malaysia*, 23.

degrading, and dangerous.<sup>35</sup>

Thus, even during economic downturns of increased unemployment, employers continue to complain about labour shortages. The Malaysian government's capitulation to employers is reflected in shifting the burden of paying the foreign worker levy back upon the migrant workers themselves and delaying the transfer of responsibility back upon employers. While the levy ostensibly was introduced to protect local workers, the government also did not want to interrupt economic growth. Garcés-Mascareñas notes that by forcing migrant workers to pay the levy, it increases their debt bondage and makes legal status more expensive to maintain.<sup>36</sup> The construction industry is also characterized by labour segmentation, likely exacerbated by wage differentiation according to nationality, as well as the segregation occurring in on-site accommodation. Abdul-Aziz observed that interaction between nationalities was extremely limited, with eating and living spaces separated from other nationalities.<sup>37</sup> This workplace segregation limits solidarity among construction workers, even though workplace issues such as low wages and lack of workplace safety may impact them all.

### ***1.2 Exploitation of migrant workers in law***

The exploitation of migrant workers in Malaysia is connected to state laws that rely upon the temporariness and non-citizenship of migrant workers. The state's conceptualization of the citizen relies on legal authority and territoriality to distinguish between citizens and non-citizens. Furthermore, this differentiation of

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<sup>35</sup> Garcés-Mascareñas, *Labour Migration in Malaysia and Spain*, 58.

<sup>36</sup> *Ibid.*, 80.

<sup>37</sup> *Ibid.*, 795.

citizenship status is accompanied by a differentiation in rights and privileges. The rights that are afforded to citizens, such as labour protections, are often not extended to non-citizens. This situation allows for the exploitation of migrant workers in a way that is often sanctioned, whether implicitly or explicitly, by law. Linda Bosniak's concept of alienage, Thomas Swerts' discussion of non-citizen citizenship, and Bryan Turner's theory of denizenship explore the assumptions underpinning citizenship, which is critical for understanding how migrant workers can be treated differently than other workers. Jennifer Gordon introduces the solution of Transnational Labour Citizenship for the exploitation of migrant workers. Bridget Anderson's discussion of immigration controls, Ruth Gomberg-Munoz and Laura Nussbaum-Barberena's analysis of the link between immigration policies and labour protections, and Guy Mundlak's call to de-territorialize labour law all focus on the role that laws governing labour migration play in perpetuating migrant worker exploitation.

Linda Bosniak's conceptualization of citizenship and alienage in *The Citizen and The Alien* underscores how there is no firm separation between universal citizenship and border citizenship, or in other words, internal citizenship and threshold citizenship. Therefore, questions of who belongs to a community and how that is decided are necessary to address. As she points out, there is what she calls an introgression of the border: namely, the regulation of national boundaries is not limited only to the nation-state's physical borders but extends into the territorial interior as well.<sup>38</sup> This shapes the pursuit of democratic, equal citizenship within the

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<sup>38</sup> Bosniak, *The Citizen and the Alien*, 9.

national society. She points to the case of immigrants as status noncitizens, who live within the national territory and enjoy important rights and recognition by virtue of their physical presence within the community, but who remain outsiders under the community's threshold-regulating citizenship rules.

This alien status structurally disadvantages the lives of most noncitizens, since “[a]liens’ lack of formal citizenship status has rendered them politically disenfranchised; they are formally ineligible for many aspects of “social citizenship,” or the public provision of basic needs; and they are always subject to the possibility of deportation from the territory”.<sup>39</sup> Thus, there is a tension existing within the concept of citizenship, because the border citizenship of the threshold jostles against the universal citizenship of the internal community. With the convergence of both sets of citizenship norms, citizenship becomes a much more ambiguous concept within liberal democratic societies. This tension is apparent within Malaysian society: while ostensibly democratic and multicultural, the Malaysian state is also characterized by authoritarian characteristics and unequal treatment of ethnicities. Compounding the inequality inherent in the Malaysian state's distinctions between its own citizens on the basis of ethnicity is the distinction between citizens and non-citizens, specifically migrant workers.

Similarly to how citizenship is a concept that encompasses two overlapping and often conflicting sets of norms, alienage is a contested legal category. Bosniak describes alienage as “an intrinsically hybrid legal category that is simultaneously the subject of two distinct domains of regulation and relationship”, the first domain

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<sup>39</sup> Ibid., 10.

being governance over membership, admission, and exclusion, and the second domain being the rights of person within society.<sup>40</sup> She points out the power imbalance of these domains: in the first, government power is generally unhindered when it comes to regulating borders, yet in the second, government power to regulate people within society is constrained.

Within liberal democratic societies, the norms of equal, universal treatment have been incorporated into law to the point that the government discrimination that occurs at the threshold is untenable within the community. This results in what Bosniak characterizes as a jurisdictional dispute, where the two domains provide different answers about what rights and benefits aliens enjoy.<sup>41</sup> Once aliens are territorially present within the community, the government's power to discriminate in the interest of sovereignty is no longer unchecked. In contrast to the treatment of those aliens physically outside the community borders, physical presence within the community "implicates a different sort of governmental authority, one shaped by interests not in sovereignty but in equality, and one subject to far greater constraints".<sup>42</sup> However, Bosniak is limited by her focus on liberal democratic societies. Setting aside the question of definitions, it remains clear that Malaysia cannot be grouped into the same category as the countries she is implicitly referring to: Canada, the US, the UK, and so on. The democratic imperative of equal treatment is curtailed by the authoritarian tendencies of the Malaysian state. Bosniak's

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<sup>40</sup> Ibid., 13.

<sup>41</sup> Ibid., 39.

<sup>42</sup> Ibid., 14.

conceptualization of citizenship and alienage, therefore, cannot capture the variegations of citizenship (and non-citizenship) within Malaysian society.

Similarly, Thomas Swerts discusses the non-citizen as a challenge to citizenship due to the difficulty of assigning a political place to non-citizens within society, though he is less concerned with the conflict between domains of government power. He uses the term non-citizen citizenship to draw attention to the contradictions of citizenship and to deconstruct the binary lines of thinking when it comes to citizenship. For Swerts, non-citizen citizenship refers to “the plethora of political practices through which non-citizens make claims to belonging, inclusion, and recognition in their societies of residence”.<sup>43</sup> In his view, non-citizens are not necessarily vulnerable, precarious, and passive victims. Rather, the liminal space they occupy provides an opportunity to challenge the state’s conception of citizenship.

He argues that non-citizen citizenship refocuses on bottom-up practices that are transforming and challenging citizenship. Non-citizens exist on a continuum of “legal statuses and denominations that includes resident and non-resident aliens, refugees, asylum seekers, victims of trafficking, foreign students, temporary visitors, stateless people, immigrants who have applied to become nationals, undocumented migrants, and so on”, with different statuses enjoying different rights.<sup>44</sup> Swerts looks specifically at the non-citizen citizenship practices of undocumented migrants, who “are able to gain a voice in the political process by integrating themselves within

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<sup>43</sup> Swerts, “Non-citizen citizenship: Canada and US,” 299.

<sup>44</sup> *Ibid.*, 295.

civic organizations on the one hand and creating their own social spaces of representation on the other hand”.<sup>45</sup> These can range from participation in community meetings, to occupying buildings.

However, Swerts acknowledges that this bottom-up challenging of citizenship will likely not result in institutional recognition of non-citizens, unless non-citizens are successful in their claims-making. Successful claims to recognition must “creatively (re) appropriate practices and discourses of belonging that resonate with the national imaginaries of their society of residence” as well as “disruptive ‘acts of citizenship’ and constructive and prolonged practices of mobilization and community-building”.<sup>46</sup> The difficulties of these tasks have left citizenship regimes largely unchanged at the national scale, though arguably there has been success at the local scale, such as sanctuary cities that limit their cooperation with immigration enforcement. Furthermore, despite his argument that non-citizenship occupies a spectrum, his focus on undocumented migrants underlines the need for some fixity to make a citizenship claim. While migrant workers could similarly make claims of belonging within their society of residence, the legally-enforced temporariness of migrant workers does not lend itself well to bottom-up, transformative challenges to citizenship. Besides, migrant workers themselves may not be invested in acquiring citizenship. The temporary nature of migrant work may be desirable in that it is a means to an end of supporting families back home, with the goal of eventually being able to return home.

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<sup>45</sup> *Ibid.*, 299.

<sup>46</sup> *Ibid.*, 301.

Bryan Turner's concept of denizenship supplements citizenship theory by filling what Turner sees as a gap left by the erosion of Marshallian citizenship. Unlike Bosniak and Swerts, Turner views citizenship as not merely a concept that fails to address alienage, but also a right that has been eroded by neoliberalism to the point that the experience of being a citizen has fundamentally transformed. No longer can the basic assumptions of Marshallian postwar social citizenship be taken for granted, as the collective provision of welfare rights has given way to "[p]rivatization, tax cuts, the reduction or cancellation of pension rights, market-driven policies, the rolling back of the state, the casualization of the labor force, and individualism".<sup>47</sup> Turner argues that citizenship granted access to the state's distribution of resources within a community, but the neoliberal turn has led to the domination of the market over civil society, resulting in citizens who increasingly resemble denizens rather than active rights-bearers of nation states.<sup>48</sup>

By denizens, Turner refers to "a person who has a legal right of residence (by virtue of a visa or work permit) in a given territory, but who has limited rights to welfare and political participation" and conditional, short-term residency.<sup>49</sup> The temporal condition of denizenship means that deportation is a possibility. In other words, denizenship is relatively analogous to alienage, though Turner interprets aliens as having "no or very few formal rights of residence and little or no right of movement", in contrast with Bosniak and Swerts who see aliens and non-citizens, respectively, as incorporating a range of legal statuses with varying degrees of

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<sup>47</sup> Turner, "We are all denizens now: on the erosion of citizenship," 680.

<sup>48</sup> *Ibid.*, 681.

<sup>49</sup> *Ibid.*, 682.

recognised rights.<sup>50</sup> Turner argues that as society becomes more market-driven and the rights associated with Marshallian citizenship are chipped away, citizenship is being converted “into a form of membership that resembles temporary, limited, and unpredictable denizenship”.<sup>51</sup> While citizens do still enjoy formal rights, the relationship between citizen, state, and civil society has eroded to the point that the institutions of citizenship—the state and civil society—are detached from the citizen.

The inadequate social reproduction of society has negative implications for capitalist societies, who need to reproduce their labour force. Accordingly, migrants have become one answer for social reproduction. However, tension emerges as labour markets require migrant labour, but governments cannot afford to be overly tolerant to increasing levels of migration or risk electoral backlash.<sup>52</sup> While a flexible migrant work force is necessary for the state’s economic interests, the state also has an interest in asserting its own sovereignty. Thus, migrant workers are no more than temporary denizens with limited political rights, despite their contribution to the community’s economy through their labour and taxes.<sup>53</sup> Turner argues that migrant worker denizens, in conjunction with citizens-turned-denizens, cannot sustain a society that no longer proffers full citizenship rights. Migrant worker denizens are constrained from full citizenship rights by dint of being outsiders. Citizens no longer enjoy full employment that can sustain social reproduction.

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<sup>50</sup> *Ibid.*, 683.

<sup>51</sup> *Ibid.*, 684.

<sup>52</sup> *Ibid.*, 688.

<sup>53</sup> *Ibid.*, 689.

However, Marshallian citizenship has arguably never existed in post-colonial states (such as Malaysia) in the same way it has in the Global North. Newly-independent states that struggled with transforming economies based upon colonial needs were often unable to provide the full breadth of rights associated with postwar Marshallian citizenship (welfare provision, full employment, etc.). Instead, these post-colonial states underwent structural adjustment programs by the World Bank and IMF, which came with conditions that curtailed a post-colonial state's ability to offer Marshallian citizenship. In Malaysia's case, full citizenship rights are arguably only extended to the ethnic Malay majority, to create a burgeoning Malay middle class that is not dominated by the ethnic Chinese minority. For example, ethnic Malay citizens can receive financial assistance when buying a home, and companies operating in Malaysia must reserve shares for the ethnic Malay majority.<sup>54</sup> Thus, citizens of Malaysia who are not ethnically Malay more closely resemble denizens. The exclusion of certain citizens from citizenship rights paves the way for the further exclusion of migrant workers. It would be politically untenable for migrant workers to enjoy rights and protections that are still not yet offered to all of Malaysia's citizens.

Jennifer Gordon takes a different approach to citizenship than the preceding authors. While the above scholars focused on the assumptions that underpin citizenship and the rights associated with citizenship, Gordon proposes a radical re-envisioning of citizenship that is not predicated upon state territoriality. She argues that immigration law distorts workers' rights by making the enforcement of labour

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<sup>54</sup> Teoh, "Pro-bumiputera policy tough to scrap," August 4, 2017.

protections much harder. In the US, the onus is on employers to determine whether employees have the legal right to work, but many will look the other way—until an undocumented worker tries to assert their workplace rights, in which case the employer can respond by firing the worker on the basis of their undocumented status.<sup>55</sup> Gordon proposes Transnational Labour Citizenship as an alternative to the current system of low-wage migration in the US. In her own words, such a citizenship “would break the link between a would-be migrant and a sponsoring employer ... Instead, it would make the enforcement of workplace rights, and the solidarity necessary for worker organizing, central to the very structure of labor migration”.<sup>56</sup> In exchange for this citizenship, the migrant worker must refuse any jobs that violate labour laws and report the employer accordingly.

While Gordon acknowledges the implausible nature of this proposal, she argues that there have been recent union experiments with mobile citizenship that demonstrate that a break with territoriality is possible. Recognizing the barriers that border pose, some unions are attempting to organize migrants across borders. Gordon points to BWI, the International Union of Food and Allied Workers, and the Union Network International as examples of global union federations attempting to develop a kind of “passport” that enables unionized workers from one country to remain unionized when they migrate to work in another country.<sup>57</sup> Even though these union efforts do not fundamentally transform the legal rules that govern labour migration, it does demonstrate growing recognition that labour protections

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<sup>55</sup> Gordon, “Citizens of the Global Economy,” 58-59.

<sup>56</sup> *Ibid.*, 60.

<sup>57</sup> *Ibid.*, 61.

that are tied to citizenship status undermine worker solidarity and produce a precarious migrant labour pool.

The exploitation of migrant workers is not only facilitated by their lack of legal citizenship. The laws that govern labour migration also facilitate this exploitation. Bridget Anderson's work focuses on the application of immigration controls and the resulting consequences. Anderson argues that immigration controls undermine labour protections, therefore failing to protect migrant workers from exploitation and resulting in the production of precarious workers. She notes that immigration controls are presented as a win for both migrants and employers: migrant workers are protecting from exploitation while the national labour force is prioritized and protected. However, in practice, these controls "function both as a tap regulating the flow of labour, but also ... as a mould shaping certain forms of labour" due to the categories of entry for migrant workers, the established dynamics of employment relations, and institutionalized uncertainty.<sup>58</sup> Immigration controls produce workers with specific types of relations to employers and to labour markets by reinforcing certain aspects of migratory processes (such as temporariness and the concentration of migrants workers in precarious work) while undermining other aspects (such as the development of permanent attachment as migrants become embedded within the community).<sup>59</sup> Anderson argues that the scholarly focus of analyses of migrant worker exploitation has been largely upon illegality, theorized as the absence of status resulting in the absence of

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<sup>58</sup> Anderson, p. 301

<sup>59</sup> Ibid., 305-306.

state protection. Instead, there must be an examination of how illegality and legality is produced through immigration controls, and how this status positions migrant workers within the labour market.

Anderson examines the UK as a case study. In terms of category of entry, migrant workers must enter through one of three tiers based on points for education, wages, and experience: Tier 1 (highly skilled), Tier 2 (skilled), or Tier 3 (low skilled).<sup>60</sup> Through the tier system, undesirables are filtered out and the labour force needs of the national economy can be addressed. Thus, the immigration control of entry category reinforces the fungibility of the migrant labour force by discouraging family settlement, as migrant workers are likely to be younger (less likely to have dependents), unable to access public funds (such as housing, making it difficult to support a family), and able to work longer days due to less familial commitments.<sup>61</sup>

Moreover, the category of entry produces status and has long-term consequences for the migrant worker's future in the labour market. For example, migrant workers are subject to conditions that govern their ability to stay. Economic migrants must work for an employer designated their "sponsor", meaning that if their contract is terminated, they must depart the UK. Accordingly, migrant workers have an interest in maintaining good relations with their employer, resulting in employers having means of control over migrant workers that nationals do not experience.<sup>62</sup> Therefore, migrant workers are more desirable as employees, because

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<sup>60</sup> Ibid., 302.

<sup>61</sup> Ibid., 308.

<sup>62</sup> Ibid., 310.

employers can enjoy increased labour retention, without losing their ability to fire indiscriminately. Finally, the complex bureaucracy governing migration produces institutionalized uncertainty, because as the system of control expands, the labyrinth of rules and regulations governing illegality creates “greater numbers of overstayers, people working in breach of conditions, and illegal entrants” as the ways in which a migrant worker can become illegal multiply.<sup>63</sup>

Similarly, Ruth Gomberg-Munoz and Laura Nussbaum-Barberena examine the expansion of enforcement-oriented immigration policies in the United States. They argue that immigration policies, disseminated through technology, programs, and federal-local collaborations, restrict the capability of undocumented migrant workers to negotiate their working conditions. As increasing numbers of people move across borders, mass migration can pose a challenge to state sovereignty and its assumption of territorial control. However, with direct and indirect mechanisms of labour control, a state can regulate migration and also sustain the inequalities that force people to migrate. In the authors’ words, “[i]mmigration categories and nation-building campaigns are thus mechanisms for reproducing vulnerability and powerlessness among a global low-wage work force”.<sup>64</sup> Gomberg-Munoz & Nussbaum-Barberena argue that in the case of the United States, historical and ethnographic data suggest that lawmakers are under opposing pressures to ensure a low-paid migrant labour force for business, and to ensure job opportunities for citizens. These competing pressures result in continual adjustments to state

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<sup>63</sup> *Ibid.*, 311.

<sup>64</sup> Gomberg-Munoz & Nussbaum-Barberena, “Is Immigration Policy Labor Policy?: Immigration Enforcement, Undocumented Workers, and the State,” 367.

immigration policies until a balance has been met between the competing interests of employers and employees, resulting in policies that can appear inconsistent and contradictory. Despite the appearance of ineffectualness, Gomberg-Munoz & Nussbaum-Barberena contend that these negotiated immigration policies are effective at maintaining a large and vulnerable pool of migrant labour.

The authors focus on Chicago as their case study for analyzing how three different state interventions affect the labour relations of immigrant workers. No-Match letters are immigration policy by proxy. The Social Security Administrations sends letters to employers who have more than 10 workers whose name does not match their social security number and ask that the employers take “reasonable steps” to correct their work records. Accordingly, No-Match letters grant employers power over undocumented workers as they can be used to discipline, threaten, or terminate undocumented workers, with little recourse.<sup>65</sup>

Federal-local collaborations are another state intervention that results in indirect labour control. These collaborations allow local and state governments to partner with federal authorities in enforcing immigration laws.<sup>66</sup> As a result, undocumented workers become reluctant to be mobile within their own community, as a minor infraction while driving could result in a deportation case. Thus, undocumented workers are less likely to seek out better working conditions, but rather remained tied to their existing employer.<sup>67</sup>

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<sup>65</sup> Ibid., 369.

<sup>66</sup> Ibid., 370.

<sup>67</sup> Ibid., 371.

Lastly, E-Verify is an online program that exerts direct labour control by allowing employers to determine the employment eligibility of new hires. It is a program “established, regulated, and occasionally mandated by the federal government” that directly intervenes in the labour relations of undocumented workers and employers, and facilitates the disciplining of undocumented workers.<sup>68</sup> The three state interventions outlined above demonstrate how immigration policy exerts a negative influence on labour policy. Furthermore, immigration policy and labour policy should not be considered in isolation, because immigration policy helps to produce a precarious migrant labour force.

Gomberg-Munoz & Nussbaum-Barberena touched upon the challenge that labour migration can pose to the role of territoriality in state power. Guy Mundlak focuses on the domestic nature of labour law and proposes de-territorialization as an avenue for ensuring labour law’s protections are extended to all workers. Labour law has historically been domestic in focus, in terms of being applied on a territorial basis: it applies to employers and workers within the state but ends at the border in recognition of other states’ sovereignty. However, globalization has resulted in flows of capital, people, and commodities that transcend borders. As markets become increasingly interdependent and institutions develop outside the nation-state system, domestic labour law falters in its ability to offer protection to all workers.

Mundlak argues that labour law’s territoriality is no longer adequate due to the de-territorialization of markets. He points out that laws do not necessarily need to be constrained by borders: he points to private and commercial law as legal fields

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<sup>68</sup> Ibid., 371.

that have embraced transnational harmonization, as well as environmental law as a legal field that recognizes the need for action that transcends the state level.<sup>69</sup>

Mundlak calls for similar recognition within labour law that the issues it attempts to respond to cannot be sufficiently regulated at the domestic level. Regarding migrant workers, the alleged equality in applying territorial labour law falls short.

Territoriality creates tension because it links employment rights and citizenship, leaving individuals vulnerable as they cross borders and receive equal treatment as workers but unequal treatment as aliens.<sup>70</sup> He emphasizes that just as our post-Fordist world “requires a shift from job-security to employment-security, from seniority in one workplace to labor market experience, from workplace-specific benefits to portable benefits”, the challenge posed by migration similarly requires extending labour law beyond territorial borders.<sup>71</sup> Extra-territorial solutions could range from the radical—like Gordon’s suggestion of transnational labour citizenship—to the tangible—like bilateral agreements.

De-territorializing labour law could take three forms. The first is establishing international labour standards through the ILO, which has already been adopted to some extent though not yet enshrined within international law, nor does it have the breadth and depth of territorial labour law. The second is integrating labour law into trade law, though this approach risks further institutionalizing the power dynamics between the Global North and Global South through protectionism. The third is through non-territorial sectoral codes of conduct, but the efficacy of these

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<sup>69</sup> Mundlak, “De-Territorializing Labor Law,” 195.

<sup>70</sup> *Ibid.*, 196

<sup>71</sup> *Ibid.*, 197

non-legally binding codes of conduct is suspect.<sup>72</sup> Despite the shortcomings of these experiments as they currently exist, Mundlak contends that de-territorialization of labour law should still be pursued. As it stands, workers are on an uneven playing field, since migrating capital can choose its desired forum which undermines labour law—corporations can operate within the regulatory context that suits its needs (such as ships flying under flags of convenience to avoid more stringent regulations, or a call centre being offshored to a country with low wages) whereas workers are not afforded the same mobility within the globalized labour market.

### ***1.3 Transnational labour solidarity***

Jamie McCallum describes the transition from early internationalism to today's transnational labour activism as mediated by changing ideas regarding how labour ought to resist global capital. McCallum notes that by the start of the 20<sup>th</sup> century, several International Trade Secretariats had been created “involving millions of workers that existed primarily as vehicles for information sharing on wage rates, working conditions, and union struggles”.<sup>73</sup> However, this nascent international labour solidarity was interrupted by WWI, which divided national working classes, and the end of WWII, which strengthened nationalism. McCallum argues that strong states are “historically linked to strong national working classes, [but] they are negatively correlated with instances of labor transnationalism”, therefore unions were content to deal with their respective states.<sup>74</sup> The Cold War further undermined international solidarity, because anti-communist projects

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<sup>72</sup> *Ibid.*, 199-200.

<sup>73</sup> McCallum, *Global Unions, Local Power*, 21.

<sup>74</sup> *Ibid.*, 22.

promoted workplace unionism over political movements. However, post 1999 anti-WTO protests in Seattle, new labour transnationalism was seen to be driving new strategies for unions to promote international solidarity, by allying with radical social movements.<sup>75</sup> McCallum cautions, however, against an uncritical embracing of globalization from below; he points out that labour in the Global North can be tinged with nationalist protectionism, as demonstrated by the United Steelworkers of America dumping Chinese steel into Elliot Bay during the anti-WTO protests.<sup>76</sup> McCallum argues that the classical argument regarding the homogenizing impacts of capitalist globalization results in class reductionism and the erasure of the divide between the Global North and the Global South.

Similarly, Ronaldo Munck argues that the 'globalization from below' approach assigns a special quality to action from 'below' when it comes to labour movements. He points to the rejection of the assumption that the globalization of capitalism necessitates the globalization of the struggle against it, by scholars such as Ellen Meiksins Wood.<sup>77</sup> Munck sees this hierarchy of strategies as problematic because the "binary opposition – globalisation 'from below' versus globalisation 'from above' – does not seem to be a credible basis for a transformative labour politics in the twenty-first century".<sup>78</sup> For Munck, globalization appears to be dissolving the traditional conceptions of 'levels' in society, thus, to portray an action as coming from below or from above neglects the complex structuration of the

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<sup>75</sup> Ibid., 25.

<sup>76</sup> Ibid., 26.

<sup>77</sup> Munck, *Globalisation and Labour*, 19.

<sup>78</sup> Ibid., 20.

world today. He criticizes the view that 'new' social movements (such as those around the environment, gender, and peace) are substantively different from 'old' ones, namely trade unions and labour politics. Munck argues that the workers' movement has been at the forefront of many of these 'new' social movements.

Peter Waterman seeks to understand the forces of globalization and social movements in the context of older forms of labour internationalism in his book *Globalization, Social Movements and the New Internationalisms*. As global social movements attempt to transcend the state system, Waterman argues that the 'old internationalism' of proletarian socialism has transitioned to a 'new internationalism', one characterized by alternative social movements. These alternative social movements are anti-capitalist and anti-statist, diverse and decentralized. The old internationalism was subordinate to the hierarchical nation-state system, preventing true international worker solidarity. Unlike Munck, Waterman argues that the new labour internationalism rejects the traditional conception of labour organizing and embraces the principles of alternative social movements, such as anti-racism, grassroots activism, and horizontal organizational structure.<sup>79</sup> In order to attain global solidarity, Waterman contends that the internationalism must move beyond its traditional focus on labour.

Kim Moody has a similar focus on the relationship between social movements and labour solidarity in his book *Workers in a Lean World*. He challenges the conception of globalization as a process leading to a single, unified world. Rather, Moody characterizes globalization as the uneven and contradictory spread

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<sup>79</sup> Waterman, *Globalization, Social Movements and the New Internationalisms*, 71-73.

of capitalism across the globe. He argues that while the mobility of capital and labour migration may have intensified competition between workers, it is lean production (characterized by the restructuring, casualization, and downsizing of labour) that threatens the labour movement and its solidarity. Moody contends that trade unions “attempt to hold the lines of defense through long-term stable bargaining relations, a rudimentary type of social partnership”, which is no longer an effective strategy in the new global economy.<sup>80</sup> Instead, he applauds the efforts of new ‘social movement unions’ to reach beyond the workplace through “an active strategic orientation that uses the strongest of society’s oppressed and exploited, generally organized workers, to mobilize those who are less able to sustain self-mobilization”.<sup>81</sup> Moody sees social movement unions as the answer for effective organizing.

#### ***1.4 Unions’ role in transnational labour solidarity***

Harald Bauder argues that migrants are not on equal standing with local workers; rather, economies depend on migrants to the extent that disruption to the international migration process would be akin to removing a linchpin in the economic system.<sup>82</sup> Bauder sees labour markets as operating differently in different contexts (whether social, political, or geographic) but argues that the social, cultural, and institutional processes that shape how economies operate is a common aspect that shapes the relationship between economies and migration. He argues that the international segmentation of the labour market is a strategy for undermining

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<sup>80</sup> Moody, *Workers in a Lean World*, 271.

<sup>81</sup> *Ibid.*, 276.

<sup>82</sup> Bauder, *Labor Movement: how migration regulates labor markets*, 10.

worker solidarity by pitting migrant workers against non-migrant workers.<sup>83</sup> In terms of labour organizing, Bauder emphasizes that migrants are not merely victims of neoliberal labour practices but have the capacity to influence the regulation of labour markets; one strategy he points to is the increasing inclusion of migrant workers within labour unions of receiving countries. Still, Bauder does not believe that labour unions challenge the underlying mechanisms of labour subordination. While he applauds Canadian and American labour unions' efforts to organize immigrants and undocumented workers and end their mistreatment, he argues that instruments such as citizenship ensure that the underlying system of labour subordination remains intact.<sup>84</sup> Bauder calls for a global political movement that seeks to destabilize the socially-constructed categories of migrant and citizen.

Williams et al. focus on the changing environment for transnational labour solidarity. The authors note that the International Trade Secretariats, which are now known as global union federations (GUFs), were organised based on industry. GUFs play a leading role in advancing International Framework Agreements (IFAs) with multinational corporations, which are "accords negotiated between MNCs and GUFs which establish minimum employment standards, often based on the International Labour Organization's (ILO's) core labour standards ... in the firm's operations, and sometimes across its supply chain".<sup>85</sup> Williams et al. acknowledge that IFAs may aid in union organizing and may improve labour standards, as well as having the potential to provide a new way forward for the international labour movement to

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<sup>83</sup> Ibid., 21.

<sup>84</sup> Williams et al., *Globalization and Work*, 200.

<sup>85</sup> Ibid., 114.

organize migrant workers and other marginalized workers; however, the authors also contend that IFAs are more concerned with basic human rights than bargaining issues, which limits their impact upon workers as an IFA may provide freedom from discrimination but make no substantive changes in terms of pay or working conditions.<sup>86</sup> As well, the IFAs' right-based approach faces a stumbling block in terms of its emphasis on local labour laws. Not only is compliance with local labour laws often weak and poorly enforced, local labour laws may also be actively undermining labour rights, especially when dealing with migrant workers.

Jamie McCallum, in his book *Global Unions, Local Power*, argues that unions' globalizing response to global capital requires strategy informed by the local context. Rather than examining the impacts of transnational labour activism in a local context, McCallum argues that the context determines the local strategy. He notes that most global union campaigns face the challenge of translating victories at the global level into real changes in workers' lives at the local level. In his view, "effective global unionism requires reciprocity with local actors", meaning that transnational labour activism relies on actors enforcing local rules in different ways in order to interlace local struggles and global struggles.<sup>87</sup> McCallum contends that at the global scale workers' rights are virtually nonexistent and a mass movement is unlikely, therefore unions' strategies have shifted to advocating for workers' rights before organizing occurs through campaigns such as global framework agreements.<sup>88</sup> Unlike Williams et al., McCallum argues that the labour struggle is

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<sup>86</sup> Ibid., 115.

<sup>87</sup> McCallum, *Global Unions, Local Power*, 3.

<sup>88</sup> Ibid., 145.

over rules rather than rights, as unions attempt to use IFAs to create new rules of engagement between corporations in order to build actionable associational power.

However, IFAs are only valuable if they are created “as one part of a comprehensive industrial strategy, not simply as a standalone policy instrument” because their impact must be both short-term and long-term.<sup>89</sup> For example, by targeting a specific geographical area rather than a specific company, a union campaign lessens the risk of non-unionized workers undercutting the gains of unionized workers. The challenge, however, is bridging the global-local divide through internal restructuring to allow substantive worker participation within the transnational labour struggle. McCallum does not address migrant workers specifically, at the detriment to his argument. His focus on local workers belies the fact that some workers are not local to their workplace. The challenge of transnational labour solidarity is compounded by the fact that not all workers are place-bound in the same way; while migrant workers are part of the local context, they may not feel invested in improving a temporary working situation, or their migrant status may leave them at risk of deportation if they participate in labour struggles.

### ***1.5 New strategies for organizing***

The global decline in unions has led to scholars questioning how unions can be effective within the current economic order. Shifting away from traditional forms of unionism, pursuing new geographical strategies, and new domains of mobilization are some of the main themes within the literature on new organizing

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<sup>89</sup> Ibid., 146.

strategies and union renewal.<sup>90</sup> Castree, Coe, Ward & Samers understand spatial strategies of labour as varying in scale and intended target, which can lead to new geographical strategies and new domains of mobilization. An example of the local scale targeting local needs would be place-based such as living wage campaigns in a specific city, and an example of the translocal scale targeting non-local needs would be global union campaigns around labour rights. Non-local needs could be targeted at the local scale (for example, through consumer boycotts). Local needs could be targeted at the trans-local scale (for example, remittances sent home by migrant workers).<sup>91</sup> Andrew Herod's case study of General Motors workers in Flint, Michigan demonstrates how workers at the local scale were able to have a trans-local impact. Targeted union action at a critical point of the production chain at the local scale paralysed the global production network for weeks—a suitably severe trans-local impact.<sup>92</sup>

The burgeoning growth of worker centres demonstrates the shift away from traditional forms of unionism, and the shift towards strategies of community-based organizing. Laura Liu's case study of worker centres' campaigns in New York City's Chinatown highlights the difficulty traditional unions have with organizing precarious and vulnerable workers, and the development of alternatives to traditional forms of unionism. In this case, the worker centres were born out of the perceived neglect of immigrant women workers by the labour establishment. In

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<sup>90</sup> Coe, "Geographies of production III: Making space for labour," 278.

<sup>91</sup> Castree et al., *Spaces of Work*, 118-119.

<sup>92</sup> Herod, "Implications of Just-in-Time Production for Union Strategy: Lessons from the 1998 General Motors-United Auto Workers Dispute," 521-547.

contrast to trade unionism, the workers organized across sectors and were rooted within the local Chinatown community.<sup>93</sup> In the same vein, Héctor Cordero-Guzmán et al.'s work on worker centres in the United States also highlights the shift towards new forms of organizing. Cordero-Guzmán et al. portrays worker centres as a response to the urban labour market's increasing concentration of low-wage workers in particular sectors of the economy—and the failure of trade unions to organize these sectors.<sup>94</sup> They characterize worker centres as different from unions in terms of their primary mission, goals, programs, and structure, and more analogous to the social movement organizations linked to immigrant and workers' rights movements.<sup>95</sup> As well, Janice Fine's work examines the growth of worker centres across the US, where workers can get help and direct-action campaigns can be undertaken. These worker centres are generally separate from labour unions, organized by migrant workers, and are community-based instead of work-based. Accordingly, these worker centres view economic and social issues through the perspective of race and ethnicity.<sup>96</sup> She contends that the growth of worker centres is due to union decline and the narrow focus of the labour movement excluding migrant workers' issues.<sup>97</sup>

Similarly, the “Fight for 15” campaign in Seattle utilized the strategy of mobilization within the community, rather than organizing at the work-site or unionization drives. The targets of the higher minimum wage campaign—fast food

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<sup>93</sup> Liu, “Ain't I a Worker?!: Gendered Labor and the Worker as Political Subject in Workers' Center Organizing,” 137-153.

<sup>94</sup> Cordero-Guzmán et al, “The Development of Sectoral Worker Center Networks,” 104.

<sup>95</sup> *Ibid.*, 107.

<sup>96</sup> Fine, *Workers Centres: Organizing on the edge of the dream*, 13. [L]  
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<sup>97</sup> *Ibid.*, 244.

workers—are difficult to organize traditionally through unionization. Though the campaign was backed by the Service Employees International Union, collective action was not geared towards unionization. Unionization was a difficult prospect due in part to the high turnover rate and franchise model of the fast food industry. Instead, the campaign was mobilized around legislative action, buoyed by fast food worker strikes and national protests, which led to a minimum hourly wage of \$15 within the city of Seattle.<sup>98</sup> Jane Wills’ work with contract cleaners in London also highlights how the strategy of mobilizing within the community can be powerful. The cleaners felt “aggrieved about the position of immigrants in the labour market, about racism and a general lack of respect. Rather than suffering the injustice of low-paid work as a fait accompli, they wanted to resist the way in which they were condemned to this kind of work”.<sup>99</sup> This resistance required appeals to morality and highly visible campaigns, in order to secure political and community support. This kind of community-based campaign built support for the cleaners’ cause far beyond their workplace.

Scholarly focus upon re-imagining unionism is also linked to the scholarly focus upon union responses to labour migration. The organizing of migrant workers is a challenge for traditional trade unions due to factors such as the political exclusion of foreigners, labour market segmentation, and the transient nature of labour migration. However, the literature on migrant worker organizing provides case studies of instances where organized labour benefits migrant workers. For

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<sup>98</sup> Hannah, “The ‘Fight for 15’: can the organizing model that helped pass Seattle’s \$15 minimum wage legislation fill the gap left by the decline in unions?”, 257-277.

<sup>99</sup> Wills, “Making class politics possible: Organizing contract cleaners in London,” 13.

example, Ruggunan's case study on Filipino seafarers reveals how the partnership between national trade unions and a global labour federation protected the wages and working conditions of Filipino seafarers. Due to Filipinos constituting approximately 20% of the global seafaring labour force, the national trade union can leverage the demand for Filipino workers, with a helping hand from their global labour counterpart, to avoid the race to the bottom of declining wages and worsening working conditions.<sup>100</sup> The result is that AMOSUP is the largest seafaring union in the world, and likely the richest trade union in the Philippines.<sup>101</sup>

In contrast, Indonesian trade unions have little involvement with migrant labour issues, both domestically and internationally. Instead, it is what Ford calls migrant labour NGOs who have taken up the mantle of migrant work organizing. Since Indonesia is a significant source of migrant labour in the region, the lack of union involvement likely stems from unions' lack of influence outside the local scale. Ford argues that to meet the challenge of organizing migrant workers, both union and non-union actors need to meaningfully engage in order to best utilize their respective skills in organizing capacity and transnational advocacy. Furthermore, Ford calls for a move away from international union initiatives focusing on migrant issues, and towards a re-imagining of unionism that transcends borders to connect workers in both countries of origin and destination.<sup>102</sup>

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<sup>100</sup> Ruggunan, "The Role of Organised Labour in Preventing a 'Race to the Bottom' for Filipino Seafarers in the Global Labour Market," 206.

<sup>101</sup> *Ibid.*, 196.

<sup>102</sup> Ford, "Migrant Worker Organizing in Indonesia," 331.

Hong Kong, a destination for many migrant workers, serves as a case study for migrant worker organizing outside the country of origin. Constable's work on migrant domestic workers in Hong Kong demonstrates how worker activism is increasing. Domestic workers organize not solely around issues of wages and working conditions, but increasingly frame their problems in relation to the transnational and global context. Their protests take many forms, including highly-public displays designed to counter the inherent invisibility of domestic work. Furthermore, there exists a complex framework of NGOs, grassroots organizations, domestic worker organizations, and labour unions within Hong Kong that enable migrant domestic workers to see their local problems through a transnational lens.<sup>103</sup>

Jennifer Jihye Chun focuses on the surging labour movements in South Korea and the United States, and the vulnerable workers at the forefront of these movements. Chun attempts to uncover "the mechanics of converting social and economic marginality into a concrete form of leverage" by comparing the revitalization of South Korea and the United States' labour movements.<sup>104</sup> She focuses on South Korea and the United States because the two countries have ostensibly dissimilar labour movements, with American labour seen as accommodating and weak, and South Korea labour seen as militant and mobilized.<sup>105</sup> However, she notes that there are important convergences between the two, notably that both labour movements are focusing on organizing marginalized

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<sup>103</sup> Constable, "Migrant Workers and the Many States of Protest in Hong Kong," 143-164.

<sup>104</sup> Chun, *Organizing at the Margins*, 4.

<sup>105</sup> *Ibid.*, 171.

workers rather than strong workers. By marginalized, Chun refers to “the concentration of historically disadvantaged workers along gender, race, and immigration status in expanding sectors of the low-paid service economy”.<sup>106</sup> Both the United States and South Korea rely on a marginalized workforce that includes migrant workers to varying degrees. The United States recruits migrant labour from Mexico into low-wage occupations, and South Korea recruits a growing number of migrant workers in low-paid, peripheral jobs.<sup>107</sup>

Chun argues that processes of globalization are not limited to the proliferation of free trade agreements or the increasing cross-border mobility of capital, but that it also includes the reconfiguration of local and national hierarchies. This reconfiguration includes the inclusion of the marginalized within organized labour. Furthermore, Chun contends that “symbolic leverage provides an avenue for the relatively powerless to transform the material circumstances of their jobs and livelihoods” through tactics such as moving the site of struggle from the workplace into the public eye.<sup>108</sup> Chun notes, however, that there is little consensus on how to bring national labour movements together in international solidarity. She argues that the incorporation of marginalized workers into the national structure of unions – let alone at the transnational level – is a challenge for organized labour, but it is necessary for transforming the institutions that contribute to marginalized workers’ subordination.

Aziz Choudry and Mondli Hlatshwayo focus on the possibilities and

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<sup>106</sup> Ibid., 44.

<sup>107</sup> Ibid., 66.

<sup>108</sup> Ibid., 172.

limitations of organizing migrant workers and argue that migrants are at the forefront of workers facing conditions of precarity and austerity. In their view, “migrant workers can be a source of new forms of labour organising as well as a potential force to rethink and reshape traditional union politics”.<sup>109</sup> The structural conditions of today’s era of global capitalism are informed by the legacies of colonialism and imperialist exploitation, with labour migration being a response to the hollowing-out of the societies of the Global South. Labour migration depends on “the creation and maintenance of categories of workers with different sets of rights tied to their immigration status ... which is fundamental to the functioning of many economies”.<sup>110</sup> Thus, migrant workers’ exploitation leaves them with the greatest potential for protest. The authors call for a recognition of the myriad forms of migrant organizing, which are often rooted in historical antecedents: workers’ centres, trade unions, and NGO/community organizations.<sup>111</sup>

### ***1.6 Research design***

As Moses & Knutsen note, case study researchers must be explicit about their theoretical lens, their research design, and the selection of the case.<sup>112</sup> My methodology for my fieldwork is pragmatism. John W. Creswell outlines the key principles underpinning an interpretive framework based on pragmatism: flexibility rather than dogmatism regarding philosophy; focus on the intended consequences and outcomes of the research, rather than the antecedent conditions or methods;

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<sup>109</sup> Choudry & Hlatshwayo, “Just Work? Migrant Workers, Capitalist Globalisation and Resistance,” 10.

<sup>110</sup> Ibid., 5.

<sup>111</sup> Ibid., 11.

<sup>112</sup> Moses & Knutsen, *Ways of Knowing*, 143.

importance placed on the conducting research that best addresses the research problem; freedom of choice regarding methods and techniques; the use of multiple methods and multiple sources; focus on the world as a multiplicity rather than an absolute unity; less focus on the nature of reality; and the understanding that research is always affected by social, historical, and political contexts.<sup>113</sup> Jori N. Hall emphasizes that the philosophy of pragmatism should not be reduced to the common-sense understanding of pragmatism as expediency or efficiency; rather, it requires critical reflection to imagine the implications of the research for society at large.<sup>114</sup> Pragmatism is often associated with the mixed methods approach. Martyn Denscombe notes that pragmatism can be characterized as a third alternative to when “neither quantitative nor qualitative research alone will provide adequate findings”.<sup>115</sup> Due to the exploratory nature of my research and the dearth of existing data, pragmatism offers a framework for my research design that ensures triangulation through multiple data sources.

My approach to inquiry is the case study. Specifically, Malaysia will be looked at as a single instrumental case study. Creswell describes the single instrumental case study as “the researcher focuses on an issue or concern, and then selects one bounded case to illustrate this issue”.<sup>116</sup> My research questions are: What are the factors that lead to the exploitation of migrant construction workers in Malaysia? How have some of BWI’s activities and advocacy work in Malaysia helped overcome

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<sup>113</sup> Creswell, *Qualitative Inquiry & Research Design*, 28.

<sup>114</sup> Hall, “Pragmatism, Evidence, and Mixed Methods Evaluation,” 24.

<sup>115</sup> Denscombe, “Communities of Practice,” 273.

<sup>116</sup> Creswell, *Qualitative Inquiry & Research Design*, 99.

migrant workers' exploitation and how might their strategies in the future advance that project? To answer these questions, my analysis focuses on how the historical and legal contexts of Malaysia reinforce migrant worker exploitation, and how the transnational migrant worker advocacy initiatives of Building and Wood Worker's International engage with the domestic context of Malaysia's building and woodworking sector.

In this case study, I am concerned with understanding the factors that facilitate migrant worker exploitation, and the attempts of global unionism at bridging the global-local divide in relation to migrant workers and local workers. My case study centres on the migrant construction worker and the global union federation employee, with data collected at the individual level of observation. The participants of this research are the following:

- Group 1: migrant workers in the construction sector, who do not have Malaysian citizenship, and who are more than 18 years old
- Group 2: employees of Building and Wood Workers' International and its affiliate unions in Malaysia

In terms of the recruitment and selection of participants, initial contact was made by verbal announcements made by BWI at different affiliate union events and information dissemination sessions. Those interested in participating provided their contact information; either a cell phone number or email address, depending on the participant's access to such resources. I then recruited potential participants after contacting potential participants by either telephone or e-mail, making it clear that there is no obligation to participate in the interview and that there will be no

negative repercussions if they decide not to participate at any point of the research. The data collected via Group 1 was from surveys and observations. The sample size for Group 1 was 200 people. Data analysis was completed using Microsoft Excel, because the exploratory nature of the data collection did not require complex coding.

The data collected via Group 2 was from interviews and observations. The method of data collection for Group 2 was semi-structured interviews. Due to the small sample size of Group 2, it was not possible to do surveys because it would not protect the participants' anonymity nor would the sample size be large enough to be generalizable. An interview framework was in place so that each interviewee answered questions crucial to the research project, while still allowing flexibility within the discussion. A recording device was used to record the interviews, and notes were taken during and immediately after the interview to record body language and other unspoken gestures. The sample size of Group 2 was five people. This small sample size was due in part to the small numbers of BWI employees and affiliate unions based in Kuala Lumpur. BWI's Asia-Pacific office employs only six people directly. While BWI holds contracts with local organizers, at the time of the fieldwork there were only two local organizers working in the Kuala Lumpur metropolitan area. This is because businesses in the woodworking sector tend to be located near the sources of raw materials, in predominantly rural areas. As well, there is a language barrier when interviewing some local organizers, because many find fluency in Malay is more helpful in their working lives rather than English. Mobility—being able to travel to East Malaysia to build relationships with the local

organizers and union employees there—and translation were the two primary limitations of gathering interview data. More time spent in the field would be necessary; six months is likely the minimum length of time needed. I transcribed each interview, then coded for concepts and themes. Coding entailed exercising judgement regarding what is interesting about the interviews, labelling passages with relevant categories, and searching for connections between passages.<sup>117</sup> No computer-assisted qualitative data analysis software was used, because the small number of interviews did not require an onerous time commitment to immerse myself in the data for analysis.

Prior to delving into my fieldwork research, it is crucial that I outline my positionality as a researcher. The reasons to do so are manifold; perhaps most importantly, as a researcher I am shaped both explicitly and implicitly by the circumstances of my life, meaning that it is impossible for me to conduct research in a truly objective fashion—objective in this sense meaning without any underlying biases influencing how I perceive the world. As Kim England notes, within social sciences the conception of objectivity as involving “impersonal, neutral detachment” is hegemonic, due to the influence of neopositivist empiricism.<sup>118</sup> This specific conception of objectivity not only reduces the personal as a minor vexation, but also treats it as a possible threat to good research due to the possibility of the personal ‘contaminating’ the data. In England’s view, fieldwork requires intersubjectivity and reflexivity. In order to do fieldwork, shared meanings between the researcher and

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<sup>117</sup> Seidman, *Interviewing as Qualitative Research*, 127.

<sup>118</sup> England, “Getting Personal: Reflexivity, Positionality, and Feminist Research,” 81.

the research participants are necessary to understand social life. Reflexivity involves “the self-conscious analytical scrutiny of the self as researcher”, which is crucial for being able to be responsive to unforeseen challenges of fieldwork.<sup>119</sup>

England describes how the positionality of the researcher affects fieldwork in two ways: “different personal characteristics ... allow for certain insights” and “the everyday lives of the researched are doubly mediated by our presence and their response to our presence”.<sup>120</sup> I will outline the identities—sometimes fluid, sometimes conflicting—that shape my positionality. First, I am a university-educated Canadian with the privileges and predispositions that come with a middle-class, Western upbringing. Secondly, I am also a woman. In terms of ethnicity, I identify as both mixed-race and a member of the Filipino diaspora. Finally, regarding religion, I was raised Catholic though I am no longer practicing. These facets of my identity—education level, citizenship, gender, ethnicity, and religious background—all informed my fieldwork in different ways, by presenting challenges but also by facilitating my research.

Martha K. Huggins & Marie-Louise Glebbeek outline four emergent dangers identified by women conducting fieldwork: “gender incredibility, avoiding physical danger itself, juggling multiple research interactions, [and] upholding research ethics”.<sup>121</sup> I will address how each emergent danger played a role in my own fieldwork. First, gender incredibility refers to research participants’ belief that being a woman and being a researcher are incompatible. My presence at BWI as a female

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<sup>119</sup> Ibid., 82.

<sup>120</sup> Ibid., 85.

<sup>121</sup> Huggins & Glebbeek, “Introduction: Similarities among Differences,” 2.

researcher was not questioned by employees, because the global nature of the union involves nearly constant interactions with affiliate members and employees around the world. BWI does not just operate transnationally; its Asia-Pacific office functions as a kind of transnational space itself, due to the steady stream of international visitors. The office's location itself was chosen as a function of being located close to the Kuala Lumpur International Airport to facilitate travel. In many regards, BWI's Asia-Pacific office maintains a Western working environment within a broader Malaysian environment, likely as a result of the influence of the funding affiliate unions located in the Global North. Thus, I felt most comfortable interacting in BWI's office environment. However, when it came to my fieldwork with migrant workers, my identity as a woman and researcher raised some challenges. Gender incredibility was tied to age incredibility, with most participants being puzzled as to why a young woman was interested in learning about their working experiences. However, perhaps due in part to my identity as a woman, the participants did not seem reticent about discussing the serious problems they were facing. It may have also helped that BWI introduced me as their student intern, in a bid to simplify my role enough to be translatable. This may have granted me more institutional credibility than if I had been introduced as an independent academic conducting research.

Second, Huggins & Glebbeek note that multiple research challenges require "strategies for negotiating within, around, and through the research challenges associated with gender, danger, identity interactions, and ethics".<sup>122</sup> As a woman conducting research in a Muslim-majority country, my presence in Malaysia had to

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<sup>122</sup> Huggins & Glebbeek, "Introduction: Similarities among Differences," 9.

be mediated through a local context of ethnic pluralism. As previously discussed, a history of fraught racial politics has led to a relatively tense peace within the multi-ethnic society. My treatment as a woman alone in Malaysia was also influenced by my ethnicity. Kuala Lumpur is a tourist destination and a relatively liberal urban metropolis with a significant population of expats; however, my appearance did not fit the expected appearance of a foreigner. As a mixed-race person, my ethnicity is often ambiguous. During fieldwork, this ambiguity resulted in my body being ascribed ethnically Malaysian cultural norms. I specify ethnically Malay, as Malaysians of Chinese descent and Indian descent do not necessarily share the same norms. By ethnically Malaysian cultural norms, I refer mostly to the Muslim beliefs I was assumed to share. As mentioned in the second chapter, to be ethnically Malay is to be born into the religion of Islam. While the wearing of the *tudung*<sup>123</sup> is not required of ethnic Malay women, it has become prevalent in recent years. Wearing the *tudung* is a symbol of modern Muslim-Malay femininity, and “as a culmination of Malayness in its negotiation with a multicultural society”.<sup>124</sup> Thus, as a woman who passed as ethnically Malay, I had to contend with navigating a culture I had not experienced in-depth.

While I made modifications to my dress and comportment, I made the explicit choice not to wear the *tudung*. First, it is not a requirement for all women in Malaysia, as Chinese-Malaysians and Indian-Malaysians are not necessarily Muslim. Second, I felt that it would be insincere and unethical to participate in a religious-

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<sup>123</sup> Malay word for hijab.

<sup>124</sup> Hassim, “‘Glocalizing’ the Hijab: A Malaysian Perspective,” 5.

cultural practice without a deep understanding of the history and context behind it. Therefore, I did not wear the *tudung*, but I also did not leave my Western wardrobe unchanged. While the expat community in Kuala Lumpur is insular and concentrated enough that many foreigners feel no need to dress differently, I was based out of a suburb located 20 km away from the downtown core. My neighbourhood was characterized by the lack of foreigners, huge tracts of upper middle-class houses, and a concentration of higher-education institutions. Its residents were predominantly families and university students. I felt it was appropriate to restrict my wardrobe to pants and skirts that went past my knees, and I often wore a light cardigan to cover my bare arms. Despite these accommodations, I often still felt uncomfortable in my everyday life; this was rooted in the tensions I felt between my identities of being Canadian—often implicitly associated with whiteness—and being a racialized woman in the Global South. In encounters with others, I was often treated with surprise, which was centred around me not being a local, me being a racialized Canadian, me being an academic, and me living alone. I also experienced the phenomenon of being seen by men and pursued as romantic interests, as other female researchers conducting fieldwork have experienced.<sup>125</sup> This experience I will address further in regard to physical safety.

Third, I will address the challenge of avoiding physical danger. Violent crime is not common in Malaysia, although petty crime does occur regularly.<sup>126</sup> Physical

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<sup>125</sup> Huggins & Glebbeek, "Introduction: Similarities among Differences," 7.

<sup>126</sup> Overseas Security Advisory Council, "Malaysia 2016 Crime & Safety Report," <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=19182>

danger was not an everyday concern in my fieldwork, beyond the typical challenges of a foreigner navigating an unfamiliar environment. However, physical danger did play a role in restricting the fieldwork I was planning on undertaking. Initially, I planned on visiting project sites in order to meet with migrant workers who were potential participants. However, while the local organizers could access these sites with relative ease, as a woman it was impossible for me to discreetly enter. The local organizers often blended in with the workers in order to gain access or built relationships with the security guards who were often of the same ethnicity. Furthermore, the local organizers became concerned that I would draw too much attention to their own activities. While there was no explicit threat of physical violence, the project sites themselves were places of active construction, with often-minimal safety regulations in place. As well, there was no predicting how an employer might react to find non-employees on the project site. Furthermore, I had concerns regarding being pursued as a romantic interest. However, despite the vulnerabilities I faced as a researcher, of greater concern to me was the vulnerability of my participants, specifically, the migrant construction workers. As discussed earlier, the legal and political environment in Malaysia is designed to maintain the precarity of migrant workers' existence. Due to my inability to meet participants on the project sites themselves, meetings were held either at a local restaurant of their choosing, or in BWI's office. A local restaurant was deemed a safe location for a meeting by participants, because it already served as their meeting spot during their free time, and thus was relatively secure from the incursions of any authorities. BWI's office was also considered to be safe due to the institutional

power BWI holds. The office is in a business district of a suburb, with the power and prestige that comes with being an outpost of a transnational organization.

Fourth, the question of how to uphold research ethics in situ proved to be a difficult one. One challenge I faced was reconciling the Western-context from which my research ethics derived, and the non-Western context in which I was conducting fieldwork. Returning to England's portrayal of Western objectivity, I had difficulty conducting fieldwork that met these Western standards. One fundamental obstacle to fieldwork was the language barrier. This barrier could not be resolved easily through translation, however. Due to the racial stratification of the migrant construction workers, there were six different nationalities represented by the migrants, with the concomitant cultural differences. Furthermore, the specificity demanded by Western research resulted in jargon incomprehensible to the average migrant worker. For example, trying to elucidate the difference between an employee and a subcontractor was difficult, because while this subtlety in employment status was an important distinction for my own fieldwork, for the workers themselves their employment status paled in significance compared to the vagaries of their day-to-day work life.

As well, the workers' level of education did not surpass secondary school. By using specific terms, I initially had aimed to produce objective, replicable research, but in practice this served to alienate the migrant construction workers participating in my fieldwork. By fixating on the terminology of employment status, for example, I was further reinforcing the divide between myself and the participants by highlighting our disparate levels of education, as well as privileging

what I thought was important rather than what the participants thought was important. This language barrier also posed a challenge for receiving informed consent. The consent forms I had designed in accordance to the research ethics of my institution in the Global North did not translate well into my research context. The gulf between language and meaning was a concern throughout the entirety of my fieldwork, and I sought to avoid jargon and academic language in my interactions with participants. In the following chapter on migrant construction workers in the Malaysian context, I elaborate on these concerns regarding my data collection, noting its limitations as well as its possibilities for future entry points. I also discuss the historical and political environment in Malaysia that has facilitated the continued exploitation of migrant workers.

## Chapter 2: Migrant Construction Work in the Malaysian Context

Despite the increasing interconnectedness of the capitalist system, workers' existence is still fundamentally local in nature. Production, reproduction, and labour regulation is necessarily place-based and locally expressed.<sup>127</sup> Understanding Malaysia as a "place", then, is crucial for understanding how the local scale of everyday life and human practices interacts with translocal relations and institutions at the global scale. Castree et al. characterize places as "material arena for the conduct of everyday life and loci for the development of local identities and loyalties," with the caveat that places are both interconnected and interdependent, and that there are no distinct boundaries between the local and the non-local.<sup>128</sup> All places have different existing local differences. Therefore, when processes and institutions from the global scale collide with conditions at the local scale, the meeting of the local and the global is unique to each place. Malaysia is one such place where local conditions interact with translocal processes to produce a unique set of outcomes. Before discussing my case study of migrant labour in the construction industry, I provide a historical overview of the development of Malaysian labour. This context is necessary to demonstrate how the colonial foundations of the state, the transformation of the economy, and legal restrictions have led to the fragmentation of Malaysian labour from the 20th century onwards. This fragmentation not only makes it difficult to cultivate labour solidarity, it also contributes to the current lack of protections and continued exploitation of migrant

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<sup>127</sup> Castree et al., *Spaces of Work*, 70-71.

<sup>128</sup> Ibid., 66.

workers. I then demonstrate how the current legal and political context of Malaysia constrains migrant workers' rights, and the ability of trade unions to advocate for them. Lastly, I delve into the analysis of the surveys I conducted with 200 migrant construction workers in Kuala Lumpur. The surveys provide empirical data on the demographics, household information, financial circumstances, and working conditions of migrant construction workers in Malaysia.

### ***2.1 The history of trade unionism and labour migration in Malaysia***

Wage labour was introduced to Malaya, the former appellation of Peninsular Malaysia, by the British colonial empire in the 19<sup>th</sup> century when it sought to develop the agriculture and mining industries. Through indirect rule, British mercantile interests began the process of primitive accumulation and capital expropriation. The colonial economy depended on "British and Chinese capital and the large-scale influx of male immigrant labour from China and India".<sup>129</sup> Aihwa Ong characterizes the colonial state as cultivating a "plural society" where local and immigrant populations were differentiated and segmented, leading to uneven development.<sup>130</sup> According to Jomo & Todd, "most indigenous Malays preferred to remain as yeoman peasants rather than be subordinated as wage-earners with poor incomes and living conditions", thus impoverished Indian and Chinese immigrants were recruited and employed.<sup>131</sup> The colonial government preferred Indian labourers over the Chinese, deeming them to be more compliant. As a result, the government actively regulated the recruitment of Indian labourers, whereas

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<sup>129</sup> Ong, *Spirits of Resistance and Capitalist Discipline*, 15.

<sup>130</sup> *Ibid.*, 16.

<sup>131</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 1.

Chinese labourers tended to be privately recruited. This lack of regulation meant that Chinese labourers had greater independence than their Indian counterparts; for example, Chinese labourers were able to find independent accommodation away from their worksites, whereas Indian labourers generally lived in subpar on-site housing.<sup>132</sup> Because immigrants brought their own traditions of labour organization with them, labour organizing in Malaysia has thus been “unevenly influential in different ethnic and sub-ethnic working-class cultures”.<sup>133</sup> These historical colonial differences have been reinforced by post-independence labour markets and government policies.

In contrast to Jomo & Todd, Ong focuses on “an expanding state bureaucracy for the integrating fractions of the peasantry loosened from the land” and “global corporate strategies based upon the fragmentation of the labor force dispersed throughout the world system” as the basis of the dispossession of the Malay peasantry.<sup>134</sup> The domination of the state and capital over labour—first introduced by the British colonial authorities and continued post-independence—is politically justified as necessary for development. The British desired an established food-producing peasantry under the guise of paternalistically protecting the local Malays from the destabilizing effects of capitalism, who were portrayed as unable to survive the market economy. To prevent Malays from participating in the market economy by selling their land and labour, the British introduced legal constraints to reconstitute the population into a land-owning peasantry. For example, the 1913

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<sup>132</sup> Ibid., 3.

<sup>133</sup> Ibid., 21.

<sup>134</sup> Ong, *Spirits of Resistance and Capitalist Discipline*, 5.

Malay Reservations Enactment ensured unsettled land would be set aside for Malays, and any such land could not be sold or leased to non-Malays.<sup>135</sup> As well, Malays were barred from growing cash crops such as rubber, ostensibly to preserve the Malay way of life, but in actuality to ensure peasantization.<sup>136</sup> Despite the different perspectives offered by Jomo & Todd and Ong, the commonality between the two is that the colonial authorities crystallized the use of racial hierarchies through labour segmentation. This differentiation between colonially-defined populations set the stage for the undermining of worker solidarity and the fragmentation of the trade union movement. It also provides the foundation for the modern flow of racialized temporary migrant workers into Malaysia.

The unsympathetic treatment of workers can be seen in the Malaysian state's position that economic progress is hindered by trade unions, which Jomo & Todd portray as "a view which fits into official development ideology prevailing since the colonial period, in as much as such ideology has generally emphasized export led-growth predicated on a low wage policy".<sup>137</sup> The low wage policy can be seen in the colonial authorities' need for cheap labour in tin mining and plantation agriculture, and its influence continues to be felt post-independence in a bid to ensure continued economic growth. In 1940, the British colonial authorities reluctantly legalized unions, but the legislation was so restrictive it ensured it was essentially "state-controlled unionism".<sup>138</sup> During WWII, the Communist Party of Malaya led the

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<sup>135</sup> Ibid., 20.

<sup>136</sup> Ibid., 21.

<sup>137</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 168.

<sup>138</sup> Ibid., 65.

resistance against the Japanese, and thus the returning British were initially forced to recognize the communist-affiliated General Labour Unions. However, the British quashed the post-war anti-colonial, pro-worker resistance through the “suppression of persons and activities suspected of being subversive” as well as the encouragement of compliant, anti-communist unions.<sup>139</sup> The British imposed Emergency rule in 1948 to crackdown on the Communist insurrection threatening its authority. This devastated the organized union leadership, because the trade union legislation introduced by the British disbanded over half of Malaysia’s trade unions.<sup>140</sup> The fear regarding the Emergency regulations and its abetment of anti-union activities led to a standstill in union organizing.

Another example of the repression of the trade union movement is the Employment Act of 1955, which is still in force today. The Act allows certain firms deemed ‘pioneering’ exemptions from unions, as well as restricting unionization to certain industries. However, the Act could be interpreted to be widely-encompassing. As Rajah Rasiah notes, “capital’s dominance and its alliance with the state tended to ensure draconian labour practices and the arbitrary definition of ‘pioneering’ opened collective bargaining to easy violation by firms”.<sup>141</sup> On July 31, 1960, the first state of Emergency was lifted. Free from Emergency regulations, trade union activism saw an upswing in union membership; however, this union growth was curtailed with the introduction of restrictive labour legislation. The enactment of the 1967 Industrial Relations Act saw Malaysia’s laws further

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<sup>139</sup> Ibid., 85.

<sup>140</sup> Rudner, *Malaysian Development*, 350.

<sup>141</sup> Rasiah, “Labour and work organization in Malaysia’s Proton,” 95.

undermine workers. The Act bars “collective bargaining or strikes over matters involving promotions, transfers, recruitment, retrenchment, dismissal, reinstatement or the allocation of duties”, as well as the striking after a dispute had been referred to the industrial court.<sup>142</sup> As well, the Registrar of Trade Unions was granted increased power in the 1960s. The Registrar had the powers of registration and deregistration which let it determine which types of unions were granted legal recognition, including the power to deregister a union if another union representing the same trade already existed.<sup>143</sup> This ensured that the government could control the composition and structure of the trade union movement using the Registrar’s power to deny radical unions legal recognition, thus suppressing any militancy within the trade union movement. The lack of inter-ethnic labour cooperation posed another challenge to the trade union movement. During the 1960s, while Malay union membership rose, Indian and Chinese union membership decreased.<sup>144</sup>

The Malaysian Trades Union Congress (MTUC) is one example of the colonial authorities’ attempt to foster anti-communist unions, which was maintained post-independence. It was established in 1950 by the British as a “moderate labour federation”.<sup>145</sup> In a concession to both employers and officials, the MTUC’s powers were curtailed. It only served “as a liaison agency for the separate unions and as an aggregator of trade union interest”.<sup>146</sup> It was not granted executive authority over

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<sup>142</sup> Ibid., 95.

<sup>143</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 112.

<sup>144</sup> Ibid., 109.

<sup>145</sup> Hadiz, “Changing state-labour relations in Indonesia and Malaysia and the 1997 crisis,” 101.

<sup>146</sup> Rudner, *Malaysian Development*, 354.

affiliate unions. In the 1960s, MTUC-affiliated unions made up approximately 70 per cent of total union membership, but internal divisions, lack of finances, and government intervention left it largely ineffective.<sup>147</sup> For example, MTUC could not get substantially involved in politics. However, because restrictive labour legislation prevented effective industrial action, the MTUC began to participate politically in a limited sense by endorsing candidates, though not identifying with a political party.<sup>148</sup> This was also due to the difficulty of reaching a unified position among all its affiliate unions.

Despite the MTUC's creation at the hands of colonial authorities, it has not always been in the Malaysian state's good graces. For example, in 1980, the public sector workers union, Congress of Unions of Employees in the Public and Civil Services (CUEPACS) separated from MTUC in an attempt to punish the trade union movement for its disagreements with the government; in 1989, another labour centre was set up in another attempt to delegitimize the MTUC's claim of representing Malaysian workers.<sup>149</sup> The now-defunct labour centre, the Malaysian Labour Organization, was established by the government in response to the MTUC's support for electronics workers, who were barred from unionizing.<sup>150</sup> However, as Rasiah points out, the successful push for unionization did not necessarily lead to improved working conditions. The working conditions experienced by the non-unionized electronics workers and the unionized textile workers were substantially

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<sup>147</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 120-121.

<sup>148</sup> *Ibid.*, 124.

<sup>149</sup> Hadiz, "Changing state-labour relations in Indonesia and Malaysia and the 1997 crisis," 101.

<sup>150</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 162-4.

the same.<sup>151</sup>

The declaration of a state of Emergency occurred again in 1969 due to the May 13 race riots, shortly after the country's third general election. This again led to trade union restrictions, which the government claimed, "were necessary to guarantee industrial peace considered essential to attract investment, especially foreign capital".<sup>152</sup> Two amendments were particularly crippling for the trade union movement: the public sector service unions could no longer affiliate with the MTUC, and the Registrar of Trade Unions was granted further powers to suspend any branch of a union and to freeze union funds.<sup>153</sup> In the 1970s, Malaysia shifted towards export-oriented industrialization and free trade zones. Its laws ensured that formal labour relations were at a disadvantage, while foreign investment was aggressively courted. Labour-intensive industries such as electronics and textiles required a "cheap and docile labour force", thus trade unions were sidelined as much as possible to prevent potentially disruptive worker organizing.<sup>154</sup> The restrictive legal and political environment underscored the state's conception of industrial peace as one where any worker dissent is disallowed and foreign investment is welcomed and accommodated, therefore industrialization in the 1970s was characterized by minimal labour activism.<sup>155</sup>

Another significant development was the debut of the New Economic Policy (NEP) in 1971. The NEP had two aims—to end poverty and to achieve national unity

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<sup>151</sup> Rasiyah, "Labour and work organization in Malaysia's Proton," 97.

<sup>152</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 124.

<sup>153</sup> Ibid., 125.

<sup>154</sup> Ibid., 129.

<sup>155</sup> Rasiyah, "Labour and work organization in Malaysia's Proton," 96.

through socio-economic restructuring—but in practice, the NEP improved the economic standing of the Malays, thus increasing the number of wage employees. Despite the increase of potential recruits, the trade unions failed to form “a more non-communal, class-based movement” necessary to integrate Malays into the trade union movement.<sup>156</sup> Resentment regarding the government’s favourable policies towards the *bumiputra* and the pressure for more Malay representation in union leadership caused inter-ethnic tensions within the trade union movement. As well, the legal and political repression of the trade union movement continued. The Internal Security Act (ISA) provides an example of Malaysia’s authoritarian legal and political environment. The ISA can be characterized as a “post-colonial refinement of colonial laws ... used during several intra-elite political crises in order to control dissenting intellectuals, artists, activists, and opposition party members”.<sup>157</sup> The Malaysian state justified its use as the only effective means of maintaining political stability, despite criticism from human rights groups regarding the continued suppression of democracy and the abuse of state power.<sup>158</sup> The ISA was continuously employed by the state to quash any perceived threats to its power from 1974 until its abolishment in 2011. However, as Al Jazeera noted in an article on August 1, 2016, the ISA lives on in the form of new laws such as the National Security Act of 2016, which grants the state sweeping powers to suspend civil liberties, ostensibly in the name of national security.<sup>159</sup>

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<sup>156</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 130.

<sup>157</sup> Heryanto & Mandal, “Challenges to authoritarianism in Indonesia and Malaysia,” 6.

<sup>158</sup> Othman, “Islamization and democratization in Malaysia in regional and global contexts,” 128.

<sup>159</sup> Al Jazeera, “Malaysia: Controversial National Security Act launched”, August 1, 2016,

The fourth Prime Minister, Mahathir Mohamad, introduced more authoritarian labour laws and policies in the 1980s in a bid to further discipline the labour force and unions. Mahathir's Look East policy propagated a new ideology that workers' interests were aligned with those of their employers and their nation. The state undermined class-based organizations such as national trade unions by encouraging workers "to serve the firm as they would serve the nation", inspired by Japanese style in-house unionism but without providing the commensurate benefits such as lifelong employment.<sup>160</sup> The repression prevented legal strikes, resulting in some unions turning to other forms of direct action such as picketing. However, the stipulations around picketing render it "an acceptable, harmless and ineffectual form of labour protest, perhaps tarnishing the employer's image, but not threatening work and productivity".<sup>161</sup> This demonstrates the difficulty of effective labour organizing in an environment as repressive as Malaysia.

The increasing use of cheap temporary labour came as the high economic growth of the 1970s and the emigration of Malaysian labour abroad resulted in areas of the economy suffering labour shortages: namely, "activities offering low wages, poor working conditions, and the option of easy outmigration".<sup>162</sup> Illegal immigration was left unchecked by the state in order to fill these labour shortages. Labour migrants came primarily from its immediate neighbours Indonesia, southern

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<http://www.aljazeera.com/news/2016/08/malaysia-controversial-national-security-act-launched-160801062824956.html>.

<sup>160</sup> Hadiz, "Changing state-labour relations in Indonesia and Malaysia and the 1997 crisis," 99.

<sup>161</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 148.

<sup>162</sup> *Ibid.*, 149.

Thailand, and southern Philippines.<sup>163</sup> This form of migration differs from the colonial-era immigration, where migrants settled permanently in Malaysia; from the 1980s onward, labour migration's defining characteristic is its temporal nature. Though some migrants stay illegally, the Malaysian state ensures that the process of obtaining legal permanent residency is cumbersome and inaccessible for the low-paid workers making up the bulk of the migrant labour force. The recession of the mid-1980s dealt another blow to Malaysian labour. Rising unemployment coupled with the surge in labour migration were "opportunities to force labour to accept declining real wages, poorer working conditions, and employment insecurity, as well as reduced worker and union rights".<sup>164</sup> The MTUC, as the representative of moderate trade unionism, has generally opted for political acquiescence in the hopes that collaboration with employers and the state will benefit workers.<sup>165</sup> In part, its reliance on this strategy is a result of traditional, more disruptive union tactics being barred by the state.

From the 1980s onwards, alternative form of labour movement organizing emerged in the form of NGOs.<sup>166</sup> The focus was on supporting workers outside the reach of unions. However, these NGOs tended to deal "with issues on the periphery of labour relations, such as housing for workers, rather than seeking to improve representation for workers within the formal processes of industrial relations".<sup>167</sup> No NGO exclusively focused on migrant labour exists in Malaysia, but the NGO

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<sup>163</sup> Ibid., 150.

<sup>164</sup> Ibid., 170.

<sup>165</sup> Ibid., 172.

<sup>166</sup> Crinis & Parasuraman, "Employment relations and the state in Malaysia," 223.

<sup>167</sup> Ibid., 223-224.

Tenaganita has become associated with migrant workers' issues due to the number of migrants seeking its aid. Since its establishment in 1991, it has become the most well-known NGO advocating for migrants' rights. However, NGOs are not immune from the same repressive legislation that incapacitates the trade unions; after publishing a report on detention centres, its director went to court in 1996 on charges of false reporting.<sup>168</sup> The relationship between NGOs and unions in Malaysia can be characterized as somewhat cautious. Unions are doubtful of NGOs' commitment to labour issues, their funding constraints, and their employment practices.<sup>169</sup> However, as Jomo & Todd argue, "it is crucial for trade unions to work closely with other popular and progressive forces in Malaysian society ... Such coalition-building is an important long-term priority for labour".<sup>170</sup> Indeed, the MTUC's position on migrant workers has evolved from the more conventional stance of treating foreign workers as competitors, towards a more inclusive and pro-active approach.<sup>171</sup> Following a change in leadership in 2004, the MTUC no longer differentiates between migrant workers and local workers in their organizing activities. Migrant worker advocacy has become a key strategy, though one marked by struggle and setbacks due to the legal and political challenges of doing so. Tactics have been adapted to better incorporate migrant workers in organizing initiatives; for example, some MTUC affiliates waive membership dues until a collective bargaining agreement is in place, in a bid to encourage migrant workers to

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<sup>168</sup> Piper, "Migrant Worker Activism," 373.

<sup>169</sup> Ford, "Migrant Labor NGOs and Trade Unions: A Partnership in Progress?," 307.

<sup>170</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 176.

<sup>171</sup> Piper, "Migrant Worker Activism," 367.

unionize.<sup>172</sup> Thus, despite the MTUC's origins as a compliant and moderate creation meant to replace the militant and radical unions of the past, today it has recognized the need to organize all workers within its border for a truly effective labour movement.

On the whole, the Malaysian state has overtly favoured capital over labour. Through design, labour organizations in Malaysia remain weak, fragmented, and ineffective. The local structures in place—namely the industrial relations framework and its corresponding laws and policies—suppress workers' interests and restrict the trade union movement's capacity to organize. Organized labour in Malaysia has not exerted much influence over government policy. The legacy of failed worker struggles in the past, the neoliberal economic restructuring that opened the door for temporary migrant workers, and the propagation of in-house unionism are some examples of the stumbling blocks that have “hinder[ed] the development of national-level working class solidarity and powerful unions”.<sup>173</sup> Due to the British colonial authorities' efforts to subvert the Communist Party and its influence, the trade union movement was transformed into a force that was more moderate, less political, and less powerful.<sup>174</sup> Thus, the Malaysian state did not need to confront “any significant radical labour-based social or political force” post-independence, ensuring a domesticated and politically-excluded trade union

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<sup>172</sup> Marks & Olsen, “The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion,” 8.

<sup>173</sup> Hadiz, “Changing state-labour relations in Indonesia and Malaysia and the 1997 crisis,” 97.

<sup>174</sup> *Ibid.*, 98.

movement.<sup>175</sup> In the 1980s, the fiscal crisis further weakened the bargaining position of labour, due to rising unemployment and growth of the poorly paid immigrant labour force. In sum, “[b]esides ethnic, religious and other cultural differences and suspicions, which continue to undermine labour solidarity, the deterrents for those who step out of line have been sufficiently severe to discourage labour militancy”.<sup>176</sup> However, as unions begin incorporating the large population of migrant workers in its membership and attempting alternative forms of organizing, it presents an opportunity for the revitalization of the moribund trade union movement in Malaysia. As of 2017, statistics from the Trade Union Affairs Department show that only 875,193, or six percent, of the 14.5 million workers in the country, were union members, with union membership in the private sector decreasing markedly from 433,702 in 2009 to 359,206 in 2017.<sup>177</sup> Therefore, any union revitalization has a long uphill battle. Furthermore, if the inclusion of migrant workers within unions is to occur, Malaysian unions will need to put pressure on the state to change the laws that effectively forbid migrant workers from joining a union.

## ***2.2 The legal and political framework in Malaysia***

The current legal and political framework in Malaysia constrains migrant workers’ rights, and the ability of trade unions to advocate for them. The Malaysian government’s regulation of migration, employment, industrial relations, trade unions, minimum wage, foreign worker levy, recruitment, trafficking in persons, and

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<sup>175</sup> Ibid., 101.

<sup>176</sup> Jomo & Todd, *Trade Unions and the State in Peninsular Malaysia*, 149.

<sup>177</sup> Hector, “The state of the labour movement in Malaysia,” November 15, 2017.

occupational health and safety standards ensure that many aspects of migrant workers' lives are regulated. These regulations work in tandem to restrict migrant workers' rights, both in principle and practice. The Immigration Act of 1959 regulates immigration into Malaysia, including migrant workers. The Act was amended in 2002 in response to increased irregular migration, introducing the criminalization of undocumented migrant and increased punishment for both undocumented migrants and employers hiring undocumented migrants.<sup>178</sup> Anyone who enters Malaysia illegally is "liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes".<sup>179</sup> For employers, hiring undocumented migrants leaves them "liable to a fine of not less than ten thousand ringgit but not more than fifty thousand ringgit or to imprisonment for a term not exceeding twelve months or to both for each such employee".<sup>180</sup> However, according to the ILO the application of the Act's punitive aspects is unequal, with migrant workers being punished more often than employers.<sup>181</sup> Furthermore, a migrant worker's status may change from regular to irregular for reasons such as "their visa, passport or work permit expires, they leave their designated employer, are dismissed, or become victims of people trafficking".<sup>182</sup> Undocumented migrants are subject to arrest by police or by the People's Volunteer Corps (RELA). The arrest

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<sup>178</sup> ILO, *Review of labour migration policy in Malaysia*, 4.

<sup>179</sup> Malaysia Immigration Act 1959, Part II, section 5 (3), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64031/99464/F1916438079/MYS64031.pdf>.

<sup>180</sup> *Ibid.*, Part VI, section 55b (1).

<sup>181</sup> ILO, *Review of labour migration policy in Malaysia*, 4.

<sup>182</sup> ILO, *Consultations with Labour Attachés and Consular Officials in Malaysia on the Protection of Migrant Workers*, 19.

powers granted to RELA, an armed but poorly trained volunteer group, has led to accusations of human rights violations against migrant workers.<sup>183</sup> Furthermore, volunteers were given bounties for capturing undocumented migrants, and are considered immune from prosecution regarding their migrant capturing activities.<sup>184</sup> Detained migrants are often arrested in raids led by RELA due to being unable to produce documentation, resulting in up to fourteen days in pre-trial detention before being brought before a special immigration court.<sup>185</sup>

According to the ILO, these immigration courts were established to streamline the deportation process by being located within detention centres. This practice has been criticized by the Malaysian Bar Council for effectively denying migrants the right to legal counsel due to the lack of translation services, the practice of trying groups of migrants together, and the practice of detaining migrants beyond the end of their sentences in order to testify in pending court cases.<sup>186</sup> Migrants can be detained indefinitely until the Malaysian government deports them or until the migrant can fund their own travel home.<sup>187</sup> Furthermore, Amnesty International has reported on the living conditions in the overcrowded immigration detention centres, noting that they fail to meet basic human rights standard as outlined in the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any

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<sup>183</sup> Network of the Oppressed People (JERIT), "Challenges of Organizing Migrant Workers in Malaysia," 227.

<sup>184</sup> Kaur, "Managing Labour Migration in Malaysia: Guest Worker Programs and the Regularisation of Irregular Labour Migrants as a Policy Instrument," 362.

<sup>185</sup> Amnesty International, *There Is A Way Out*, 4.

<sup>186</sup> ILO, *Review of labour migration policy in Malaysia*, 4.

<sup>187</sup> Amnesty International, *There Is A Way Out: Stop Abuse of Detained Migrants in Malaysia*, 4.

Form of Detention or Imprisonment.<sup>188</sup> The lack of adequate food and water, the lack of access to healthcare, and the lack of recourse regarding abuse in detention were some of the findings in Amnesty International's 2010 report.<sup>189</sup> The ILO notes that 12,862 migrants were being held in immigration detention centres as of March 2015.<sup>190</sup> Of these, approximately 1,200 are children.<sup>191</sup>

The Employment Act 1955 regulates the terms of employment and conditions of work in Malaysia. The Act specifies the minimum standards for workers covered by it, including "hours of work, overtime rates, employment contracts, leave, maternity benefits, retrenchment, dismissals, deductions from wages, rest days and complaint and compensation procedures".<sup>192</sup> The Act is enforced by the Labor Department of Malaysia, which can pursue cases of non-compliance upon the lodging of a formal complaint. In principle, migrant workers are treated equally as Malaysian citizens under this legislation. In practice, this legislation is rarely enforced for migrant workers. The ILO indicates that the limited number of labour inspectors, the difficulty accessing sectors migrants are most likely to work (such as plantations or domestic households), and uneven law enforcement are factors that constrain the implementation of labour legislation protections for migrant workers.<sup>193</sup>

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<sup>188</sup> Ibid., 5.

<sup>189</sup> Ibid., 6-7.

<sup>190</sup> ILO, *Review of labour migration policy in Malaysia*, 5.

<sup>191</sup> ILO, *Consultations with Labour Attachés and Consular Officials in Malaysia on the Protection of Migrant Workers*, 20.

<sup>192</sup> Xavier, "Malaysia," 173.

<sup>193</sup> ILO, *Review of labour migration policy in Malaysia*, 5.

The Industrial Relations Act 1967 regulates the relationship between workers and employers in the event of disputes. Its 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”.<sup>194</sup> The ITUC notes that the Act allows for the systematic violation of workers' rights, most notably to the right to collective bargaining.<sup>195</sup> A trade union must apply for recognition from the employer, who can accord recognition to the union or deny recognition.<sup>196</sup> If a union does not report to the Director General for Industrial Relations within 14 days about the employer's refusal of recognition, the union's application is considered withdrawn.<sup>197</sup> As well, the Act restricts collective bargaining to skills training, the annual review of wages, and the provision of a performance-based remuneration system, excluding issues such as hiring, dismissals, and promotions.<sup>198</sup> Furthermore, the Act enshrines compulsory arbitration, as the Minister of Labour may conciliate in any trade dispute.<sup>199</sup> Despite being a member of the ILO, Malaysia has not officially ratified the ILO Convention no. 87 on the freedom of association. However, as the right to organize is a core principle of the ILO and enshrined in international human rights law, Malaysia ought to recognize and respect it.<sup>200</sup>

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<sup>194</sup> Xavier, “Malaysia,” 174.

<sup>195</sup> ITUC, “Survey of violations of Trade Union Rights,” <http://survey.ituc-csi.org/Malaysia.html?lang=en>.

<sup>196</sup> Malaysia Industrial Relations Act 1967, Part III, Section 9 (3), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf>

<sup>197</sup> Ibid., Part III, Section 9 (4).

<sup>198</sup> Ibid., Part IV, Section 13 (2a-3).

<sup>199</sup> Ibid., Part V, Section 19a.

<sup>200</sup> Piper, “Migrant Worker Activism,” 364.

In terms of strikes, the Industrial Relations Act is restrictive. Workers in essential services must give employers forty-two days notice prior to striking.<sup>201</sup> The government can easily deem a service essential by declaring it as essential to the economy of Malaysia, and the current definition of essential service is broadly defined to include health care, education and transportation.<sup>202</sup> Solidarity strikes are also prohibited. A legal strike cannot have any other object other than the furtherance of a trade dispute between the workers and their employers.<sup>203</sup> As well, no pupils may support the furtherance of a strike, and to do so is punishable by expulsion and the inability to attend any other school without the permission of the Minister of Education.<sup>204</sup>

The Trade Unions Act 1959 regulates freedom of association, collective bargaining and industrial relations within Malaysia. Its regulations are similarly onerous for trade unions regarding the right to strike. A strike must be voted for by at least two-thirds of the union members in a secret ballot, which must then be submitted to the Director General for verification.<sup>205</sup> Upon receipt of the ballot results, the Director General has the authority to prohibit the strike on the grounds that it contravenes the Trade Unions Act or any other law.<sup>206</sup> If a strike is deemed illegal, the executive union members are liable for a fine up to two thousand ringgit, or imprisonment up to a year.<sup>207</sup> Rank and file workers participating in an illegal

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<sup>201</sup> Ibid., Part IX, Section 43 (1).

<sup>202</sup> Ibid., First Schedule Essential Services, Section 2, 17.

<sup>203</sup> Ibid., Part IX, Section 45 (1b).

<sup>204</sup> Ibid., Part IX, Section 38.

<sup>205</sup> Malaysia Trade Unions Act 1959, Part IV, Section 25a (1), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/10327/99503/F626669980/MYS10327.pdf>.

<sup>206</sup> Ibid., Part V, Section 40 (6).

<sup>207</sup> Ibid., Part IV, Section 25a (2).

strike are stripped of their union membership and cannot become a member of a union in the future.<sup>208</sup> The Act also restricts trade unions' right to affiliate with international organizations, by requiring that trade unions get the written permission of the Director General to affiliate with any body outside of Malaysia.<sup>209</sup> The Act grants the Director General the authority to unilaterally deregister trade unions if two or more exist in "a particular establishment, trade, occupation or industry".<sup>210</sup>

According to the Trade Union Act and the Industrial Relations Act, migrant workers are not differentiated from nationals and may join existing trade unions. Migrant workers are, however, restricted from becoming union officers.<sup>211</sup> However, conflicting laws and lack of enforcement result in the systemic refusal of freedom of association rights to migrant workers. In 2008, MTUC filed a complaint with the ILO alleging that the Malaysian government refuses to allow migrant domestic workers to establish organizations to defend their interests, thus violating their right to freedom of association. MTUC's application for the registration of a Domestic Workers Association has twice been rejected, most recently in 2014.<sup>212</sup> In the ILO Committee's conclusions regarding MTUC's formal complaint, it noted that "various stipulations in the labour legislation lead to the effective exclusion of migrant workers from its coverage", particularly the Immigration Department's practice of issuing work permits that stipulate that migrant workers cannot join associations,

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<sup>208</sup> Ibid., Part IV, Section 25a (3).

<sup>209</sup> Ibid., Part XIII, Section 76a (1).

<sup>210</sup> Ibid., Part III, Section 15 (2).

<sup>211</sup> Ibid., Part V, Section 28 (1).

<sup>212</sup> ILO, *Review of labour migration policy in Malaysia*, 22.

which employers interpret as encompassing trade unions.<sup>213</sup> Thus, employers generally do not allow migrant workers to join trade unions. In response to the complaints lodged at the ILO, the Malaysian government has embarked on reforms of its key labour legislation (namely, the Employment Act 1955, the Trade Unions Act 1959 and the Industrial Relations Act 1967), though the Committee noted it is still noncompliant in key aspects of Convention no. 98.<sup>214</sup>

The terms of migrant workers' contracts tend to contain clauses that migrant workers cannot join a union or be politically active, despite the fact that such a clause contravenes the law and is invalid.<sup>215</sup> As Piper notes, work contracts are usually only provided in English with no translation offered, and employers may dismiss a migrant worker without being punished.<sup>216</sup> The fear of retaliatory dismissal and deportation prevents many migrant workers from joining a trade union, despite having the right to organize in principle. Furthermore, migrant workers supplied by labour contractors as not treated as employees of their physical workplace, further constraining their ability to join trade unions as well as their ability to lodge a formal complaint against their employer.<sup>217</sup> Thus, in law and in practice migrant workers are prevented from exercising their right to freedom of association.

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<sup>213</sup> ILO, "Report in which the committee requests to be kept informed of development - Report No 353, March 2009", [http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2911366](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2911366).

<sup>214</sup> ILO, "Individual Case (CAS) - Discussion: 2016, Publication: 105th ILC session (2016)," [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3284598](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3284598).

<sup>215</sup> ILO, *Review of labour migration policy in Malaysia*, 6.

<sup>216</sup> Piper, "Migrant Worker Activism," 369.

<sup>217</sup> ILO, *Consultations with Labour Attachés and Consular Officials in Malaysia on the Protection of Migrant Workers*, 15.

In 2013, the Malaysian government introduced a minimum wage law that applies to all workers regardless of nationality, with the exception of domestic workers, in an effort to reduce the economic dependency upon migrant workers in low-skilled sectors.<sup>218</sup> However, the median salary of Malaysian workers was 1703 RM (500 CAD) in 2016, suggesting that the rate of minimum wage is likely not high enough to convince locals to take on jobs normally performed by migrant workers.<sup>219</sup> On 1 July 2016, the minimum wage increased to 1000 RM (315 CAD) for Peninsular Malaysia, and 920 RM (290 CAD) for Sabah, Sarawak, and Labuan.<sup>220</sup> The implementation of minimum wage as a means of changing the composition of Malaysia's workforce has not been successful, as it has resulted in resistance from employers. Complaints from employers has led to reactive, abrupt policy shifts, such as the decision to transfer the payment of the foreign worker levy away from employers and back to migrant workers after employers protested their businesses would not survive.<sup>221</sup>

An annual levy on the employment of foreign workers has been in place since 1992. Initially, it was payable by migrant workers but in 2009 the burden was shifted to employers to encourage economic restructuring in the wake of the 2008 global financial crisis.<sup>222</sup> The Malaysian government increased the foreign worker levy rates for Peninsular Malaysia in 2016. Foreign worker levy rates for manufacturing and construction workers (Category 1) were raised to 1850 RM (583

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<sup>218</sup> ILO, *Review of labour migration policy in Malaysia*, 18.

<sup>219</sup> Department of Statistics Malaysia, "Salaries & Wages Survey Report, Malaysia, 2016", 1.

<sup>220</sup> National Human Resource Centre Malaysia, "Minimum Wages," <http://www.nhrc.com.my/minimum-wages>.

<sup>221</sup> Cheng, "Move to postpone EMC levy welcomed," *The Star*, January 13, 2017.

<sup>222</sup> ILO, *Review of labour migration policy in Malaysia*, 19.

CAD), while plantation and agriculture workers (Category 2) were raised to 640 RM (200 CAD).<sup>223</sup> The foreign worker levy was originally introduced to discourage employers from hiring foreign workers, but with the introduction of minimum wage, the Malaysian government has yielded to employers' assertions that paying the foreign worker levy would be an economic hardship. Thus, the obligation to pay the levy has fallen back on migrant workers themselves. This nullifies the aim of the policy, which was to reduce structural dependency on migrant workers by raising the cost for employers. As well, while the foreign worker levy is the most expensive, there are seven other government fees migrant workers must pay: visit pass, visa, processing fee, security bond, foreign worker compensation scheme, health insurance premium, and medical examination.<sup>224</sup> For migrant construction workers specifically, the levy has quadrupled since its introduction. In 1992 the levy was 420 RM, increasing to 1200 RM in 2006 and currently at 1850 RM.<sup>225</sup> Migrant workers in general are at an economic disadvantage, compounded by the fees charged by the Malaysian government.

The Private Employment Agency Act 1981 regulates the recruitment of migrant workers. Recruitment agencies are required to obtain a license to operate from the Ministry of Human Resources.<sup>226</sup> The original intention of the Act was to regulate recruitment agencies providing services for domestic employment and

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<sup>223</sup> Anis, "New foreign worker levies for Peninsular Malaysia effective today," *The Star*, March 18, 2016.

<sup>224</sup> ILO, *Review of labour migration policy in Malaysia*, 19.

<sup>225</sup> Garcés-Masareñas, *Labour Migration in Malaysia and Spain*, 78.

<sup>226</sup> Malaysia Private Employment Agencies Act 1981, Section 7 (1), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/11246/117929/F1685702427/MYS11246.pdf>

sending Malaysian workers abroad and has not been updated to reflect the current context where the recruitment of migrant workers is much more common than the recruitment of Malaysian workers to go overseas.<sup>227</sup> The Private Employment Agencies Bill, tabled in March 2017, is expected to update the Act though it remains to be seen how it will affect the recruitment of migrant workers.

In terms of regulating recruitment, since 2005 the Malaysian government has required that companies hiring fewer than fifty migrant workers must use labour outsourcing companies.<sup>228</sup> Companies hiring more than fifty migrant workers may either directly recruit in sending countries or use an outsourcing company.<sup>229</sup> In 2010, it was determined that these outsourcing companies would be regulated under the Private Employment Agency Act and must be licensed by the Ministry of Home Affairs.<sup>230</sup> According to the ILO, Malaysia's approach is unique in the East Asia region, as the government operates "a licensing scheme for private employment agencies that recruit both Malaysian and foreign workers alongside a parallel scheme for licensing "outsourcing" businesses employing migrant workers from outside Malaysia".<sup>231</sup> The rationale for introducing the labour outsourcing recruitment system was primarily that it was more efficient and flexible for recruiting migrant workers, as it "simplified the process for employers, reducing administrative delays and allowing for changes in employment and short-term

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<sup>227</sup> ILO, *Review of labour migration policy in Malaysia*, 6.

<sup>228</sup> Kaur, "Shifting Geographies of Migration in Southeast Asia," 360.

<sup>229</sup> ILO, *Review of labour migration policy in Malaysia*, 12.

<sup>230</sup> Arukesamy, "Freeze on foreign workers' licence," *The Sun Daily*, July 24, 2013.

<sup>231</sup> Andrees et al., *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities*, 61.

assignments".<sup>232</sup> However, the labour outsourcing system transfers the responsibility for the migrant worker from the employer to the outsourcing company, resulting in the employer no longer being directly responsible for ensuring that migrant workers' working conditions are in compliance with national labour laws.<sup>233</sup> In December 2013, the government decided to phase out the outsourcing system for recruitment of migrant workers, though it is uncertain when the policy will be fully implemented because the existing outsourcing companies are operating with licenses that are valid through 2021.<sup>234</sup>

Bilateral agreements signed with sending countries represent an alternative system of recruitment. Such agreements either standardize the fees that can be charged by private recruitment agencies or provide government-to-government recruitment arrangements. For example, prior to Malaysia's bilateral agreement with Bangladesh, the average cost for a Bangladeshi migrant worker to get a job in the plantation sector was 12,000 RM (3500 CAD).<sup>235</sup> After the signing of the Memorandum of Understanding (MOU), private recruitment agencies were removed from the recruitment process and recruitment fees were fixed at 40,000 BDT (625 CAD) including one-way airfare.<sup>236</sup> Malaysia also signed an MOU with Indonesia in 2011 regarding domestic migrant workers, which made employers responsible for 4,511 RM (1300 CAD) of the recruitment fees and the migrant worker responsible

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<sup>232</sup> ILO, *Review of labour migration policy in Malaysia*, 12.

<sup>233</sup> Institute for Labour Market Information and Analysis (ILMIA), *Immigration in Malaysia: Assessment of its Economic Effects, and a Review of the Policy and System*, 107.

<sup>234</sup> ILO, *Review of labour migration policy in Malaysia*, 13.

<sup>235</sup> ILO, "Consultations with Labour Attachés and Consular Officials in Malaysia on the Protection of Migrant Workers," 17.

<sup>236</sup> ILO, *Review of labour migration policy in Malaysia*, 15-16.

for the remaining 1,800 RM (530 CAD).<sup>237</sup> In both MOUs, standard employment contracts were introduced. However, in 2013 it was reported that only 669 Indonesian domestic workers had arrived through regular channels since 2011.<sup>238</sup> It is likely that irregular migration continues in a bid to avoid paying the fixed recruitment fees.<sup>239</sup>

Relevant to Malaysia's recruiting systems is the Anti-Trafficking in Persons Act 2007. The Act's aim was to prevent trafficking activities, protect and provide shelter for trafficked victims, and prosecute traffickers.<sup>240</sup> In 2010, the Act was amended to become the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM). This act extended the definition of trafficking to include all actions involved in acquiring or maintaining the labour or services of a person through coercion. In the ILO's perspective, "the law is comprehensive in criminalizing all dimensions of trafficking and establishes stringent penalties of up to twenty years imprisonment and fines for those convicted".<sup>241</sup>

However, despite a small increase in the number of trafficking victims identified, the number of convictions has fallen, reaching a low of three convictions in 2014, compared to seventeen convictions in 2011.<sup>242</sup> According to a 2015 report by the UN Special Rapporteur on Trafficking in Persons, effective investigation of trafficking cases is hampered by "limited coordination among enforcement agencies

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<sup>237</sup> Ibid., 14.

<sup>238</sup> "No changes to existing terms for new MoU," *The Star Online*, December 27, 2013.

<sup>239</sup> ILO, *Review of labour migration policy in Malaysia*, 14.

<sup>240</sup> Institute for Labour Market Information and Analysis (ILMIA), "Immigration in Malaysia: Assessment of its Economic Effects, and a Review of the Policy and System," 117.

<sup>241</sup> Ibid., 6.

<sup>242</sup> Ibid., 7.

and skills to handle cases of trafficking, as well as corruption”.<sup>243</sup> In its 2015 Trafficking in Persons Report, the US Department of State found that some migrant workers on construction sites, agricultural and palm oil plantations, the electronics industry and domestic work are subjected to conditions of forced labour, “such as restricted movement, wage fraud, contract violations, passport confiscation, and imposition of significant debts by recruitment agents or employers”.<sup>244</sup> The 2016 Trafficking in Persons Report reiterates the existence of practices indicating forced labour and notes the discovery of mass graves along the Thai border that generated reports that some Malaysian officials were complicit in facilitating migrant smuggling.<sup>245</sup>

The Occupational Safety and Health Act 1994 is especially relevant for migrant construction workers. The Act makes provisions for securing the health, safety, and welfare of workers and authorizes the National Council for Health and Safety to investigate complaints and form policies to improve occupational health and safety.<sup>246</sup> According to Irene Xavier, the Act does not substantively address health and safety concerns in the workplace because the Act does not provide for a mechanism for complaints to be taken to a department for enforcement.<sup>247</sup> The ILO reports that the majority of workplace accidents in Malaysia occur in the

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<sup>243</sup> Giammarinaro, “Malaysia Mission Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children,” 15.

<sup>244</sup> U.S. Department of State, *Trafficking in Persons Report July 2015*, 234, <https://www.state.gov/documents/organization/245365.pdf>.

<sup>245</sup> U.S. Department of State, *Trafficking in Persons Report June 2016*, 255, <https://www.state.gov/documents/organization/258880.pdf>.

<sup>246</sup> Malaysia Occupational Safety and Health Act 1994, 7, <http://www.ilo.org/dyn/travail/docs/1628/Occupational%20Safety%20and%20Health%20Act%201994%20-%20www.agc.gov.my.pdf>.

<sup>247</sup> Xavier, “Malaysia,” 174.

construction, manufacturing, and agricultural sectors.<sup>248</sup> The most common accidents are crushing and entanglement; the most common victims are those who are new employees, lack sufficient training, and lack language skills.<sup>249</sup> The victims tend to have a poor understanding of safety rules, work in unsafe conditions and have excessive workloads, all of which are factors that heighten the probability of workplace accidents. Employers often fail to report workplace accidents involving migrant workers and shift the responsibility onto the contractors who supplied the migrant workers.<sup>250</sup> The Foreign Workers Insurance Scheme covers migrant workers who are injured at the workplace. However, it does not offer the same insurance coverage as that of Malaysian workers, but rather “lump sum payments for permanent disability or death at much lower amounts”.<sup>251</sup> Thus, Malaysian laws and government policies have a net-negative effect on migrant workers, because of the enshrinement of systemic exploitation and the lack of enforcement of the few formal rights formally accorded to migrant workers.

### ***2.3 Migrant construction workers survey data***

The method of data collection used was surveys, due to the dearth of empirical data on migrant construction workers in Malaysia. Not only does BWI lack data on migrant construction workers, the Malaysian government itself cannot state with certainty the number of migrant workers in the country. However, Malaysia is considered to be the “the biggest net importer of labour in Asia as a per cent of

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<sup>248</sup> ILO, *Review of labour migration policy in Malaysia*, 20.

<sup>249</sup> ILO, “Consultations with Labour Attachés and Consular Officials in Malaysia on the Protection of Migrant Workers,” 17.

<sup>250</sup> *Ibid.*, 18.

<sup>251</sup> ILO, *Review of labour migration policy in Malaysia*, 21.

labour force”.<sup>252</sup> While there is no consensus on the number of migrant workers in Malaysia, the Human Resources Ministry of Malaysia records the number of legal migrant workers at 1,978,948.<sup>253</sup> Estimates of the number of undocumented migrant workers range from 1 million to 4 million. Due to the lack of valid empirical data, the surveys attempted to fill this gap by gathering information on migrant construction workers in Malaysia. Thus, the surveys provide a breadth of data regarding the aspects of migrant construction workers’ lives and working conditions in the Malaysian context. Furthermore, the survey data demonstrates the challenge for both migrant workers and BWI’s advocacy activities within the current legal and political framework in Malaysia, which constrains migrant workers’ rights, and the ability of BWI to advocate for them.

In order to administer the surveys, local organizers employed by BWI served as facilitators and translators. As noted in the previous chapter, survey administration occurred either in local restaurants catering to migrants, or in BWI’s office. In total, 200 migrant construction workers completed the survey during the period of July 2016 to September 2016. The survey was designed to gather empirical data in four areas: demographics, household information, financial circumstances, and working conditions. Due to the exploratory nature of the data collection, complex coding was not necessary, and data analysis was completed using Microsoft Excel.

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<sup>252</sup> Brooks & Go, “Trade, employment and inclusive growth in Asia,” 332.

<sup>253</sup> Ministry of Human Resources, eBook i-STATISTICS Bil 2/2016, p. 30, [http://myhos.mohr.gov.my/ebook/istatistik2\\_2016/bil2\\_2016.pdf](http://myhos.mohr.gov.my/ebook/istatistik2_2016/bil2_2016.pdf)

Of particular interest was the impact of the 2016 minimum wage increase and the government levy for hiring foreign workers. While migrant workers are included under the purview of the minimum wage, there have been reports of problems regarding payments of wages, and the reduction of real wages because some employers deduct the cost of providing food and accommodation from workers' salaries. BWI has been campaigning on the issues of minimum wage and the payment of the levy, therefore the survey included specific questions on these issues to determine specifically how migrant construction workers are affected.

### ***2.3.1 Demographics and household information***

In terms of demographics, the respondents are uniformly male.<sup>254</sup> The respondents ranged in age from 22 to 46, with a median age of 33. Nepali and Indonesian workers are best represented in the sample. The majority of respondents have worked between 4 to 6 years in Malaysia and have a primary school education. No respondent has attained an education past high school. Regarding the makeup of their households, the vast majority of respondents indicate they support dependents. Nearly half of dependents are school-aged, which can mean increased expenses for school fees, supplies, uniforms, etc. However, there are also particular costs associated with infants and toddlers (such as child care, vaccinations, and other health interventions for newborns) and adult dependents

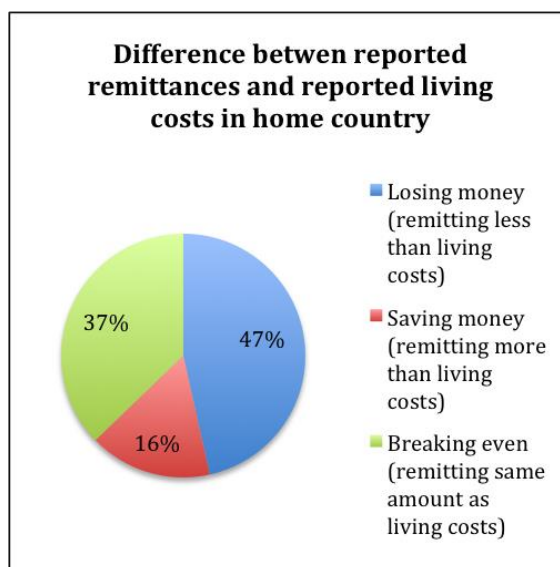
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<sup>254</sup> This mirrors domestic workers in terms of gendered labour migration. Assumptions regarding what constitutes 'masculine' and 'feminine' work are mobilized. Arguably, domestic workers and construction workers are seen as similarly disposable: however, the nature of construction work condones the possibility of extremely physical violence in terms of workplace injuries. This likely plays a role in the gender segmentation of these industries, as it is acceptable for masculine work performed by migrant men to be explicitly dangerous, while the feminized work performed by migrant women is less likely to be seen as implicitly dangerous (due to the vulnerability inherent in working in a private household).

(such as long-term support for the disabled and elderly).

### **2.3.2 Financial circumstances**

Over 90% respondents earn the minimum wage or higher, however deductions (for employer-provided food and/or accommodation, foreign worker levy, etc.) may lead to the workers' remuneration being less than the legally mandated minimum wage. The non-payment of overtime also affects remuneration; workers who are paid the monthly minimum wage but consistently work overtime without being duly compensated are being exploited. The Employment Act of 1955 does not differentiate between local and foreign workers, thus the law regarding overtime is applicable to migrant workers.<sup>255</sup> Furthermore, the survey data shows that many migrant workers do not earn enough to cover the living costs of their households in their home countries, as shown in the chart below.



**Figure 1. Fieldwork survey data**

<sup>255</sup> National Human Resource Centre, "Employment Act 1955," <http://www.nhrc.com.my/employment-act-1955>

The median monthly remittance is in the 600-699 RM range. The median monthly household expenditure is 700 RM. This suggests that some respondents are not able to remit enough to cover their household's living costs. Upon analysis, nearly half of respondents remit less than their reported household expenditure. Over one-third of respondents remit the same amount as their reported household expenditure, and about one-sixth of respondents remit more than their reported household expenditure. This indicates that the minimum wage is not enough to sustain the majority of migrant workers and their families. Just over half of the respondents report paying the foreign worker levy. However, this increases to 91% if we exclude the respondents with undocumented status who would not be subject to government levies. Out of 200 respondents, 80 reported being undocumented. Undocumented status poses different financial challenges for migrant workers. Although the undocumented workers do not pay the levy, they reported paying 80 RM per day to the recruitment agency.

The median monthly amount deducted from pay for the foreign worker levy is 200 RM. One respondent indicated the deduction varies from month to month. This may also be the case for the 9 respondents who indicated they had deductions but did not indicate the exact amount. Having varying deductions increases the vulnerability of migrant workers, because they cannot predict their future wage flow and budget accordingly. The current levy policy places the burden of paying the foreign worker levy upon the employees, however, under the Trans-Pacific Partnership (TPP), employers will be required to pay the levy. With the ratification of the TPP now in limbo due to the United States' withdrawal, representatives of the

Malaysian government have not made clear whether these announced changes will continue to be implemented under the labour consistency plan.<sup>256</sup>

As well, the Malaysian government has a history of shifting the burden of paying the levy between employers and employees: when the levy was first introduced in 1992, it was fully borne by foreign employees, but payment was shifted to employers in 2009, before shifting back to employees in 2013 alongside the Minimum Wages Policy.<sup>257</sup> This is due to the ad-hoc nature of policymaking, because the Malaysian state tends to be reactive towards issues and tends to bow to the demands of capital. Initially, the foreign worker levy was introduced in response to the growing public perception that there were too many migrant workers in Malaysia competing for local jobs. However, because of the 2008 global financial crisis, the Malaysian government sought to discourage the hiring of foreign workers by making employers responsible for paying for the foreign worker levy, in a bid to prevent the retrenchment of locals. In 2013, the introduction of the minimum wage included both local and foreign workers; to placate the employers whose labour costs were increasing, the Malaysian government placed the responsibility for paying the levy back upon the migrant workers.

### ***2.3.3 Working conditions***

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<sup>256</sup> The United States negotiated additional bilateral agreements— also known as consistency plans—with certain countries as a requirement for participation in the TPP. These plans address specific labour issues and require the implementation of reforms as part of TPP membership. The labour consistency plan with Malaysia requires improvements to migrant workers’ labour rights, such as prohibiting employers from withholding workers’ passports.

<sup>257</sup> Ministry of Finance, “Media Release,” [http://mohr.gov.my/pdf/MINWAGE/levi\\_foreignworkers.pdf](http://mohr.gov.my/pdf/MINWAGE/levi_foreignworkers.pdf)

While the survey administration was not undertaken to explicitly organize migrant workers, the recruitment of survey respondents provided participants with an introduction to union membership. No respondents are part of a union, and just under half of the respondents reported, “I don’t know”, when asked if they were a member of a union. This was expected due to Malaysia’s unfriendliness to organized labour. According to the Trade Union Act and the Industrial Relations Act, migrant workers may join existing trade unions, but conflicting laws and lack of enforcement result in the systemic refusal of their freedom of association. In response to MTUC’s 2008 complaint on this topic, the ILO noted that “various stipulations in the labour legislation lead to the effective exclusion of migrant workers from its coverage”, particularly the Immigration Department’s practice of issuing work permits that stipulate that migrant workers cannot join associations, which employers interpret as encompassing trade unions.<sup>258</sup> Thus, the lack of surveyed migrant workers being unionized is to be expected because employers disallow migrant workers from joining unions.

However, it is important to note that as a result of participating in the surveys, approximately a dozen migrant workers began working with BWI to gain redress for their labour rights violations, and began the process of joining the GEFONT Support Group Malaysia, which is not a union but a workers’ support group run by the General Federation of Nepalese Trade Unions (GEFONT), a BWI affiliate.

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<sup>258</sup> ILO, “Report in which the committee requests to be kept informed of development - Report No 353, March 2009”, [http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2911366](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2911366).

The ignorance towards organizing is a result of at least two factors, the first being racial stratification on job sites. There are six nationalities represented in this survey sample, and the Ministry of Human Resources lists 13 nationalities working in the Malaysian construction sector. However, migrant construction workers tend to work in crews of their own nationality, due to language barriers; migrant construction workers cannot speak Malay upon arrival and tend to rely on their fellow countrymen who have been in Malaysia longer and can speak the language for translation on the job site. This stratification is also perpetuated in the form of differing levels of support from the home countries; Nepal is an example of a relatively activist country for its workers, in contrast to Bangladesh, whose workers reported the highest debt amounts due to the lack of regulation. Besides the linguistic inaccessibility, the ignorance towards unions is also due to the physical inaccessibility of the job sites.

The majority of respondents work 10 to 12 hours per day. However, 100% of respondents who indicated that they worked 12 or more hours per day also indicated they worked 7 days a week. This means that 22 respondents out of 200 experience 84+ hour workweeks. This is in contravention of the Malaysia Employment Act 1955, which states “No employee shall be required to work more than 12 hours in a day”.<sup>259</sup> Although there are specific circumstances under which the limit of working hours may be exceeded, more investigating must be done to determine if these respondents’ workplaces fall under the purview of these special

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<sup>259</sup> Malaysia Employment Act 1955, Part XII, section 60a (7), <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm>.

circumstances; the circumstances where overtime is permissible are “in the case of (a) accident, actual or threatened, in or with respect to his place of work; (b) work, the performance of which is essential to the life of the community; (c) work essential for the defence or security of Malaysia; (d) urgent work to be done to machinery or plant; (e) an interruption of work which it was impossible to foresee; or (f) work to be performed by employees in any industrial undertaking essential to the economy of Malaysia or any essential service as defined in the Industrial Relations Act 1967”.<sup>260</sup> This list appears vague enough that many employers would be able to argue that overtime is legally permissible.

However, even if 12+ hour days are legally permissible, these workers must be paid overtime. The non-payment of overtime wages decreases the actual earnings of a worker. 69% of respondents report not being paid the overtime premium, meaning that the worker receives either daily minimum wage or monthly minimum wage regardless of how many hours worked. Of the respondents who report being paid for overtime, the median hourly overtime wage is 5 RM (1.58 CAD), 30 percent below the legal rate. According to the Malaysian Employment Act 1955, “Employees shall be paid at a rate not less than 1.5 times his hourly rate of pay for any overtime work”.<sup>261</sup> Because the hourly minimum wage is 4.81 RM (1.52 CAD), the hourly overtime rate for minimum wage should therefore be no less than 7.215 RM (2.27 CAD) in Peninsular Malaysia.<sup>262</sup> In principle, migrant workers are

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<sup>260</sup> Malaysia Employment Act 1955, Part XII, section 60a (2), <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm>.

<sup>261</sup> Malaysia Employment Act 1955, Part XII, section 60a (3), <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm>.

<sup>262</sup> Federal Government Gazette, “Minimum Wages Order 2016”, p. 4,

treated equally as Malaysian citizens under the legislation of the Employment Act of 1955, but in practice the implementation of labour legislation protections for migrant workers is virtually non-existent.<sup>263</sup>

While 46.7% of respondents reported being employees rather than subcontractors, slightly more respondents (47.21%) answered, “I don’t know”, to the question. This indicates a lack of knowledge of the difference between employees, who are employed directly and on a more permanent basis, versus subcontractors, who are employed through intermediaries on temporary and casual terms.<sup>264</sup> However, this confusion is also likely due to the opacity of employment status in general. In Malaysia, migrant workers’ status is at the whim of their employer, who can transform a migrant’s status from legal to illegal as easily as improperly filling out paperwork.

### ***2.3.4 Precarity and forced labour***

Forced labour is a subset of unfree labour, where “the labour relationship is either entered into under duress (which can include social and/or familial pressure), or that it is entered into freely but then becomes coercive”.<sup>265</sup> The Forced

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[http://www.mohr.gov.my/pdf/pua\\_20160429\\_P.U.%20\(A\)%20116%20-%20Perintah%20Gaji%20Minimum%202016.pdf](http://www.mohr.gov.my/pdf/pua_20160429_P.U.%20(A)%20116%20-%20Perintah%20Gaji%20Minimum%202016.pdf).

<sup>263</sup> ILO, *Review of labour migration policy in Malaysia*, 5.

<sup>264</sup> The use of the term “subcontractors”, as opposed to agency or temp workers, is specific to the construction industry. The construction industry is project-based, but not all construction workers work on the job site for the entire duration of the project. Specialized tradespeople may only be needed for a specific, finite task; thus, it is common practice to hire specific tradespeople on a project site, paid by the general contractor responsible for the project (for example, hiring an electrician to perform wiring only when needed). However, as the majority of migrant construction workers surveyed identified their position as “general helper”, it is clear that subcontracting is not being used in Malaysia as a way of hiring specialized tradespeople for specific tasks, but rather to institutionalize precarity.

<sup>265</sup> Strauss, “Coerced, Forced and Unfree Labour,” 139.

Labour Convention does not consider forced labour to include poor wages and working conditions, but as Kendra Strauss notes that this definition forced labour predicates on freedom of choice and the assumption that there is a universal understanding regarding freedom of choice and the nature of consent.<sup>266</sup> Strauss considers unfree labour to be best understood as a “continuum of exploitation” which all workers are subject to, both as individuals and groups.<sup>267</sup> Precarity is generally understood in relation to employment. Leah Vosko defines precarious employment as:

work for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements. Precarious employment is shaped by the relationship between *employment status* (i.e. self- or paid employment), *form of employment* (e.g. temporary or permanent, part-time or full-time), and *dimensions of labour market insecurity*, as well as social context (e.g. occupation, industry, and geography) and *social location* (or the interaction between social relations, such as gender, and legal and political categories, such as citizenship).<sup>268</sup>

I use *precarity* to discuss the precarious employment of migrant construction workers in Malaysia. Legal status and work contracts are often considered to be instruments that can reduce precarious employment. However, this legalistic viewpoint does not encompass the precarity experienced by migrant workers in the Malaysian context. For some migrant construction workers in Malaysia, it is legal status and work contracts that contribute to their precarity and entrap them into situations of forced labour.

In Malaysia, the distinction between legal and illegal status loses its

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<sup>266</sup> Ibid., 140.

<sup>267</sup> Ibid., 141.

<sup>268</sup> Vosko, *Managing the Margins*, 2 (emphasis in original).

significance, because legal status is not necessarily less precarious. The undocumented Indonesian construction workers were not bound by the same contracts as the construction workers with legal status. However, Indonesian migrants are much more able to “pass” as Malaysian, due to the mutual intelligibility of the Malay and Indonesian languages. Understanding the language of the host country provides Indonesian migrants with an advantage in terms of being better equipped to navigate the labour market and employers’ demands. Malaysia’s convoluted political and legal environment is often contradictory in regard to foreign workers. Thus, legal status does not always serve as a form of protection for migrant workers. Rather, legal status becomes an instrument of discipline and surveillance for the Malaysian state. The enforced temporality of legal status ensures that migrant workers cannot stay, whereas the undocumented Indonesian migrant workers are able to circumvent this state control over migration.<sup>269</sup> The contrast in the experiences between documented and undocumented workers is due in part to laws such as the Immigration Act of 1959, which tends to be applied more often to punish migrant workers rather than their employers.<sup>270</sup> Since a migrant worker’s status may change from regular to irregular for a reason as mundane as their employers forgetting to file the proper paperwork in time, migrant workers may start off as documented and then become undocumented. Generally, those who are at risk of losing their legal status are more at risk than the

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<sup>269</sup> Filipino migrants in East Malaysia (Sabah, Sarawak, and Labuan) are also able to circumvent state control over migration due to the close proximity of Mindanao. However, it is beyond the scope of this thesis to discuss Filipino migrants, as the context of East Malaysia differs from Peninsular Malaysia.

<sup>270</sup> ILO, *Review of labour migration policy in Malaysia*, 4.

Indonesian migrant workers who never had legal status, as the police and People's Volunteer Corps (RELA) can identify the otherness of those migrant workers more easily than Indonesian migrant workers. Therefore, the risk of arrest and detainment is lower for undocumented Indonesian workers, by virtue of their ability to blend into the local population better.

In terms of employment contracts, nearly half of respondents reported that their written contract is not being complied with. This increases to 93% if undocumented workers' responses are excluded, because an undocumented worker is unlikely to have a written contract. Nearly half of respondents reported that their passport or work permit is being withheld from them; again, this rises to 83.19% if undocumented workers' responses are excluded from the data. One respondent reported during the survey that he would have left long ago if his employer were not withholding his passport. Migrant construction workers take a risk every time they depart the job site: by being in public without passport and work permit, they are vulnerable to deportation. This immobility increases the precarity certain migrant workers face. Indonesian migrant workers are the exception, by dint of their ability to "pass" in Malaysian society. By contrasting the documented migrant workers with the undocumented Indonesian migrant workers, it is apparent that immobility is crucial for reinforcing precarity—immobility in terms of being tied to your employer (whether due to a mercenary work contract or the withholding of legal documents), as well as in terms of being able to move through Malaysian society without fear of being targeted by the authorities. Immobility is also tied to indebtedness; as I will discuss later, high levels of debt may force a migrant worker

to remain in an exploitative working situation.

The widespread practice of withholding passport has implications for Malaysia's human trafficking and forced labour commitments. According to the ILO, "The key element in many situations of forced labour is coercion—forcing people to work when they do not freely consent. Migrant workers may be coerced through withholding of their passports or identity documents. The employer may be holding the workers' identity documents for safekeeping. In such cases, the workers must always have access to the documents, and there should be no constraints on the ability of the worker to leave the enterprise."<sup>271</sup> Therefore, the practice of withholding migrant workers' passports may be considered a situation of forced labour.

In 2015, Malaysia was upgraded to Tier 2 of the US State Department's Trafficking in Persons report, up from Tier 3 for countries that fail to comply with the US minimum standards regarding anti-human trafficking. However, media reports criticized this upgrade as a political move to ensure Malaysia could take part in the TPP, because trade deals with Tier 3 countries are prohibited.<sup>272</sup> The 2016 Trafficking in Persons report once again placed Malaysia in Tier 2, despite noting that "the government did not demonstrate overall increasing anti-trafficking efforts compared to the previous reporting period ... [and] initiated fewer trafficking

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<sup>271</sup> International Labour Organization, "Q&As on Business and Forced Labour," [http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_FL\\_FAQ\\_EN/lang--en/index.htm#Q5](http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang--en/index.htm#Q5)

<sup>272</sup> Szep & Spetalnick, "Special Report: State Department watered down human trafficking report," *Reuters*, August 13, 2015.

investigations and prosecutions compared to last year”.<sup>273</sup> It also notes that the government did not convict any employers for withholding passports despite it being a widespread practice, which marks a decrease from one conviction in 2014.

Because 80% of respondents indicated that they are agency hires, it is important to understand the relationship between agency, employer, and migrant worker. The ILO Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation (No. 188) discuss the supply of labour by private employment agencies. The convention attributes to the agency the function of employing workers with a view to making them available to a third party.<sup>274</sup> This creates a triangular relationship between the worker, the agency, and the third party. For these workers, their employment status is not in doubt, but they frequently face difficulties in establishing who their employer is, what their rights are and who is responsible for them. If this triangular relationship is complex, it may lead to confusion about who is responsible and accountable for the migrant worker; the confusion over being an employee or a subcontractor is possibly due to the widespread practice of hiring through agencies. 3 respondents who indicated they are direct hires also indicated an amount paid to an agency. This could either indicate confusion over labour brokerage, or companies charging for direct hires. Furthermore, just over half of the respondents report that the agency determines

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<sup>273</sup> U.S. Department of State, “Malaysia: 2016 Trafficking in Persons Report,” <http://www.state.gov/j/tip/rls/tiprpt/countries/2016/258814.htm>.

<sup>274</sup> International Labour Organization, “C181 – Private Employment Agencies Convention, 1997 (No. 181),” [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C181](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C181).

their wages, rather than the employer. This again raises the question of what specific relationship the employer and the agency have with each other, and with the migrant worker; if there is a dispute over wages, it is important for the migrant worker to know where the responsibility lies.

81.2% of respondents indicated they took on debt in order to work in Malaysia. The median amount of debt is 4000 RM (1260 CAD), but debt as high as 13,000 RM (4100 CAD) was reported. High levels of debt reinforce the vulnerability of migrant workers in Malaysia because it “gives rise to migratory trajectories that start from 'voluntary' indebtedness and eventually lead to a status of subordinate and immobilised guest workers in Malaysia”.<sup>275</sup> The financial burden may oblige the migrant to work longer in Malaysia in order to repay these debts. Indebted migrant workers are more vulnerable to exploitation because the worker must continue servicing the debt, regardless of their treatment and working conditions. This power imbalance between the employer and the migrant worker may lead to reluctance in seeking redress, for fear of being sent back to their home country and unable to repay the debt. Indebted migrant workers are also vulnerable to workplace injuries that may leave them unable to repay their debt. As well, the stress of debt may have negative health impacts; debt is associated with reduced psychological health, worse self-reported general health, and higher diastolic blood pressure.<sup>276</sup> The survey results also indicate the failure of bilateral agreements in reducing the costs

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<sup>275</sup> Huong, “A New Portrait of Indentured Labour: Vietnamese Labour Migration to Malaysia,” 895.

<sup>276</sup> Sweet et al, “The high price of debt: Household financial debt and its impact on mental and physical health,” 95.

for migrant workers to come to Malaysia. Though the bilateral agreements with Bangladesh<sup>277</sup> and Indonesia<sup>278</sup> were meant to standardize the recruitment fees, it is likely that there is not enough monitoring and implementation to ensure that migrant workers are not acquiring high levels of debt.

### **2.3.5 Limitations**

However, it is important to explicitly outline the limitations of the survey as part of the data validation process. Initially, the method of data collection for both participant groups was to be semi-structured interviews to allow for a closer examination of their lived experiences working with Malaysia. My reasoning behind using semi-structured interviews as a method was that the interview framework would ensure that each participant answers questions crucial to the research project, while still allowing flexibility within the discussion. As well, it would ensure that despite their manifold differences, both participant groups would provide information on the same subjects from their own perspectives. The aim was to make the collected data as commensurate as possible. However, this research design proved impossible to implement in a four-month timeline. Above all, I had to remain flexible as I attempted to translate research methods from the Global North to the Global South and accept the inevitability of accommodation and negotiation as research challenges arose.

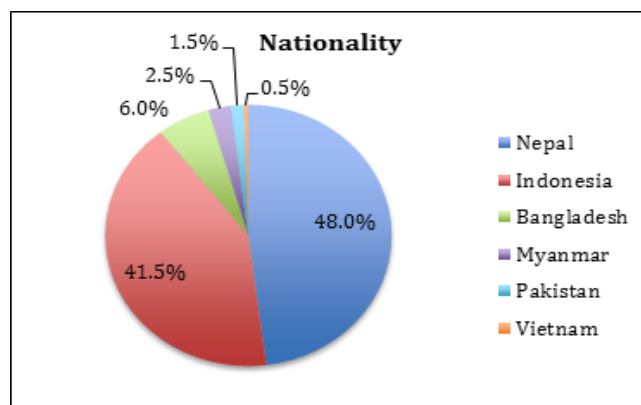
The language barriers of the six nationalities represented in the sample group posed a challenge. It was not feasible to attempt to hire six different

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<sup>277</sup> ILO, *Review of labour migration policy in Malaysia*, 15-16.

<sup>278</sup> *Ibid.*, 14.

interpreters to help conduct these interviews. Furthermore, the sample group is not representative of migrant construction workers as a whole. According to the Ministry of Human Resources, Indonesians make up 55.38% of documented migrant workers in the construction sector, followed by Bangladeshis at 22.46%, Pakistanis at 7.74%, Burmese at 4.94%, and finally Nepalese at 3.56%.<sup>279</sup> As shown by the chart below, the nationalities represented in the survey responses are not the same proportions. This points to a limitation in the survey data: it is difficult to ensure a representative sample of migrant workers complete the survey. This limitation is due to the difficulties of accessing a vulnerable population such as migrant workers, and the ability of local organizers to better convince migrant workers of their own nationality to participate in the survey taking.



**Figure 2. Fieldwork survey data**

This tension I faced while implementing research methods mirrors the tension uncovered between the global union and local contexts by my fieldwork. How can I ethically carry out fieldwork in the Global South using research methods designed for the Global North? In my discussion of my positionality as a researcher,

<sup>279</sup> Ministry of Human Resources, eBook i-STATISTICS Bil 2/2016, p. 30, [http://myhos.mohr.gov.my/ebook/istatistik2\\_2016/bil2\\_2016.pdf](http://myhos.mohr.gov.my/ebook/istatistik2_2016/bil2_2016.pdf)

the influence of neopositivist empiricism is highlighted as a barrier to conducting reflexive fieldwork, due to its conception of valid research as neutral and detached. The emphasis on validity as being rooted in an achievable objective influences all research issuing from a Western institutional context, both explicitly and implicitly. Institutional review boards are one such example. Though laudable in its goal of preventing harm occurring due to participating in a research project, the review board is embedded within a Western context, and its conception of ethics is accordingly Western-centric. Take the consent form as an example of institutionalized Western norms travelling beyond the Global North. In order to gain human research ethics approval, one of the requirements was that I include my consent forms with my application. While the guidelines emphasize that consent is a process and not reducible to a form, the status quo remains written consent.<sup>280</sup> The template consent form provided acknowledges that the form must be adapted to be appropriate for the participants, but it is unclear how the technocratic, elite jargon of the consent form can be practically adapted for research in the Global South. As Irving Seidman notes in *Interviewing as Qualitative Research*, the institutional demand for consent formalized via forms has discouraged working-class participants by establishing an atmosphere of suspicion and relations of authority and dominance.<sup>281</sup> This dynamic becomes even more pronounced when conducting research in the Global South, due to the assumption that a consent form deriving from a Western institutional context is both translatable and universal.

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<sup>280</sup> University of Victoria Human Research Ethics Board, "Annotated Guidelines," 14-15.

<sup>281</sup> Seidman, *Interviewing as Qualitative Research*, 77-78.

For example, the distinction between anonymity and confidentiality is not immediately clear even to most native English speakers. Such nuanced concepts do not lend themselves well to translation. Furthermore, my research was beset with two interlocked challenges: not only of translation into different languages, but also of translation for laypeople. No migrant construction worker participating in the research had obtained education beyond secondary school. Accordingly, the consent form—in order to be effective—ought to be understood by laypeople who not only do not have tertiary education, but whose education occurred in a non-Western context. The contractual language of the form is representative of the Western legal paradigm it operates within. Although it is relevant for the Western context—Group 2 participants, used to working within transnational spaces shaped by Western norms, had no problems understanding the consent form—the contractual language did not necessarily leave Group 1 participants well-informed. Difficulty arose in ensuring Group 1 participants truly understood the consent form.

For migrant workers, the consent form was another iteration in a long line of legalistic documents that confound rather than clearly inform. In many ways the consent form is analogous to the work contract. Both are written in an incomprehensible language: both in terms of linguistics and in terms of a specialized lexicon. Even if the migrant construction workers could understand the English language, the lexicon of the consent form requires insider knowledge to comprehend the context of university research. Similarly, the work contract is generally not written in the migrant construction workers' native language, and understanding it requires some insider knowledge about the law of the host

country. The requirement of a signature finalizes the consent form's role as a contract. In light of the problems migrant construction workers face after signing their work contracts, it is surprising that anyone agreed to participate. However, I believe that the relationships cultivated by BWI, the local organizers, and myself fostered enough trust to overcome the parallels between the consent form and the work contract. Still, despite the valuable intent behind the consent form, it does not seem to fulfill the standards of free, informed consent. The translation that would be required to ensure the consent form is understandable also raises the question of the translatability and universality of concepts.

My fieldwork attempted to circumvent the problem of translating the consent forms with the help of local organizers, who were able to provide interpretation. Because interpretation involves oral communication, the local organizers could expand on the contents of the consent form and provide explanations verbally, in-person. However, the disadvantage of interpretation was that I had no control over what was communicated to the migrant construction workers regarding the research. Much as the migrant construction workers trusted that the consent form they were signing was not another exploitative legal document, I had to trust that the local organizers aiding me were translating my words relatively accurately.

Open-ended questions, such as the ones about accommodation and food, went unanswered or answered with no details. Respondents generally did not understand open-ended questions such as "Do you have any other problems or concerns? Please write them down". One possible improvement for the survey is to

replace the open-ended question for respondents with a space for the surveyor to take notes of their own observations. For example, the surveyor could note if participants are unhappy with their employer-provided housing or need help with a wage dispute. As well, very few respondents were willing to identify the name of the contractor, company, or project they are working for. This is likely due to mistrust, because migrant workers are in a vulnerable work environment, and are unfamiliar with BWI and its employees.

Additionally, many respondents did not know the exact breakdown of their monthly household expenditures, possibly due to the nature of working away from home. Likely there is someone else in the migrant worker's home country managing the household on a day-to-day, and that person would have a better understanding of expenditures. However, by asking the respondents to provide their best estimate, we were still able to collect some data on the question. Going forward, it may be beneficial to translate surveys into Malay, or into the languages of the countries that send the most construction workers to Malaysia. However, this would also pose a challenge when it comes to compiling and analyzing the data, because it would have to be translated back into English.

The migrant workers who participated in the survey, as well as the local organizers who aided with translation were able to provide respondent validation during the presentation of preliminary results. The feedback focused on differences between sectors, the stratification of workers based on nationality, and the differences in agency fees for different nationalities. The participants requested that the construction sector's working conditions and payment systems should be

compared to other sectors (such as textile and plantation industries) to better understand the situation of migrant workers in Malaysia. The unpaid overtime and long working hours could be a widespread phenomenon outside of just the construction sector; at the same time, there may be unique qualities of the construction sector that creates openings for exploitation. For example, some workers have fixed wage contracts but could make themselves available for longer working hours. This could lead to the workers earning extra money, but not at the legally mandated minimum hourly overtime rate.

There is also wage stratification in play at the LRT extension projects underway in Kuala Lumpur, with Indian and Pakistani workers often being paid higher wages of 65 RM/day (20.48 CAD/day) because they are considered high-skilled. Furthermore, local workers could earn 100 RM/day (31.51 CAD/day), because the employers are required to hire some locals to demonstrate their adherence to the regulation of providing employment for local Malaysians. Finally, the participants underscored the need for clarity regarding agency fees among different nationalities. Bangladeshi workers pay higher agency fees than other nationalities; this results in increased long-term indebtedness compared to other migrant workers. While these issues were beyond the scope of my limited time in Malaysia, they provide a roadmap of future avenues for this exploratory research.

This chapter has delved into the historical background of Malaysia and the legal and political framework in Malaysia. Together, this paints a picture of the current state of the domestic trade union movement as one that has been weakened and subdued. There is a dearth of both structural power and associational power for

workers in Malaysia. The results of the migrant construction worker surveys provide insight on the demographics, financial circumstances, working conditions, and precariousness of migrant construction workers in Malaysia. The weak position of workers in Malaysia compounds the exploitation of migrant workers. However, despite the political and legal constraints upon labour in Malaysia, there exist entry points for solidarity between Malaysian workers and migrant workers. The following chapter provides an overview of the history of trade unions and GUFs, and then return to the specificities of my fieldwork by analyzing the activities of BWI through qualitative interviews and grey literature. BWI's transnational organizing activities are transformed by the reciprocities between the global and the local. Rather than pursue the signing of GUFs, BWI is attempting to change the terms of engagement between capital and labour through tactics more effective in the Malaysian context, such as education and resource provision.

### **Chapter 3: Building and Wood Workers' International**

The analysis of Malaysia's construction sector is not complete without a discussion of the global institutions interacting with Malaysian trade unions: namely, global union federations. I discuss the history of trade unions and International Trade Secretariats, the precursors to today's global union federations. I present an overview of global union federations as key players in trade union internationalism and go into detail regarding the activities of Building and Wood Workers' International (BWI), a global union federation for the building, building materials, wood, and forestry sector. I then present the analysis of the interviews conducted with BWI employees of the Asia Pacific regional office in Kuala Lumpur, Malaysia with five emergent themes identified. First, BWI's institutional history and sectoral focus influences its priorities regarding migrant workers, leading it to become the forerunner of global union federations advocating for migrant workers' rights. Its concern for migrant workers leads BWI to act beyond the negotiation of GUFs, because other repertoires of action may be more effective for migrant worker protection. Second, Malaysia's political and legal environment constrains the work BWI can do within the country, especially in regard to migrant workers. Therefore, BWI takes part in the local governance struggle over changing the normative framework and cultural logic at play in the Malaysian context in a bid to change the treatment of migrant workers. Third, advocating for migrant workers requires new strategies to unite both migrant workers and local unions, demonstrating how a GUF like BWI can take effective action beyond the negotiation of GFAs. Fourth, BWI's

global campaigns are shaped by the local contexts in which they are pursued. Rather than being unidirectional and top-down, the campaigns are necessarily reciprocal with local actors in order to be effective. Lastly, cautious optimism regarding the future of the trade union movement is the final theme emerging from the interviews. As well, I discuss a notable silence within the interviews: the lack of discussion of employment agencies and how recruitment practices reinforce the precarity and exploitation of migrant construction workers.

### **3.1 Trade unions**

Beatrice and Sidney Webb provide a succinct definition of a trade union: “a continuous association of wage earners for the purpose of maintaining or improving the conditions of their employment”.<sup>282</sup> The trade union is associated with the advent of industrial capitalism. Workers’ collectives existed prior to the Industrial Revolution in the form of working men’s trade associations and craft guilds, but the trade union emerged in response to the transformation of workers into employees who no longer owned the means of production.<sup>283</sup> In the words of Beatrice and Sidney Webb, although “industrial oppression belongs to all ages, it is not until the changing conditions of industry had reduced to an infinitesimal chance the journeyman’s prospect of becoming himself a master that we find the passage of ephemeral combinations into permanent trade societies”.<sup>284</sup>

The formation of trade unions began in Europe, before spreading to North America and then the Global South. Due to trade unions’ association with

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<sup>282</sup> Webb & Webb, *The History of Trade Unionism*, 1.

<sup>283</sup> Williams et al., *Globalization and Work*, 102.

<sup>284</sup> Webb & Webb, *The History of Trade Unionism*, 6.

industrialization, trade unions have a shorter history in the Global South due to the delayed industrialization of many countries in the Global South. For example, Malaysia's economy was dependent on the export of primary commodities at the time of independence because due to British colonial policy of exporting raw materials and importing British-made goods. In 1960, 40% of Malaysia's gross domestic product came from agriculture, and 9% from manufacturing.<sup>285</sup> As a result, Malaysia's industrialization occurred in the latter half of the twentieth-century, in contrast to the well-established unions in place by the end of the nineteenth-century in most of the Global North. The example of Malaysia is one that highlights the broader trend of lower union density in the Global South due in part to the recency of unionization in those countries.<sup>286</sup> While white-collar and professional workers are now drivers of union growth, it is industrialization that provided the initial impetus for the development of trade unions.

Trade unions' foremost preoccupation is to protect, maintain, and improve their members' working lives. How trade unions do so today range from collective bargaining, representing individuals against their employers, diversity and equality initiatives, political lobbying for workers' rights, and providing benefits for their members such as group discounts and training.<sup>287</sup> However, the specific activities and behaviour of a trade union vary between countries. Union priorities may focus on labour market outcomes, social integration, or political activism, depending on the country's context. Furthermore, trade unions' power is curtailed by neoliberal

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<sup>285</sup> Jomo & Edwards, "Malaysian Industrialisation in Historical Perspective," 18.

<sup>286</sup> Williams et al., *Globalization and Work*, 107.

<sup>287</sup> Williams et al., *Globalization and Work*, 104.

globalization characterized by Andreas Bieler, Ingemar Lindberg, and Devan Pillay as “the increasing transnational organization of production, the emergence of an integrated global financial market, the extensive informalization and deregulation of labour markets, and the dominant ideology of neoliberal economics”.<sup>288</sup>

Specifically, neoliberal globalization challenges the national-scale of unions. The mobility of capital, as well as labour, is contrasted by the relative fixity of unions in their respective national contexts. For example, the practice of outsourcing allows employers to move jobs to countries with cheaper labour. Similarly, guest worker programs allow businesses to reduce labour costs by temporarily ‘importing’ migrant workers without providing an avenue for permanent immigration.<sup>289</sup>

Another challenge for unions is the increasing casualization of labour. Guy Standing defines the term ‘precariat’, a portmanteau of ‘precarious’ and ‘proletariat’, as “people who lack the seven forms of labour-related security”, namely labour market security, employment security, job security, work security, skill reproduction security, income security, and representation security.<sup>290</sup>

The proletariat is characterized by “workers in long-term, stable, fixed-hour jobs with established routes of advancement, subject to unionisation and collective agreements ... facing local employers whose names and features they were familiar with”.<sup>291</sup> In comparison, the precariat is composed of workers faced with labour insecurity, insecure social income, and a lack of a work-based identity. Such workers

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<sup>288</sup> Bieler et al., “The future of the global working class: an introduction”, 1.

<sup>289</sup> Canada’s Temporary Foreign Worker Program is an example. The Seasonal Agricultural Workers Program tied workers to a single employer and forces workers to return home after a maximum of eight months.

<sup>290</sup> Standing, *The Precariat*, 10.

<sup>291</sup> *Ibid.*, 6.

may see little value in organizing in an uncertain work environment. However, neoliberal globalization cannot be solely blamed for the decline in union density in the Global North. Deindustrialization has removed the foundation of trade unionism, because manufacturing and heavy industry has given way to service sector expansion. Services in the private sector have traditionally had low levels of unionization. According to Williams et al., in 2011 union density in the public sector was 57% compared to 14% in the private sector.<sup>292</sup> In response to neoliberal globalization and decreasing union density, unions have renewed focus on cross-border and transnational labour activism. However, international trade unionism is not a new phenomenon borne out of the spread of neoliberal globalization but rather established in the early 18<sup>th</sup> century.

### ***3.2 International trade unionism***

Williams et al. note that the first formal international bodies for trade unionism were defined by their ideological cleavages in the context of the Cold War. Thus, the Western social-democratic International Confederation of Free Trade Unions (ICFTU) was formed when it split from the communist-oriented World Federation of Trade Unions (WFTU), and the World Confederation of Labour (WCL) was organized along Christian religious lines.<sup>293</sup> Besides international trade union federations, there were also industry-based international associations of individual national trade unions, referred to as International Trade Secretariats. On paper, they are “autonomous organizations composed of national unions in specific trades or

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<sup>292</sup> Williams et al., *Globalization and Work*, 111.

<sup>293</sup> Williams et al., *Globalization and Work*, 113.

industries” focused on issues relevant to their industries and leaving broad international labour policy to the aforementioned international trade union federations.<sup>294</sup> However, in practice, the overlap between the federations and the International Trade Secretariats led to conflict regarding the organization of the international labour movement and the prospect of amalgamation.<sup>295</sup> The International Confederation of Free Trade Unions and the International Trade Secretariats laid down the terms of their relationship in the 1951 Milan Agreement, which reinforced the need for a unified and cooperative international trade union movement while still preserving autonomy.<sup>296</sup>

According to John P. Windmuller, the International Trade Secretariats developed out of the desire for formalized relationships with unions of the same trade in different countries.<sup>297</sup> Although there were existing informal and patchwork reciprocity agreements and mutual-aid pledges, the institutionalization of trade union relationships via International Trade Secretariats improved the efficacy and productivity of these cross-border connections. Initially, the International Trade Secretariats were concerned primarily with “exchanging information on wages and working conditions, combating international strikebreaking attempts by employers, extending aid to traveling journeymen, encouraging reciprocity agreements ... and mobilizing international support in periods of grave industrial conflicts”.<sup>298</sup>

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<sup>294</sup> Segal, “The International Trade Secretariats,” 372.

<sup>295</sup> *Ibid.*, 377-378.

<sup>296</sup> Windmuller, *International Trade Secretariats*, 9.

<sup>297</sup> *Ibid.*, 5.

<sup>298</sup> *Ibid.*, 6.

Jamie McCallum notes that WWI interrupted this nascent international labour by dividing national working classes and pitting them against each other on the battlefield. However, the 1919 establishment of the International Labour Organization (ILO) to develop universal labour standards represented an important contribution to labour internationalism. McCallum argues that the end of WWII was similarly detrimental to international labour solidarity because it strengthened nationalism. In McCallum's view, strong states are "historically linked to strong national working classes, [but] they are negatively correlated with instances of labor transnationalism", therefore unions were content to deal with their respective states rather than commit to international unionism.<sup>299</sup> The Cold War further undermined international solidarity, because anti-communist projects promoted workplace unionism over political movements. However, the campaign against apartheid in South Africa is heralded as the pinnacle of cross-border labour solidarity, bringing together unions, NGOs, and churches in a bid to pressure Royal Dutch/Shell to end its South African operations.<sup>300</sup>

In the 1990s and 2000s, international trade unionism underwent further consolidation. Windmuller commented on the declining number of International Trade Secretariats due to the increased acceptance of mergers to counteract organizational weaknesses, resulting in fewer International Trade Secretariats but an increase in average size.<sup>301</sup> Amalgamation has transformed the 30 International

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<sup>299</sup> McCallum, *Global Unions, Local Power*, 22.

<sup>300</sup> Munck, *Globalisation and Labour*, 151; McCallum, *Global Unions, Local Power*, 24.

<sup>301</sup> Windmuller, *International Trade Secretariats*, 3.

Trade Secretariats operating in 1915 into the 9 existing today.<sup>302</sup> Furthermore, the International Trade Secretariats underwent a renewal and a renaming. Michele Ford & Michael Gillan characterize the transition in appellation from 'International Trade Secretariats' to 'Global Union Federations' (GUFs) in 2002 as representative of "their transition from isolated and bureaucratic international trade secretariats to more expansive and engaged labour movement actors".<sup>303</sup> Similarly, in 2006, the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) merged to form the International Trade Union Confederation (ITUC). The smaller WCL brought with it affiliates from developing countries, resulting in the better representation of the Global South in the international trade union movement.<sup>304</sup> The communist-oriented World Federation of Trade Unions (WFTU), on the other hand, collapsed alongside communism. While it does still have a membership, ITUC has become the dominant player in international unionism.

### ***3.3 Global Union Federations (GUFs)***

Richard Croucher & Elizabeth Cotton define GUFs as "coordinating bodies that link, or articulate, unions at other levels to each other and to international institutions and employers" with the functions of defending existing space for unions, creating further space for unions to operate, and help unions exploit this space through capacity-building.<sup>305</sup> They argue that GUFs are important for the

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<sup>302</sup> Ford & Gillan, "The global union federations in international industrial relations: A critical review," 462.

<sup>303</sup> Ibid., 459.

<sup>304</sup> Croucher & Cotton, *Global Unions, Global Business*, 36.

<sup>305</sup> Ibid., 8.

improvement of workers' lives because unions are the largest membership organizations in the world with a long history of democratic processes.<sup>306</sup> In contrast, many NGOs participating in global civil society do not have defined membership structures, rely on unelected professionals, and have no direct accountability.<sup>307</sup> Michele Ford & Michael Gillan characterize GUFs as trade unions that "seek to represent the economic and social interests of workers, but also their broader human rights ... [and] has an explicitly international scope" out of recognition that the traditionally-national scope of industrial relations is not aligned with the structure of global capitalism.<sup>308</sup> The clearest difference between International Trade Secretariats and GUFs is that GUFs are associated with the development of Global Framework Agreements (GFAs).<sup>309</sup> The first such agreement occurred in 1988 with BSN Danone and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).<sup>310</sup> This new approach preserved national unions' bargaining independence while still taking action against multinational corporations.

Croucher & Cotton argue that GFAs represent "an historic breakthrough since earlier attempts at international collective bargaining in the 1960s and 1970s essentially failed" in terms of inserting social clauses into international trade agreements.<sup>311</sup> GFAs used the ILO's Core Labour Standards as the jumping-off point

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<sup>306</sup> Ibid., 4.

<sup>307</sup> Batliwala, "Grassroots Movements as Transnational Actors," 395.

<sup>308</sup> Ford & Gillan, "The global union federations in international industrial relations: A critical review," 460.

<sup>309</sup> Also known as International Framework Agreements (IFAs). I use the term GFA because I follow Building and Woodworkers' International's most recent usage, but the two terms are interchangeable.

<sup>310</sup> Croucher & Cotton, *Global Unions, Global Business*, 34.

<sup>311</sup> Ibid., 61.

for convincing companies to sign onto an agreement, including freedom of association and the right to collective bargaining. Ford & Gillan argue that GFAs represent “an attempt by global unions to define this terrain of voluntaristic regulation [such as codes of conduct and labelling systems] on their own terms”, with some GFAs including monitoring, implementation, and employment relations clauses.<sup>312</sup> Dimitris Stevis & Terry Boswell characterize GFAs as “rules that regulate the corporation’s labor practices at the global level ... not collective bargaining agreements that can be enforced in national or international law”, negotiated between unions and corporations.<sup>313</sup> The association of GUFs with GFAs is reasonable considering the sharp rise in their usage: in 2000 nine agreements existed, with that number rising to sixty-one in 2008.<sup>314</sup>

However, GFAs are not without criticism. Davies et al. argue that so far, GFAs’ effectiveness in translating a formal agreement at the global level into action at the enterprise level has been lacking. The inclusion of implementation and monitoring clauses into GFAs “are mediated by product and ownership structures, as well as societal and local arrangements of subcontracting and labour control”.<sup>315</sup> Davies et al. note that for workplace monitoring to be effective in practice, there must be capacity building at the societal and local level in terms of institutions of industrial relations. Christina Niforou argues that GFAs are purposefully generic to encourage their adoption by corporations, but that this genericity obscures the role local laws

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<sup>312</sup> Ford & Gillan, “The global union federations in international industrial relations: A critical review,” 466.

<sup>313</sup> Stevis & Boswell, “International Framework Agreements,” 175.

<sup>314</sup> Croucher & Cotton, *Global Unions, Global Business*, 61.

<sup>315</sup> Davies et al., “Labour standards and capacity in global subcontracting chains: evidence from a construction MNC,” 135.

play in GFAs' enforcement and effectiveness. In her words, "where local laws contravene or lack compatibility with ILO conventions, the central [GFA] premise as instrument of global governance is largely undermined".<sup>316</sup> GFAs that are ultimately too removed from local contexts are not effective.

Furthermore, Stevis & Boswell note that GFAs are overwhelmingly signed with European multinational corporations. This geographical emphasis reflects the highly organized space within Europe and the lack of serious contestation from corporations as compared to North America and the Global South.<sup>317</sup> This results in GFAs not being signed in the contexts where they are most needed. As well, Fichter et al.'s study of GFA implementation in Brazil, India, Turkey, and the United States found that GFAs were unknown or poorly-understood by local actors.<sup>318</sup> Without proactive local implementation, GFAs' effectiveness in practice is limited.

Despite GUFs' association with GFAs, my interest is not in the agreements negotiated by Building and Woodworkers' International (BWI). While BWI has traditionally favoured the social partnership strategy of signing GFAs, it has become increasingly involved in campaigning and advocacy work, particularly on the issue of migrant workers.<sup>319</sup> As Ford notes, the growing literature on GUFs negotiating GFAs focuses on transnational solidarity, but little attention is given to GUFs' trade union aid projects in particular national contexts.<sup>320</sup> GUFs such as BWI, by virtue of their transnational nature, are well situated for responding to labour migration

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<sup>316</sup> Niforou, "International Framework Agreements and Industrial Relations Governance," 370.

<sup>317</sup> Stevis & Boswell, "International Framework Agreements," 181.

<sup>318</sup> Fichter et al., *Globalising Labour Relations*, 8.

<sup>319</sup> Ford & Gillan, "The global union federations in international industrial relations: A critical review," 463.

<sup>320</sup> Ford, "The Global Union Federations and temporary labour migration in Malaysia," 261.

more effectively than national trade unions. Stuart Rosewarne singles out BWI as a GUF “active in advancing the rights of migrant workers as a key element in its platform” and at the forefront of the international labour movement’s engagement with migrant workers, pointing to its lobbying efforts regarding the protection of migrant construction workers’ rights within the Gulf states.<sup>321</sup>

Similarly, other GUFs whose sectors involve large numbers of migrant workers are active in advocating for migrant workers. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) has a mandate that includes the hospitality and agriculture sectors, which often depend on migrant labour. The IUF’s efforts to integrate migrant workers into its work include the establishment of an agreement where union members are automatically incorporated within union membership in destination countries, employing migrant organizers, and holding solidarity campaigns advocating for the equal treatment of migrant workers within the production chain.<sup>322</sup> For example, the Transport and General Workers’ Union in the UK supported agricultural migrant workers’ picket protests by campaigning outside supermarkets with a petition for the fair treatment of workers in the supermarkets’ supply chains. This pressure resulted in the produce company negotiating with the union and signing a union recognition agreement.<sup>323</sup> However, the IUF’s focus on

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<sup>321</sup> Rosewarne, “The internationalisation of construction capital and labour force formation: Union responses in the transnational enterprise,” 286.

<sup>322</sup> Ford, “The Global Union Federations and temporary labour migration in Malaysia,” 263.

<sup>323</sup> International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations, “Workers and Unions on the Move,” 24.

migrant labour is Europe-centric, whereas BWI's work regarding migrant labour includes its affiliates in the Global South.<sup>324</sup>

Thus, the role GUFs such as BWI can play in responding to the transnational phenomenon of labour migration is of greater interest for my thesis. Campaigning and advocacy by GUFs are an opportunity for transforming local struggles into demands for structural change at the global scale. Ford & Gillan highlight BWI's mega sports games campaign around the World Cup as an example of "campaigns that are linked to contingencies – heightened media attention around global events or in the context of a horrific industrial disaster – which provided the opportunity for efforts to drive through structural change at industry or national level to labour practices and enhance space for union recognition and representation".<sup>325</sup> Mega games such as the World Cup often require large-scale construction projects, which in turn require large numbers of migrant workers. Despite GUFs' transnational nature, however, not all engage with the issue of transnational labour. It is BWI's specific institutional history and sectoral focus has led to its current proactive approach to migrant labour.

### ***3.4 Building and Woodworkers' International (BWI)***

BWI was established in December 2005 through a merger of the International Federation of Building and Wood Workers (IFBWW) and the World Federation of Building and Woodworkers union (WFBW).<sup>326</sup> The IFBWW was

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<sup>324</sup> Ford, "The Global Union Federations and temporary labour migration in Malaysia," 264.

<sup>325</sup> Ford & Gillan, "The global union federations in international industrial relations: A critical review," 469.

<sup>326</sup> BWI, "History," <https://www.bwint.org/cms/about-2/history-6>.

formed as a result of the merger in 1934 of the Building Workers International (formed in 1903) and the Woodworkers' International (formed in 1904), with the Painters' International and the Stoneworkers' International later joining in 1934.<sup>327</sup> The WFBW was the continuation of the International Federation of Christian Building and Woodworkers' Unions, constituted in Paris on 9 September 1937. The WFBW was an international trade federation associated with the World Confederation of Labour (WCL).<sup>328</sup> The formation of BWI occurred one year prior to WCL's merger with ICFTU.

BWI is one of the GUFs most active on migrant worker issues, with many of its European affiliates engage in initiatives around migrant worker advocacy. This reflects BWI's policy, as formalized in Article 7 of its statutes:

7.1. Where the members of one of the affiliated organisations are posted to another country, they shall be entitled, on the basis of their membership, to obtain advice and information free of charge from the affiliated organisation(s) in the country of employment.

7.2. Where a member of one of the affiliated organisation is migrating to another country, the affiliated organisation in this country shall take the necessary steps to ensure that an uninterrupted membership can be guaranteed.<sup>329</sup>

Thus, affiliate unions must commit to reciprocal union membership upon joining BWI. The commitment to migrant workers is top-down as well: the trade union development programmes of BWI generally include a focus on migration.<sup>330</sup> BWI's 2014-2017 priorities also reinforce the presence of migrant workers' rights on its agenda. The priorities pertain to organizing, jobs, and rights:

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<sup>327</sup> Docherty & van der Velden, *Historical Dictionary of Organized Labor*, 140.

<sup>328</sup> "World Federation of Building and Woodworkers Unions (WFBWU)", <https://www.uia.org/s/or/en/1100032325>.

<sup>329</sup> BWI, "Statutes," <https://odoo.bwint.org/cms/statutes-128>.

<sup>330</sup> Ford, "The Global Union Federations and temporary labour migration in Malaysia," 264.

1. Organising and negotiating with multinational companies (MNCs)
2. Organising workers in major infrastructure projects and public works
3. Promoting forest certification, sustainable forest management and sustainable jobs in the timber trades
4. Organising construction projects for major sport events, under the BWI campaign banner 'Fair play – fair games'
5. Organise on rights to health, safety and welfare at work and push for improved international standards on health and safety
6. Campaign to stop precarious work and social dumping
7. Combat illegal logging and promote better governance in the forestry industry to generate more job opportunities
8. Campaign to defend and promote Trade Union rights
9. Global Campaign for Migrant Workers' Rights, and
10. Campaign for Youth Employment and Gender Equality.<sup>331</sup>

Besides the explicit focus on migrant workers' rights through its priority campaign, concern for migrant workers is embedded within BWI's other priorities such as organizing for major sports events and stopping precarious work. Migrant workers are often employed on construction projects for major sports events and are frequently involved in precarious employment due to not enjoying the protections of citizenship in receiving countries. In contrast to other GUFs operating in Malaysia, BWI does not limit its activities to organizing workers in the formal sector. For example, BWI has funded a full-time position for a Nepalese trade unionist to advocate for Nepalese workers in Peninsular Malaysia, in recognition of the difficulties involved with advocating for migrant workers who often cannot speak Malay.<sup>332</sup> Rather than servicing, a mode of union engagement that "maintains distance between local and temporary migrant labour", BWI chooses to focus on organizing—which requires the integration of migrant workers—and advocacy.<sup>333</sup>

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<sup>331</sup> BWI, "Chinese MNCs in Africa," 56.

<sup>332</sup> Interview, June 2016.

<sup>333</sup> Ford, "The Global Union Federations and temporary labour migration in Malaysia," 268.

BWI's focus on migrant labour is not accidental, however. Its precursor, IFBWW, had a long-established presence in Southeast Asia as one of the first International Trade Secretariats to establish a regional office in Kuala Lumpur.<sup>334</sup> Its regional office in Kuala Lumpur has existed since 1979.<sup>335</sup> Thus, upon the creation of BWI, the employees of IFBWW's regional office continued as employees of BWI. These employees spearheaded internal change that eventually led to the current institutional culture of BWI, as this interviewee describes:

We took that as a challenge and tried to transform the organization. We even form a union inside the BWI, that's a different story. But we started as a youth group in the IFBWW. Our generation, or our batch in 1998, 1999 - we call ourselves then the Youth Datcom, of the IFBWW. So we were very vocal, we proposed - we present our observations, we discuss with affiliates of progressive mindset, and you know there's a big challenge ahead of us, we have to transform the organization ... Eventually, this transformation also led us, you know from the Youth Datcom ... that generation, either appointed as a senior staff of the BWI or even became a political leader of the affiliates.<sup>336</sup>

The above excerpt supports Michele Ford's assertion that BWI's focus on migrant labour stems from the influence of employees passionate about the issue moving from the Asia Pacific regional office into the head office.<sup>337</sup> Certain GUFs deal with sectors that depend on migrant workers but do not engage as substantively on the issue, such as the manufacturing GUFs.<sup>338</sup> For example, IndustriALL Global Union (the GUF formed out of the 2012 merger of the International Metalworkers' Federation, the International Federation of Chemical, Energy, Mine and General Workers' Unions, and the International Textile, Garment and

<sup>334</sup> "ILO urged to move regional office to KL," *Business Times (Malaysia)*, December 27, 1999.

<sup>335</sup> Windmuller, *The shape of transnational unionism : international trade secretariats*, 35.

<sup>336</sup> Interview, July 2016.

<sup>337</sup> Ford, "The Global Union Federations and temporary labour migration in Malaysia," 270.

<sup>338</sup> *Ibid.*, 263.

Leather Workers' Federation) does not mention migrant workers as one of the issues with which it is concerned.<sup>339</sup> A search of the website's articles and reports for terms related to labour migration provides very few results and those that do only mention migrant workers in passing. This demonstrates that being situated in a sector with large numbers of migrant workers does not necessarily lead to migrant labour activism.

Rather, the presence of union employees who are experienced, knowledgeable, and passionate about the issue determines if a GUF's projects include a focus on migrant workers. While the head office does communicate its priorities to its regional offices and affiliates, it is the local actors who interpret these priorities and enact them according to their own interpretation, shaped by the context within which they are operating and the issues they feel are most pressing. In BWI's case, as union employees intimately familiar with the local contexts and problems in the Global South moved into roles at the head office, the agenda of the GUF shifted accordingly and migrant labour became a priority in its advocacy work. This prioritization also impacted the repertoires of action BWI pursues. For example, in the context of Malaysia, the signing of GFAs does not substantively impact the political and legal environment that permits the mistreatment of migrant workers. Therefore, different strategies such as worker training and union recruitment are more effective for changing local norms. At the same time, this should not be interpreted as meaning that Malaysia, where the Asia Pacific regional office is located, has an outsize impact on BWI's activities

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<sup>339</sup> IndustriALL Global Union, "Issues," <http://www.industriall-union.org/issues>.

in the region. Malaysia's inhospitality to unions, and labour in general, has constrained the Malaysia-specific projects BWI is able to pursue.

One example of BWI's advocacy work in Malaysia is its continued support of the Sabah Timber Industries Employees Union (STIEU). Workers at Sabah Forest Industries (SFI) have been trying to unionize since 1999, including hundreds of Indonesia migrant workers working at the SFI timber plantation.<sup>340</sup> However, their efforts at organizing have been hindered by SFI's repeated filings of judicial reviews in order to avoid recognizing the union by prolonging the legal struggle. Because the Malaysian court system was not effective in ensuring union recognition, BWI changed tactics and targeted SFI's Forest Stewardship Council accreditation. The Forest Stewardship Council (FSC) promotes sustainable forestry by certifying and labelling forest products as meeting a strict set of environmental and social standards.<sup>341</sup> In this situation, BWI leveraged its global reach to provide formal worker representation at the international scale, and to offer legal resources for the union to continue its bid for recognition.

After BWI aided in submitting a complaint against SFI, the FSC investigated SFI for consistently failing to recognize STIEU, and determined that SFI was not upholding the principles of the International Labour Organization's Core Conventions, specifically Convention 87 (Freedom of Association), and Convention 98 (Collective Bargaining), and was also found to be violating the FSC Policy for Association. Due to SFI's failure to comply with the prescribed corrective measures,

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<sup>340</sup> BWI, "BWI Affiliates Sign Up for SFI Campaign in Malaysia," <http://connect.bwint.org/default.asp?index=5763&Language=EN>.

<sup>341</sup> Forest Stewardship Council, "Certification," <https://ca.fsc.org/en-ca/fsc-certification>.

the FSC disassociated from SFI, as well as its parent company in India, Ballapur Industries Limited (BILT), in September 2016. This was the first instance of the FSC disassociating from a timber company on the grounds of workers' rights violations.<sup>342</sup> This example demonstrates how BWI attempts to circumvent the local restrictions on labour activism and migrant workers' rights by drawing on its multiscalar power to put pressure on employers both locally and globally. However, it also demonstrates the limitations on BWI's capacity to transform the local context:

But union organizing, to gain recognition, to conclude collective agreement, doesn't - you cannot say, "We can do this in one year's time or two years' time." There are many variables to take into account, like what we have in Sabah. I mean, 25 years ... it's too long.<sup>343</sup>

In this interview, the participant is referring to BWI's support of STIEU. There is a palpable sense of frustration at the continued stymying of union recognition. Despite the resources BWI can draw upon, the legal and political constraints of operating within the Malaysian context pose challenges to BWI's labour migration initiatives. Indeed, this emerged as a theme throughout the interviews.

### ***3.5 Malaysia's political and legal environment***

Despite BWI's Asia Pacific office being located in Malaysia, it is not reflective of the Malaysian state's receptiveness to the trade union movement. Rather, the office location reflects more pragmatic concerns with logistics: being located near an international airport in a relatively central Asia Pacific country, and being in a

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<sup>342</sup> BWI, "MALAYSIA: FSC disassociates from SFI/BILT over labour rights," <https://odoo.bwint.org/cms/priorities-10/union-11/forest-certification-18/news-19/malaysia-fsc-disassociates-from-sfi-bilt-over-labour-rights-416>.

<sup>343</sup> Interview, June 2016.

relatively stable country with good quality of life in comparison to its neighbours. As discussed in the previous chapter, the Malaysian Trades Union Congress (MTUC) in Malaysia was established in part to undermine the existing trade union movement associated with the Communist Party. As MTUC is recognized as the representative of workers in Malaysia in all major sectors, it works closely with BWI.<sup>344</sup> MTUC's affiliate unions that fall under BWI's purview—the Union Of Employees in the Construction Industry (UECI), Timber Employees Union Peninsular Malaysia (TEUPM), Union of Forestry Employees Sarawak (UFES), Sabah Timber Employees Union (STIEU), Malay Forest Officers' Union (MFOU), Malayan Technical Services Union (MTSU), and the Timber Industry Employees' Union of Sarawak (TIEUS)—are also BWI affiliate unions.<sup>345</sup> Currently, the repressive features of Malaysia's political and legal environment restrict freedom of association, which results in a context where the unions do not wield much power. This also restricts the avenues BWI can pursue when it comes to migrant worker protections. As a result, BWI's activities in Malaysia are directed more towards transforming the normative framework underpinning the political and legal environment.

In general Malaysia, I mean Malaysians are comfortable with their jobs. They don't feel the need to join the union, and they are—and for the past five years, maybe because of the migrant workers coming in, the number of the local workers reduced, many dominated by migrant workers. So, the organizing become—I mean, organizing the local workers becomes smaller. And one thing—union is not sustainable in terms of financial—less membership dues.<sup>346</sup>

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<sup>344</sup> MTUC, "About MTUC," <http://www.mtuc.org.my/about-us/>.

<sup>345</sup> BWI, "BWI Structure & Affiliates," 69-70, <http://connect.bwint.org/pdfs/abook2014web.pdf>.

<sup>346</sup> Interview, June 2016.

The above quote reveals how the average Malaysian views trade unions as a moribund institution in the face of the ever-increasing inflow of migrant workers. In many respects, the migrant workers are the demographic most in need of a strong labour movement to advocate for its labour rights. This quote suggests that the comfortable working lives of many Malaysians, and the commensurate reliance upon the continued exploitation of migrant workers, as one possible reason for the debility of Malaysian unions. If the average Malaysian is content with the existing working conditions, there is little impetus for change, even if those working conditions come at the expense of migrant workers. However, as the next quote highlights, it is unlikely that the unions in Malaysia will be able to improve this current situation, due to the laws currently in place that restrict most union activities:

The other crucial element of challenge in Malaysia is of course the political environment. There are laws that they can make use of to organize unions, but they're also current laws that are restricting the growth of trade union movement and even to do industrial actions, which is necessary to put pressure to achieve their agenda, this is the union strength—to do direct industrial action. And if you're not allowed to do this as other trade union movement in countries, then it's difficult. Meaning, in concrete terms, it's too difficult for Malaysian unions to go on strike.<sup>347</sup>

Arguably, going on strike is the most direct action unions can take in order to push for their demands. Without this recourse, there is little sense of urgency when unions make demands and little impetus for the government or employers to meet them. As a result, BWI's organizing initiatives in the Asia Pacific do not have a strong focus on Malaysia as a space for union growth.

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<sup>347</sup> Interview, July 2016.

For example, the Sabah Timber Industry Employees Union has been fighting for union recognition since 1991. BWI has been in and out of the courtroom in the decades since, fighting for legal recognition, but the court system has left BWI without substantive legal recourse despite consistently ruling in its favour. In this context, BWI has taken different approaches to supporting the development of Malaysian unions, such as through public consumption campaigns designed to pressure recalcitrant employers. As noted earlier, BWI targeted the employer's sustainable forestry certification as a means of pressuring the employer to recognize the Sabah Timber Industry Employees Union due to the lack of legal consequences being meted out to the employer. In this case, the legal system is not an effective entry point for challenging the normative framework in Malaysia that allows the continued repression of the trade union movement and the continued exploitation of migrant workers. As the following quote demonstrates, this interviewee believes that despite the challenging legal and political environment, negotiating and organizing are still the optimal strategies for strengthening the Malaysian unions:

I think in general living standards across Southeast Asia are so low, but you see so much wealth which is embedded across these countries. It indicates to me that there's a huge problem in income inequality that exists here, and wealth inequality, which needs to be addressed in some way. To my mind the best way of addressing that, short of taking control of the government, which I don't see any change happening here [laughs] in the next couple of decades to see that is to, you know, negotiate. Or organize for collective power and negotiate collective agreements so that workers get a fair share of the benefits of the projects in which they build.<sup>348</sup>

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<sup>348</sup> Interview, July 2016.

The restrictive legal and political environment also poses a challenge when it comes to advocating for migrant workers. With Malaysia receiving the largest number of migrant workers in Southeast Asia, this leaves many migrant workers in exploitative situations without access to justice. For BWI, the restrictive legal environment compounds its ability to help migrant construction workers:

Guess the other big challenge is the fact that migrant workers can't organize in the same way that national workers can here: can't join unions, can't bargain collectively, that kind of thing.<sup>349</sup>

The convoluted laws and the generally pro-business stance of the Malaysian government leave migrant workers at a disadvantage, and there is very little incentive to transform the current system. However, as one interviewee noted, transformation of the legal and political environment may come as a result of outside globalizing pressures:

But it's looking like that's going to change as a result of, ironically, the Trans-Pacific Partnership. Malaysia signed a bilateral agreement with the United States, which forced them to make a number of changes, quite a few changes in their labour law to bring them in line with the 8 ILO Core Conventions. I recently asked a member of whatever the labour department's called—the department of human resources, or ministry of human resources—a high official. I said, if TPP's not going to be ratified, which is looking kind of likely right now with current US politics, will the Malaysian government continue with the plan to implement the changes to bring its own law in line with the ILO Core Conventions which it signed up to. And he said that yes, it's going to do that. So it looks like there's some kind of determination on the part of the Malaysian government to change the situation for migrant workers.<sup>350</sup>

After the interviews were conducted, the United States withdrew from the TPP and its political future appeared dead. However, several of the remaining

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<sup>349</sup> Interview, July 2016.

<sup>350</sup> Interview, July 2016.

11 countries have signalled interest in reworking the deal without the United States. It remains to be seen if Malaysia will continue to be interested in a trade deal without the United States and if its laws will change to meet international standards. In this interviewee's view, it was the external pressure exerted by the United States that was the impetus for Malaysia to consider legal change to improve the conditions of migrant workers. Thus, the struggle over norms at the local scale is supported at the global scale. This theme of legal and political curtailment is also tied to the theme of migrant worker advocacy.

### ***3.6 Migrant workers***

As the discussion on Malaysia's repressive legal and political environment demonstrates, advocating for migrant workers within such a context is wrought with complexity. One specific challenge a participant alluded to was trying to work with Malaysian unions in order to address the problems migrant workers face:

In the case of Malaysia, frankly speaking it took the trade union movement here to accept that inevitable phenomenon of migrant workers and the strategic importance of recruiting them in the union fully. Otherwise it will contribute actually to the dwindling of the members of the union, because locals are shying away from hazardous, dirty, as you know, that type of work. And it is proven that it's possible, that you can organize a new type of trade union structure, not necessarily in the enterprise-base. In Malaysia, again, migrant workers are, as you know, allowed to join unions but they cannot be official but that's a good start. Maybe the Malaysian trade union movement can look into other models like in South Korea, where eventually there was a separate union altogether for migrant workers, but an integral part of the national centre.<sup>351</sup>

As the above quote demonstrates, the cultural logic at play in the Malaysian context

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<sup>351</sup> Interview, July 2016.

tends to be exclusionary towards migrant workers. In December 2015, the World Bank published figures that there were 2.1 million registered immigrants and likely over 1 million undocumented immigrants in Malaysia, with 95% of immigrant labour filling low and medium skill occupations.<sup>352</sup> The Malaysian Employers' Federation pegs the total number of both documented and undocumented migrant workers much higher, at 6 million.<sup>353</sup> In February 2016, the Ministry of Human Resources of Malaysia released statistics that the total number of documented migrant workers was 1.9 million, with no statistics regarding undocumented migrant workers.<sup>354</sup> Despite the lack of concrete numbers, one certainty is that the percentage of foreigners in the Malaysian workforce surpasses the 15% cap on foreign workers that the Malaysian government pledged to meet by 2020.<sup>355</sup>

The Malaysian trade union movement has treated migrant workers ambivalently, often calling upon the government to reduce the number of migrant workers allowed into the country in order to preserve jobs for local Malaysians. To its credit, however, MTUC has set up a Migrant Workers Resource Centre specifically to advocate for migrant workers.<sup>356</sup> MTUC's Migrant Workers Resource Centre has had success in winning compensation for claimants in the labour courts, as well as through direct negotiations with employers.<sup>357</sup> For example, in 2012-2013, MTUC

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<sup>352</sup> Munoz Moreno et al., *Malaysia – Economic monitor : immigrant labor*, 29.

<sup>353</sup> National Union of Bank Employees, "Employment of Foreign Workers; the Impact on Malaysian Workers," <http://nube.org.my/employment-of-foreign-workers-the-impact-on-malaysian-workers>.

<sup>354</sup> Ministry of Human Resources, eBook i-STATISTICS Bil 2/2016, 30, [http://myhos.mohr.gov.my/ebook/istatistik2\\_2016/bil2\\_2016.pdf](http://myhos.mohr.gov.my/ebook/istatistik2_2016/bil2_2016.pdf).

<sup>355</sup> <http://www.epu.gov.my/sites/default/files/Chapter%205.pdf>, 18.

<sup>356</sup> <http://www.facebook.com/MigrantResourceCentreMRC>.

<sup>357</sup> ILO, *Good practices on the role of trade unions in protecting and promoting the rights of migrant workers in Asia*, 18.

handled 22 complaint cases involving 122 claimants that resulted in over US\$56,000 in compensation through the labour courts, the industrial relations courts, and direct negotiations.<sup>358</sup> Furthermore, the BWI strategy of waiving membership dues for migrant workers until a collective bargaining agreement has been signed has been adopted by MTUC in a bid to encourage migrant workers to unionize.<sup>359</sup> This strategy helps recruit migrant workers who are hesitant to join a union if they have no prior experience with unions or if their employer has warned them against joining a union, by allowing them to experience union membership without financial commitment at the outset. The relationship between MTUC and BWI demonstrates how transnational labour advocacy can effect change in local unions. By restructuring its organization to be more amenable to migrant workers and their issues, MTUC revitalizes itself and the role it plays in the national trade union movement.

As the participant noted in the previous quote, the unions in Malaysia cannot neglect migrant workers because they now compose a significant percentage of the workforce. The sectors of agriculture and construction are particularly skewed towards migrant workers, with the workforce in these sectors being composed of approximately 70% migrant workers.<sup>360</sup> The trade union movement in Malaysia must attempt to incorporate migrant workers in its activism, because the exploitation and marginalization of migrant workers impact the working conditions

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<sup>358</sup> ILO, "Migration and trade unions," 1.

<sup>359</sup> BWI employee, personal communication, August 2016.

<sup>360</sup> Malaysian Employers Federation, *Practical Guidelines for Employers on the Recruitment, Placement, Employment and Repatriation of Foreign Workers in Malaysia*, 24.

of local workers as well. If trade unions in Malaysia advocate for local workers and win gains only for local workers, employers are still able to employ migrant workers at low wages and with poor labour protections. Local workers may find themselves shut out of the labour market because employers choose to hire migrant workers as a cheap, disposable, and renewable labour force. Still, the question of how to incorporate migrant workers in union membership has no simple solution. The South Korea model of a separate union for migrant workers is one avenue for the trade union movement, though it required a decade of struggle to win legal recognition of the Migrants' Trade Union.<sup>361</sup>

In Malaysia, you have a huge phenomenon of influx of migrant workers, the ability of the trade union movement to respond creatively to recruit them into the union fold, and at the same time [the need] to change the industrial system or the regime in order for them to reach more members and build their capacities.<sup>362</sup>

The preceding quote outlines the trifecta of concerns the participant has regarding the trade union movement in Malaysia. Without acknowledging the importance of migrant workers, the Malaysian trade unions will not be able to augment its membership base. However, as the participant states, migrant worker advocacy will require creative thinking on the part of the unions. This implies that any attempts at advocating for migrant workers must be embedded within and cognizant of the Malaysian context in order to succeed.

For local people, the local Malaysians, there are two views on the migrant workers. Either they blame the migrant workers, because with the migrant workers that mean they have less ability to negotiate

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<sup>361</sup> Lee Kyung-mi, "After 10 year struggle, Migrants' Trade Union wins official status," *The Hankyoreh*, June 26, 2015, [http://english.hani.co.kr/arti/english\\_edition/e\\_international/697696.html](http://english.hani.co.kr/arti/english_edition/e_international/697696.html).

<sup>362</sup> Interview, July 2016.

because the number is smaller now, less ability to negotiate with the employer. They blame the migrant workers. And the other point [of view] is, I think, they want to fight for migrant workers, because probably that's the only reason [indistinct] they cannot avoid the fact that the migrant workers are the major—I mean, will be the major workforce in Malaysia. So they have to accept the reality, and I know some unions, they really fight for migrant workers. Because the reason why employers tend to hire migrant workers is because they could be easily manipulated. In general they are—they receive much lower salary, wages, despite the minimum wages, the employers always manipulate these minimum wages.<sup>363</sup>

The above excerpt further underlines the difficulty of migrant worker advocacy in Malaysia. Migrant workers can serve as an easy scapegoat for the lack of local jobs and the obstinacy of employers, but as they now make up a significant proportion of the Malaysian workforce it is highly unlikely that the trend of incoming labour migration will be reversed. Employers have grown reliant on migrant labour because, as the participant stated, migrant workers can be easily manipulated—due to a plethora of factors such as indebtedness, language barriers, and the inaccessibility of justice for migrant workers. As the following quote underscores, migrant workers are more vulnerable to employer abuse:

For example, this migrant worker use to receive free hostel, and when the government implemented, you know, minimum wage is 900 ringgits, so they start charging this house, you know, for example ... As a comparison, the local Malaysians, like the operators [at] the furniture factory—they receive 1500 to 2000 [ringgit per month] and the migrant workers receive less than 900 ringgit. So it's a big gap that the employers [are] taking advantage of the migrant workers.<sup>364</sup>

The employer often provides housing for migrant construction workers. The interviewee pointed out that despite the success in pressuring the government to

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<sup>363</sup> Interview, June 2016.

<sup>364</sup> Interview, June 2016.

implement a minimum wage encompassing all workers—both local and foreign—the consequences were mixed. Before the implementation of the minimum wage, migrant construction workers generally did not pay for employer-provided housing. This housing is often located on project sites, designed to be temporary in structure, and generally inadequate as accommodation. In order to offset the cost of paying migrant workers the minimum wage, BWI has received reports of employers deducting housing costs from paycheques, despite the inadequacy of the employer-provided housing. As well, the minimum wage does not ensure fair compensation for migrants' labour. The local workers may command wages much higher than the minimum wage while doing the same work as the migrants being paid minimum wage.

When the migrant workers are equal, eventually the employer will see there's no difference whether they employ migrant workers or the locals. And they won't easily retrench the local workers.<sup>365</sup>

The belief that migrant workers and local workers are stronger in solidarity with one another was pervasive throughout the interviews. The above quote neatly encapsulates the undercurrent of optimism regarding the future of migrant worker advocacy in Malaysia. Once the trade union movement in Malaysia fully embraces migrant workers, a real transformation of the current system and its normative underpinnings may ensue. However, this optimism was also tempered by the reality of migrant workers' current situation, and the embedded historical relations and flows of capital that continue to inform it:

Migrant workers are one of the most vulnerable groups of workers as a result of their visa status, work status, employment status. All that

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<sup>365</sup> Interview, June 2016.

kind of thing. Here in Malaysia, I think it's a matter of design really. From the beginning, it was a factor of design. You know, the first plantation workers that were brought here from South Asia were not necessarily brought here because they were far better workers than Malaysian people who were here, although some of the British colonialists would say that. But they were brought here because they could be put into a situation of vulnerability and they could be exploited accordingly. So, those kinds of ideas are still embedded within the DNA of this country to a certain extent. I don't think it's sort of a rational decision making process, where people are like, "let's get more migrant workers 'cause they're easier to exploit". It's a matter of understanding that it makes economic sense to those people who direct capital. They know that it's cheaper to use migrant workers, and that the Malaysian government is not going to do much to try and change that situation, to intervene with people's rights, to be able to import cheap labour.<sup>366</sup>

This quote underlines how the participant views the underlying economic system as being responsible for the exploitation of migrant workers. The legacy of colonialism and the mobility of capital characterize the Malaysian context, leaving migrant workers as the most vulnerable. The historical underpinnings of this normative framework make it difficult to transform governance of migrant workers in Malaysia. As one participant put it succinctly:

It's the reality that migrant workers are still afraid to join the union, because their contract—they are on contract basis. Two years, or three years, and then it depends on the employer whether to continue or to extend their permit—if they are making trouble, then they are on the black list, not to be renewed.<sup>367</sup>

The precarity of labour migration is not limited to the Malaysian context; it poses a challenge for unions around the world. Developing strategies for dealing with migrant workers is crucial for the future successes of the global union federations.

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<sup>366</sup> Interview, July 2016.

<sup>367</sup> Interview, June 2016.

### **3.7 Global union and local unions**

Although BWI's head office is focused on migrant workers as a priority issue, the head office's global outlook does not translate easily to its local-oriented affiliates. As BWI is the link between its affiliate unions across the globe, its transnational labour activism relies on reciprocity between local actors and global struggles. However, this reciprocity is not without tension. The local scale involves places, which are the "material arenas for the conduct of everyday life and loci for the development of local identities and loyalties".<sup>368</sup> Still, the local is not distinct from the global: places are permeable, interconnected, and interdependent. Place remains a useful lens for understanding how workers are rooted in physical places: production is local, social reproduction is local, and commodity consumption is often local. Accordingly, there are very real differences between workers around the world. This geographical dilemma underlines the difficulty of building solidarity between workers in different places, and the need to find ways to make local needs and wants complement, not contradict, global needs and wants.<sup>369</sup> The difficulty is many-faceted: building solidarity with unseen and/or unknown workers while dealing with the effects of uneven geographical development as well as needing to reach workers who have not organised. BWI's priorities of organizing migrant workers, organizing around mega sports events, and organizing around Chinese multinational corporations all involve work done on multiple scales, ranging from BWI lodging formal complaints with international institutions such as the ILO to

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<sup>368</sup> Castree et al, *Spaces of Work*, 66.

<sup>369</sup> *Ibid.*, 235.

enabling the hiring of local organizers to organize their compatriots abroad. These projects utilize strategies of knowledge dissemination, education, formal worker representation, resource provision, union formation, and the development of transnational trade union networks in order for BWI to participate in local governance struggles. While GFAs are useful instruments, these strategies can be more effective for disrupting the relationship between capital and labour in different local contexts.

Within Malaysia, the projects that BWI pursues can take many forms. Education and knowledge dissemination often occur in the form of meetings and conferences either hosted or facilitated by BWI. For example, in recognition of International Workers' Memorial Day, BWI held a meeting with MTUC-UECI Union of Employees of Construction Industry and CIEU Cement Industry Employees Union to share information on migrant workers' exposure to asbestos, safety measures to improve safety on construction sites, as well as sharing survey results.<sup>370</sup> Education and resource provisioning occur through the funding of speciality projects, for example, supporting the participation of women in Malaysian unions. Education also occurs through social media. For example, to build worker solidarity, BWI will encourage union members across the globe to post pictures of themselves holding signs in support of those who are suffering from violations of their labour rights. This ensures that what would otherwise be an anonymous union conflict on the other side of the world is not only recognized by other unions, but other unions pledge their support publicly in a bid to keep the pressure going. Formal worker

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<sup>370</sup> BWI, "MTUC, CIEU and UECI in Malaysia on IWMD."

representation occurs through BWI's employment of a Nepali organizer to help Nepali migrant construction workers in Malaysia. As well, BWI can, and does, advocate for workers without the workers' identities being revealed, which is often crucial for migrant workers to avoid retribution.

BWI's regional offices represent an attempt to manage this interchange between the global scale and the local scale. Its affiliate unions range from the Global North to the Global South. Accordingly, unions in these different countries may not share many commonalities beyond the industrial sector within which they are located. Unions in the Global North tend to focus on fighting the claw-backs of neoliberalism and rebuilding the labour movement to its former strength, whereas unions in the Global South are often operating within contexts where the labour movement never enjoyed a heyday and thus are building from scratch. Despite these differences, BWI undertakes the development of transnational trade union networks in a bid for transnational labour solidarity. These networks represent another repertoire of action available to BWI.

BWI must harmonize these unions' local struggles into a sustained global campaign. Because workers around the world have different needs and demands, harmonization between the global and local can be difficult. For example, the MTUC needed to accept the inevitability of migrant workers coming to Malaysia in order to be receptive to BWI's goal of integrating migrant workers within destination country unions. One recurring theme from interviews with BWI employees was the tension inherent in this relationship between the local and the global scales. In the words of one employee:

And then the other side [of my job] is very much top-down, where BWI is a global union, which consists of 335 or 336 different affiliates, meets every 4 years and sets a series of priorities on what their global campaigns are going to be each year, and then the other part of my job is about harmonizing the work that our affiliates are doing to those global campaigns, and you know, working out areas where we could go 'oh yeah, we should be getting our union over here joining in with that kind of campaign or changing their behaviour'. A lot of the time, everybody is doing the exact right thing; it's just a few things aren't connected up so the campaign's not operating properly.<sup>371</sup>

As this interviewee alludes, the global campaigns require the support and resources of affiliate unions in order to be successful. However, with hundreds of unions in different countries, there is no straightforward method for ensuring such support. Thus, BWI is the mediator between the local and the global. By translating a global campaign's goals into possible actions for an affiliate union, BWI reconciles the geographical differences between unions with the need for transnational labour solidarity. Furthermore, BWI provides resources such as training and education opportunities, which also reinforce the importance of transnational labour solidarity. For example, the development of a BWI Global Activists Academy and BWI Global Organizing Academy is underway, specifically aimed at educating and training union activists who will then be able to support BWI's projects.<sup>372</sup>

Translation is fraught with challenges, especially as BWI must contend with the demands of the funding Global North unions. The local scale continuously informs the possible range of actions an affiliate union may take, with different opportunities and constraints in different contexts. As well, transnational solidarity

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<sup>371</sup> Interview, July 2016.

<sup>372</sup> BWI, "[Resolution 16 - Global Activist Academy](https://www.bwint.org/web/content/cms.media/791/datas/EN_Resolution_16_Global%20Activist%20Academy%20EDITED_FINAL.pdf)," [https://www.bwint.org/web/content/cms.media/791/datas/EN\\_Resolution\\_16\\_Global%20Activist%20Academy%20EDITED\\_FINAL.pdf](https://www.bwint.org/web/content/cms.media/791/datas/EN_Resolution_16_Global%20Activist%20Academy%20EDITED_FINAL.pdf)

does not necessarily equate to support for BWI's global goals. Paradoxically, transnational solidarity can undermine the global struggle. One employee discussed the need to transform not just unions in the Global South, but also the Global North:

Even the donors, because they have their own pet countries, pet affiliates, and we have to say look you have to stop, or at least reconsider the design, the selection of the affiliates and so on.<sup>373</sup>

As seen in this interview, transnational solidarity does not occur in a vacuum; there is often a historical context at play. In this case, the donor unions in the Global North have an already established tradition of transnational solidarity, with established recipients for their aid. For BWI, this tradition is problematic as it circumvents BWI's evidence-based funding process. The developed relationships between donor unions in the Global North and recipient unions in the Global South may come into conflict with specific global campaigns. Rather than aid being given based on personal relationships, it ought to be given based on ostensibly objective criteria for funding to be as efficient as possible. This represents another recurring theme: the economic tension between the local scale and the global scale. The global scale ostensibly transcends the personal relationships that characterize the local scale, which facilitates the evidence-based funding BWI promotes but also erases the historical relations that already exist across the Global North and the Global South.

Historical relations of solidarity between unions have existed long prior to BWI, as the institutions of international trade secretariats demonstrate. However, this form of solidarity has also shaped the history of BWI, due to the legacies of international trade secretariats, the precursor to global union federations. One

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<sup>373</sup> Interview, June 2016.

interviewee discussed the challenge of changing affiliate unions' perceptions of the role of BWI. As the interviewee notes, international trade secretariats were seen as a source of funds without much reciprocity:

But I think the other, more important challenge is the transformation of the IFBWW [International Federation of Building and Wood Workers] from making use of the project operations that we have, to transform also the affiliates using the project support because many years ago, the orientation of many unions, particularly in the developing countries, or least developed countries, is to affiliate to an international in order to get funds ... of course it's necessary. Even unions in the developed countries, they know that it's part of their solidarity work. But the mindset is as if the sources of money, project funds, will be forever. And not using it really in a very innovative, creative projects that will increase the financial members with the capacities of the activist officials so they can recruit more members and so on and so forth. And we have to change that.<sup>374</sup>

Previously, the tension between donor unions and BWI's goals were discussed as being possibly at odds. However, recipient unions are also a source of economic tension. As this quote demonstrates, the historical pattern of relationships between recipient unions and international trade secretariats shape BWI's interactions today, because union funding has become associated with international solidarity work. The relationship between the local and the global was associated with a hands-off funding model that BWI no longer supports. As BWI attempts to implement evidence-based funding, this comes at odds with recipient unions' understanding of transnational labour solidarity. BWI is not content to simply fund unions; it requires some linkage with BWI's stated goals, especially in light of BWI's adoption of new public management instruments.

As one of BWI's stated goals is to promote trade unions' development around

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<sup>374</sup> Interview, July 2016.

the world, providing funding for unions in the Global South is considered an integral part of BWI's solidarity work. The provision of resources is another strategy for challenging the terms of engagement between capital and labour. As previously discussed, BWI's funding process is ostensibly evidence-based and objective. In certain respects, BWI has modernized the way it funds its solidarity work, as this interviewee discusses:

Actually, I think what we did also helped the union to modernize the organizations, in terms of trade union administration, and financial management. Somehow, it also becomes their culture to follow the BWI financial guidelines, as well as to incorporate the guidelines in their own internal system. So I think it's kind of an achievement. But of course there are many challenges, it's a long way. As I mentioned, it's difficult to change the habit, the people's habits, the attitude. It takes years to change it. But I think we managed to change this, because we control the keys - that means the money. We are more result-oriented, that's our key. If you don't perform we will not give you the money.<sup>375</sup>

This quote demonstrates how the tension between the local and the global is not readily adjudicated, as the interviewee notes that it takes years to change established patterns of relationships. The quote alludes to the relationship-based funding process of days past, where unions in the Global North had their "pet affiliates" to which they funnelled funding. BWI's problem with this pre-existing pattern is that in their view, the funding did not lead to lasting fiscal stability and sustainability:

This assistance to the union, in our experience—that also actually we contribute[d] to the union [becoming a] project-dependent union. They are too dependent on the external fund. We have, actually we have many cases that we support for many years, more than five years, seven years. When we pull out the funds, the union just collapse. Of course, that's—we learn our lesson that we have to be

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<sup>375</sup> Interview, June 2016.

prepared that not all funding, you know, will meet our expectation that they will eventually become sustainable—that's actually our objective, to become more sustainable.<sup>376</sup>

This further underlines BWI's concern regarding funding relationships. The established pattern of unions in the Global North economically supporting unions in the Global South has led to dependence rather than sustainability. The unidirectional flow of money does little to promote the growth and independence of organized labour in the Global South if the supported unions fail once funding is withdrawn.

The theme of economic tension between the local and global scales is also linked to the theme of reciprocal relationships. BWI cannot ignore the importance of personal relationships, despite its promotion of evidence-based funding. In order to ensure that its global campaigns are successful, BWI must cultivate such relationships at the local scale. As noted earlier, reciprocity between local actors and global struggle is crucial for success, and one interviewee underlined the importance of such reciprocity:

These kinds of roles - like campaigning roles, where you're working with a group of affiliates - are very much based on the relationships that you have with the people that you're working with, which is of critical importance. So our ability to sit down and have a face-to-face discussion is kind of what drives our ability to work together in the future, and I found when I started in this role that it was quite difficult to do that because I didn't have those personal connections.<sup>377</sup>

As the interviewee notes, personal relationships are of critical importance. It is not enough for affiliate unions to come together once every four years to agree upon

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<sup>376</sup> Interview, June 2016.

<sup>377</sup> Interview, July 2016.

global campaigns. These campaigns require sustained effort, and without personal relationships, there is no impetus for such sustained effort. This quote makes it clear that BWI's mandate is not merely top-down but requires bottom-up interaction and participation. Without convincing the bottom to support the goals of the top, so to speak, BWI's global campaigns will falter. This is further demonstrated by the following quote:

One [role] is to take existing campaigns that are taking place in a national setting, national context, and then trying to amplify them a bit more. So give them assistance in how they're running the campaign, trying to reach out to broader audiences to get more support for their campaign, that kind of thing .... So that's kind of like, a bottom up side to what I do.<sup>378</sup>

This demonstrates how important the reciprocity between the local and the global is for BWI to function as a global union federation. There is a recognition that despite the global scale of BWI's campaigns, knowing and understanding the local context is key for the success of a global campaign. Furthermore, BWI must be able to work within the confines of a local context to foster the success of a global campaign in a specific local context.

However, it is also crucial that BWI understands the relationships between multiple different local contexts and global struggles. One of BWI's hallmark global campaigns focuses on decent work in mega sports events, with a particular emphasis on the Olympics and the FIFA World Cup. The rationale behind the mega sports campaign is that it provides an unprecedented public arena for pressuring hosts to respect workers' rights. Mega sports events are a core driver of

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<sup>378</sup> Interview, July 2016.

international migration for construction workers, with workers from low-wage countries such as Nepal, India, the Philippines, Vietnam and China promised good jobs by recruitment agencies, but many find themselves in debt, working in extreme conditions, and with severe rights restrictions.<sup>379</sup> BWI takes advantage of the public profile of mega sports games to link together affiliate unions across the globe in order to protect construction workers' rights and to organize migrant workers.

For example, the BWI campaign towards the 2014 World Cup in Brazil focused on the "lack of safety, deaths, low wages, delayed payments, exploitation of migrant workers, [and] violations of numerous labour standards" for the four million Brazilian workers involved in the construction of World Cup-related sites.<sup>380</sup> While there were no international migrant workers to organize, many were internal migrants from poorer states.<sup>381</sup> There were 27 strikes waged across Brazil in order to begin negotiations with Odebrecht, the construction company responsible for the 2014 World Cup stadiums, leading to a framework that included the ILO core standards of freedom of association and collective bargaining, no forced labour, no discrimination in employment and no child labour.<sup>382</sup>

As a participant noted regarding this campaign, each mega sports event involves a different local context that necessitates different strategies and different

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<sup>379</sup> BWI, "Berlin sports conference highlights unfolding migration challenges," <https://www.bwint.org/cms/news-72/berlin-sports-conference-highlights-unfolding-migration-challenges-759>.

<sup>380</sup> Mega-Sporting Events Platform for Human Rights, "Human Rights Risk Mitigation in the Sports Context", 29.

<sup>381</sup> "Brazil World Cup workers 'face slave-like conditions'," *BBC*, September 26, 2013, <http://www.bbc.com/news/world-latin-america-24292174>.

<sup>382</sup> Mega-Sporting Events Platform for Human Rights, "Human Rights Risk Mitigation in the Sports Context", 30.

conceptions of what victory entails:

A lot of migrant worker issues that happen, a lot of health and safety issues because it's always like "we need this done now, we need this done yesterday" kind of thing so health and safety is always an issue. Yeah, and grafted onto various national contexts as well, so the campaign that exists in South Korea is very much focused around the current trade union repression for the Pyeongchang 2018. When we look at the Tokyo 2020 Olympics, they're in a much more sort of developed kind of situation, but—the culture is much more reticent to the idea of having foreign workers there, so it's much more about the acceptability of migrant workers and that kind of thing. The extreme case is Qatar where you have a system of basically indentured slavery that exists, so we're trying to use the focus of 2022 World Cup and the massive building and infrastructure events, er, projects that are taking place there to really put an international spotlight on the kafala system, to try and break it.<sup>383</sup>

Despite the global nature of the mega games campaign, it must be tailored to each local context in order for it to be successful as a governance struggle. As the interviewee notes, the host countries vary in their recognition of labour rights, and so the campaign pinpoints a specific issue as its cynosure—South Korea's union suppression, Japan's acceptance of migrant labour, and Qatar's exploitative kafala system—with the end goal of achieving improvements in working conditions and recognition of workers' rights across the globe. BWI's current mega games campaigns are for the 2018 World Cup in Russia, the 2018 Winter Olympics in South Korea, the 2020 Summer Olympics in Japan, and the 2022 World Cup in Qatar.

BWI is explicit about the need for different strategies in these campaigns in different contexts. According to General Secretary Ambet Yuson, "In host countries with prohibitive labour laws that do not adhere to international standards, the

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<sup>383</sup> Interview, July 2016.

strategies of trade unions and civil society have to be different.”<sup>384</sup> Yuson outlines the strategies specifically tailored to the Qatar World Cup campaign as releasing high-profile research and media reports on the conditions of modern slavery for migrant construction workers, linking trade unions and embassies of countries of origins, and finding support from other governments such as the United States and the UK. This multi-pronged approach attempts to capitalize on BWI’s place in the global arena to provide support for its local affiliates. By dint of its role as an international institution

Each mega games campaign aims to protect migrant construction workers’ rights. Therefore, BWI affiliates from across the globe—from sending countries and receiving countries—link together to develop strategies for bringing these vulnerable workers into contact with unions and protect their rights. For example, the General Federation of Nepalese Trade Unions (GEFONT) represents more than 400,000 Nepali workers covering the agricultural, industrial and service sectors, and has established a Migrant Desk at its head office in order to promote the rights of migrant workers.<sup>385</sup> As migrant workers contribute approximately 30% of Nepal’s GDP, GEFONT has built a global network of workers and union activists in cooperation with affiliate unions in receiving countries.<sup>386</sup> One of GEFONT’s initiatives includes organizing Nepali migrant workers in specific destination countries through the formation and mobilization of support groups. Currently,

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<sup>384</sup> Mega-Sporting Events Platform for Human Rights, “Human Rights Risk Mitigation in the Sports Context”, 31.

<sup>385</sup> GEFONT, “About Us,” <https://www.gefont.org/GG2303390.html>.

<sup>386</sup> BWI, “Berlin sports conference highlights unfolding migration challenges,” <https://www.bwint.org/cms/news-72/berlin-sports-conference-highlights-unfolding-migration-challenges-759>.

there are support groups established in Malaysia, Hong Kong, Korea, Japan, India, Qatar, Kuwait and the United Arab Emirates.<sup>387</sup>

Support groups are part of the strategy of building a global network of workers and union activists, working in cooperation with unions in destination countries to protect Nepali migrant worker rights. In 2014-2015, the Nepalese government issued approximately 500,000 labour permits, one-third of which were for Malaysia.<sup>388</sup> In Malaysia specifically, GEFONT has been engaging with MTUC regarding specific protection issues for Nepali workers and has a support office within the MTUC building in Kuala Lumpur.<sup>389</sup> In 2007, a Memorandum of Understanding was signed between BWI's affiliate unions in Nepal and Malaysia with the goal of organizing Nepali migrant workers within Malaysia's construction industry.<sup>390</sup> BWI provides funding for an SMS-helpline where migrant workers in Malaysia can send text messages asking for trade union support and advice as well as funding for a full-time Nepali organizer in Malaysia.<sup>391</sup> For BWI, employing local organizers who can communicate with migrant workers in their own language is crucial for organizing efforts.

The other challenge [of organizing migrant workers] is the one you understand quite easily you know. People don't speak the same languages as... as me. And that's why we have [local organizer] to be able to speak his own language.<sup>392</sup>

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<sup>387</sup> ILO, *Promoting informed policy dialogue on migration, remittance and development in Nepal*, 12.

<sup>388</sup> *Ibid.*, 5-6.

<sup>389</sup> *Ibid.*, 49.

<sup>390</sup> BWI, "BWI unions in Nepal and Malaysia agree to work jointly on migration issue," <http://connect.bwint.org/default.asp?index=757&Language=EN>.

<sup>391</sup> BWI, "Malaysia: Exploitation of migrant workers," <http://connect.bwint.org/default.asp?index=6002&Language=EN>.

<sup>392</sup> Interview, July 2016.

This reinforces the role BWI plays in linking affiliate unions in receiving and sending countries. An organizer from a sending country can work alongside the union of a receiving country to more effectively advocate for migrant workers. Furthermore, these linkages propagate successful advocacy strategies: what works for Nepali workers in Malaysia may also work for them in other receiving countries, and what works in Malaysia for advocating for Nepali migrant workers may also work for migrant workers of other countries such as Bangladesh and Indonesia. The collaboration between GEFONT and MTUC—both BWI affiliates—in Malaysia is only one example of the relationship between the local context and the global struggle, however.

Despite the different contexts, these strategies are similar to the ones BWI utilizes in its campaigns regarding mega sports events and migrant workers' rights, involving the expenditure of resources at both the global and local scales. The commonalities include the appeal to international institutions at the global scale, the capacity building of affiliate unions at the local scale, and the dissemination of media campaigns at both the global and local scales. This multi-scalar approach throughout BWI's campaigns also reflects the last emergent theme from the interviews, that of the necessity for coming up with new strategies to secure the future of the trade union movement across the globe.

### ***3.8 The future of the trade union movement and union organizing***

Lastly, concern over the future of the trade union movement and union organizing was repeated throughout the interviews. The transformation of the workplace and the difficulties this poses for unions was often mentioned. One

participant gave the example of the hospital as a workplace that has drastically changed, and thus changed the face of union organizing:

Let's make use of a hospital ... The security guard, the cleaners, and the clerks, nurses, all of the personnel of the hospital, is working in one employer, which is the owner of the hospital. And you don't find it anymore in this present situation, be it the bank, be it even a trading company, a hospital, things have changed a lot. Security guards are outsourced. There's a security agency supplying this type of workers; the cleaners are also outsourced, supplied by another company and so on and so forth.<sup>393</sup>

Working in the same physical location is no longer a guarantee that workers are employed by the same employer. Employment relations have been obfuscated to the point where the traditional industrial trade union model is no longer as effective. Solidarity among workers becomes more difficult to cultivate when there is a patchwork of employers and contracts. Migrant workers also experience complex employment relations due to the use of middlemen such as recruitment agencies and labour brokers, allowing businesses to eschew direct responsibility for migrant workers by treating them as contract workers. Furthermore, migrant workers often experience more precarity than local workers due to the threat of being returned to their home country. As this participant explicitly outlines, unions can no longer rely on the traditional tactics for building its membership:

In every country in the world, but particularly in the Global North, you're getting jobs being cut up and destroyed in ways that didn't exist—you know, the sort of casualization process, I work one and half hours at this job, then I have another assignment over here and that kind of thing—we don't have a standard eight hour work structure anymore. And that was the basis of industrial trade unionism. You get eight hours a day where you're at work, and I as a union organizer could guarantee that for eight hours I could come and organize you, or come and, you know, start to fill up your mind with all various

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<sup>393</sup> Interview, July 2016.

schemes and propaganda that I was trying to use to further the interests of the union. That doesn't exist anymore.<sup>394</sup>

As the participant points out, industrial trade unionism relies on formal structures that implicitly require state protections and employer accountability. The ongoing fragmentation and casualization of the workforce disrupt the efficacy of traditional union strategies and hampers the cultivation of worker solidarity. The construction industry is not immune to these changes, as another participant points out:

The conventional enterprise-based organizing doesn't hardly apply for this new set of work environments. We have—speaking on a general type of workers, more so if you apply it for the construction industry which has a very high turnover of employees considering that they only need them for maybe at the most, depending on the pace of the project, a year or so, then they move to another employer afterwards. Then there must be something new in terms of strategy.<sup>395</sup>

The construction industry tends to follow a boom-bust employment cycle, because it involves both long-term investment and long-term risks. The sector is “one of the first to be suspended at the first sign of an economic downturn, and the last to be revived during an economic upturn”.<sup>396</sup> In Malaysia, the cyclical nature of the industry is apparent in the construction cycles of 1975-85, 1985-98, and 1998-2009, which correlates with fluctuations in Malaysia's economy.<sup>397</sup> Similarly, the temporal nature of construction projects reinforces the temporality of migrant construction workers, who must either find another employer once the project has ended or return to their home country.

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<sup>394</sup> Interview, July 2016.

<sup>395</sup> Interview, July 2016.

<sup>396</sup> Chia et al, “Economic development and construction productivity in Malaysia,” 878.

<sup>397</sup> Ibid., 886.

Another participant lamented the difficulty of engaging youth in the trade union movement, mindful of the reality that unions require youthful membership or risk dying out. In the ensuing excerpt, globalization and the impression of unions' obsolescence are blamed for the difficulty of attracting youth:

The youth are simply not taking any interest in the movement. Maybe this is also influenced by the cultural dimension of globalization, that mostly young people are resigned, they don't want to get involved in the movement. They would rather hang around in coffee shops, maybe do Pokemon Go [laughs] or other toys or games in the smartphone and so on. In a way you cannot blame them, because it's either the union has a bad image in that country or the union has also—it's not its fault entirely—low density, poor public image and so on. In most cases, the first thing that comes to mind is the union is the troublemaker.<sup>398</sup>

BWI includes youth as one of its priority areas. The Youth Ad-Hoc Group's 2016 work plan included the mapping of unions with youthful membership, the promotion of increased inclusion of youth in BWI campaigns, and the promotion of the inclusion of one extra young leader in every participating delegation in BWI meetings.<sup>399</sup> Training seminars focused on organizing and campaigning youth are also offered by BWI. In April 2016, Central Asian and Southeast European affiliate unions participated in the training seminar "Building women and youth power" to build more inclusive trade unions and share successful campaign strategies.<sup>400</sup> There is also an Africa Regional Youth Committee focused on organizing youth in

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<sup>398</sup> Interview, July 2016.

<sup>399</sup> BWI, "Youth Ad-Hoc Group demand participation in BWI political discussions," <http://connect.bwint.org/default.asp?index=7370&Language=EN>.

<sup>400</sup> BWI, "Women and youth of Central Asia and Southeast Europe call for increased participation in trade unions," <http://connect.bwint.org/default.asp?index=7044&Language=EN>.

short-term and temporary contracting jobs.<sup>401</sup> As well, the BWI Youth Festival held in Maierhöfen, Germany in April 2016 allowed 370 young workers to attend forums and workshops on the subject of youth in international trade unionism.<sup>402</sup>

Economic rationale was also touched upon to explain the faltering trade union movement. The subsequent quote names economic globalization and the failure of the trade union movement's political allies as two factors in the reduction of unions' relevance in today's world:

The crisis, I would say, of the relevance of trade union movement is also part of the broader crisis of the left movement in responding to the challenges brought about by globalization as the economic model. Even the developed countries that used to be the bastion of trade union movement, Western Europe for example, or North America, have been restricted by the dominance of the economic world order ... I'm say[ing] that it's a crisis because the next ally of the union movement are the labour or the social democratic parties, which were also weakened, either by ascension of rightists because of the economic liberalization and everything, but also failure in a way; they became complacent of being part of the system.<sup>403</sup>

Similarly, another participant touched upon economic globalization as detrimental to the traditional union model:

The real damage that was done to developed country trade unions was the, you know, the liberalization of trade and investment which allowed for a business to say, "it's much cheaper for us to use Cambodian labour than to use Canadian labour, so let's shift our factories". We have massive deindustrialization across the global north and a massive increase in industrialization in the global south. And that defeated many of the strong unions in many of those developed countries.<sup>404</sup>

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<sup>401</sup> BWI, "Maputo Mozambique : Africa Regional Youth Committee explores and bring forth innovations to Trade Unions," <http://connect.bwint.org/default.asp?index=7322&Language=EN>.

<sup>402</sup> BWI, "Youth Festival in Maierhöfen: A starting point for 370 BWI global youth networking," <https://www.bwint.org/cms/priorities-10/rights-34/youth-41/news-42/youth-festival-in-maierhofen-a-starting-point-for-370-bwi-global-youth-networking-250>.

<sup>403</sup> Interview, July 2016.

<sup>404</sup> Interview, July 2016.

The two above quotes demonstrate the belief that in the face of economic globalization and the transnational mobility of capital, the industrial trade union organizing is no longer effective or relevant. National unions are necessarily place-based, but BWI's global union model provides an opportunity to counter these forces. The relationship between the local scale and the global scale also re-emerges as a theme as participants discuss the future of the trade union movement and union organizing. Discussing the future of Malaysia's unions specifically, one participant worried that the unions will stagnate unless migrant worker advocacy becomes a priority:

In the context of Malaysia—the trade union movement ... is not really growing. I think it's like, stagnant. I think one reason because Malaysia is not becoming developed country, we are becoming industrialized, you know. Less workers employed, and the economy now also not so good, and scandals [laughs] and we still have high rate of unemployment among [university] graduates ... it's more automated, so less workers employed, and the trend that the migrant workers are coming in, and also—the government also, despite they're saying that they will control the migrant workers, but they are still opening you know—like people from Bangladesh, Nepal. Despite the assurance from the government to make more job opportunities for the Malaysians, but in reality the workforce is many migrant workers. I mean until the union is very strong that they can really actually organize migrant workers, well I think the union in Malaysia will be stagnant you know?<sup>405</sup>

According to the ILO, if the entirety of Malaysia's non-employed working population were brought into the workforce, it would only meet one-tenth of the labour demand in sectors reliant on migrant workers.<sup>406</sup> Although Malaysia has the highest numbers of migrant workers in Southeast Asia, it is not alone in being a net labour

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<sup>405</sup> Interview, June 2016.

<sup>406</sup> ILO, *Managing labour mobility*, 4.

importer in the region. Singapore and Thailand are also major labour destinations. In 2016, the number of migrant workers in Singapore was approximately 1.4 million.<sup>407</sup> In 2013, the number of migrant workers in Thailand was estimated to be 2 million, or 5% of the workforce.<sup>408</sup> Therefore, migrant worker advocacy is not an area of concern solely for the Malaysian trade union movement. Malaysia, Singapore, and Thailand's status as receiving countries for labour also underscore how labour migration must be understood not only in terms of North-South migration but also South-South migration.

The idea that the future of Malaysia's union movement was in the hands of migrant workers was echoed throughout the interviews. This participant was concerned that the decline in plantation worker union membership reflected the exclusion of migrant workers from the Malaysian trade union movement at large:

I think from what I see in the Malaysian trade union movement is probably more in the vein of developed countries rather than the newly democratizing. There's been very little growth of the trade union movement; in fact, it's declined quite significantly over the past 20 years. It's really been white collar unions which have stayed the same size, whereas the plantation workers union has more than halved its membership. It's gone from 80,000 members to less than 30,000. And these are all not too hard to organize kind of workers, it's just that they are migrant workers, so they weren't included.<sup>409</sup>

Arguably, it is workplaces such as the plantations, not the white-collar professions, where workers need unions the most. The sectors that most rely on migrant workers—construction, manufacturing, services, plantations, agriculture, and

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<sup>407</sup> Ministry of Manpower of Singapore, "Foreign workforce numbers," <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers>.

<sup>408</sup> The Government Public Relations Department of Thailand, "Migrant Workers Account for 5 Percent of Thai Labor Force," [http://thailand.prd.go.th/ewt\\_news.php?nid=2822&filename=index](http://thailand.prd.go.th/ewt_news.php?nid=2822&filename=index).

<sup>409</sup> Interview, July 2016.

domestic work—are characterized by ‘low-skilled’, 3D jobs in contrast to white-collar professions. For example, Malaysia’s palm oil plantations rely almost entirely on migrant labour with working conditions characterized by surveillance, control, and suppression.<sup>410</sup>

However, a common thread of optimism regarding the future of organizing was apparent in the interviews. The link between union organizing and the development of democracy was repeatedly brought up:

I think [the future of union organizing] is in the Asia Pacific. Such an enormous young population and a number of countries emerging into new sort of democratic environment, like Indonesia has this massive exploding trade union movement at the moment, that’s only 20 years, or less than 20 years since democracy was sort of brokered in Indonesia to begin with.<sup>411</sup>

The above excerpt points to the underlying excitement regarding working at a global union federation during a time of perceived transformation. Despite the challenges the trade union movement has faced, there is a feeling that institutions like BWI are at the forefront of a revitalization. Another participant extolled the dynamism and growth of the labour movement in India:

The dynamism that will come from these countries [in Asia] is going to be enormous and if you think of the contribution that a united trade union movement in India will be able to provide, with you know, well—there’s many practically unorganized workers in India because of rural subsistence and that kind of thing but even another 100 million unionized workers coming out of India will increase the global trade union movement ... by 50%.

This also suggests a possible strategy for improving advocacy for migrant workers. If BWI and other global union federations can foster union growth in countries

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<sup>410</sup> Pye et al, “Precarious lives: Transnational biographies of migrant oil palm workers,” 334.

<sup>411</sup> Interview, July 2016.

without a long history of trade unionism, it may serve to familiarize migrant workers with unions prior to their departure from their home countries. Having affiliate unions established in sending countries with a strong membership base provides an opportunity to educate workers on the many dimensions of employment relations and labour migration, such as understanding the work contract and accessing justice in a foreign country. For example, GEFONT's global support network often familiarizes migrant workers with union organizing abroad, who then continue to be active in the trade union movement upon their return home.<sup>412</sup> Moving forward, organizing migrant workers prior to their departure would be even more effective.

Indeed, as the following excerpt indicates, the Global South is seen as a place of renewal and rebirth for the labour movement, in contrast to the Global North:

Do I think the trade union movement is going to be the one that ushers in a new society? I mean I think it will definitely be part of the democratic transitions that take place. I think they'll probably become crisis points for trade unions in developed countries anyways, because the model—well of course the mantra, unofficially, is like, let's keep doing the exact same thing and expect a different result all the time. Because [laughs] there's very little sort of progressive changes taking place in the vast majority of developed country trade unions, and we live in quite a different world to the one in which that model of organizing was developed. Yeah, there's probably going to have to be you know like exchange programs where people from England come to countries like Indonesia and learn about what actual trade union organizing looks like nowadays.<sup>413</sup>

The participant was explicit in his belief that unions of the Global North should learn from the Global South, despite the reality that the affiliate

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<sup>412</sup> Lee, "Challenges of and Coping with Immigration in Korea: The State, Civil Society, and Migrant Workers," 59.

<sup>413</sup> Interview, July 2016.

unions of the Global South still rely on funding from the affiliate unions of the Global North. Yet, the dynamism of union organizing in the Asia-Pacific, and the Global South more generally, serves as a stark contrast to the participants' portrayal of unions in the Global North as stunted and in need of innovation, as this quote indicates:

Let's actually start to think creatively and tell Canadian and American trade union organizers that it's great for them to do what they're doing at the moment, but maybe it's worthwhile to spend some time in these parts of the world and see how trade unionism is evolving. And see why it is that so many people in the Global South actually see unions as a relevant institution.<sup>414</sup>

An unequivocal connection between unions and democracy was made in an interview using the Arab Spring as an example; the participant contended that if a strong union movement had existed alongside the Arab Spring, the push for reform would have been more effective:

You can see in countries that still have very weak trade union movements where these problems—the push towards democracy is not so palpable, like if you look at the Arab Spring, you have countries like Libya, Syria, Tunisia, Egypt—all, with the exception of Tunisia, all with quite weak trade union movements and haven't been able to sustain what was, you know like a big sort of public outcry and a demand for a better society. And they haven't been able to turn that into an ongoing political project. What unions offer is long-term organizing capacity to be able to do that.<sup>415</sup>

Participants also linked unions in the Asia-Pacific with progressivism. As this excerpt shows, women's rights, indigenous rights, and environmentalism are seen as integral to the trade union movement, rather than separate:

The kind of trade unionism that is coming out of newly democratizing countries in Asia is a really kind of progressive, pro-women's rights, in

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<sup>414</sup> Interview, July 2016.

<sup>415</sup> Interview, July 2016.

fact it's pretty bad on recognition of LGBT rights, but much better in terms of recognition of indigenous rights, and environmental concerns are kind of bundled up with it as well, because there's not a harsh distinction that exists between the kind of, developing world environmental activism, and the trade union movement, because they're basically both fighting against foreign investment, or the excesses of foreign investment in those countries. Quite different from the kind of environmentalism you see in the first world, which is primarily based on changing light bulbs [laughs].<sup>416</sup>

This portrayal of the trade union movement in the Asia-Pacific highlights the hope BWI employees and local organizers hold for the future. In some respects, the lack of a strong history of trade unionism has left the region with a tabula rasa for building an intersectional labour movement, without the legacy of misogyny, racism, and environmental degradation with which the trade union movement has sometimes been associated. BWI's interpretation of trade union internationalism follows the same lines as Kim Moody's social movement unionism. Moody characterizes social movement unions as "asserting the centrality of union democracy as a source of power and broader social vision, and outreach as a means of enhancing that power".<sup>417</sup> BWI's employees' emphasis on democracy and progressivism as hallmarks of trade unionism in Asia appears to be an instance of social movement unionism in practice. This also indicates a rejection of parochialism, which is crucial for an inclusive trade union movement that encompasses migrant workers.

We can't just ask the government to change that because the government doesn't have the power to do that. We can't ask single businesses necessarily to do that. We actually have to build a new model that's based around what the future looks like, rather than what we wish the future looked like.<sup>418</sup>

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<sup>416</sup> Interview, July 2016.

<sup>417</sup> Moody, *Workers in a Lean World*, 4.

<sup>418</sup> Interview, July 2016.

The participants' view of the future may be summarized as cautious but hopeful.

The above quote neatly expresses the recurring notion that the future of the labour movement and union organizing does not lie in nostalgia. The return of widespread state protections of labour rights and effective employer accountability appears to be a Sisyphean task, and unions would be better served by adapting to the new reality of the global economy. However, adaptation does not mean surrender; it means new strategies and tactics, applicable and impactful in the local context in which they are deployed.

Equally as important as the themes emerging from the interviews are the silences. There was no discussion of the role employment agencies play in Malaysia's construction industry, despite the issues revealed by the survey. Arguably, this stems from the challenges of transnational activism. BWI's labour migration advocacy involves making certain kinds of demands of employers and governments—demands related to labour rights, legal and political reform, etc. However, employment agencies are diverse in their characteristics and reach. The term "employment agencies" I use broadly to reflect this diversity.<sup>419</sup> For example, Nicole Constable's ethnographic work on Filipina domestic workers in Hong Kong demonstrates the complexity of the recruitment agency industry: agencies in the Philippines serve as partners to agencies in Hong Kong, ensuring a reliable flow of recruits.<sup>420</sup> Constable notes that direct hires are more desirable (read: malleable and compliant) than local re-hires (seen as too knowledgeable about Hong Kong to be

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<sup>419</sup> My use of the term "employment agencies" includes recruitment agencies, placement agencies, and labour brokers.

<sup>420</sup> Constable, *Maid in Hong Kong*, 64.

subservient), which encourages this relationship between Philippine and Hong Kong agencies. However, it is difficult to parse whether these agencies formally connected, or simply engaging in a mutually beneficial business relationship where one agency provides the recruits and the other provides the jobs.

As employment agencies operate in both sending and receiving countries, the question of how BWI ought to engage with them becomes even more complex, as the local contexts must also be considered. As the ILO notes, cross-border recruitment takes three forms: direct hiring by employers, direct hiring by employers with limited support from employment agencies (local and/or overseas) and hiring via employment agencies (which may also entail sub-agents to source workers in sending countries). This can lead to complex employment relationships, as employment agencies can either act as the sole employer of the migrant workers, the joint employer alongside the firm where the migrant worker is placed or have no employment relationship with the migrant workers they place.<sup>421</sup> In the Malaysian context, the state has allowed labour-hire, or outsourcing, firms for small and medium enterprises (SMES), ostensibly to evade the middlemen who charge exorbitant recruitment fees. In reality, “[w]orkers are recruited by counterpart labour brokers in sending states and thus have to pay for the privilege of recruitment to both sets of brokers”.<sup>422</sup> The employer no longer retains overall responsibility for the worker, but rather the outsourcing agent becomes the “contractor” or labour. For example, the Malaysian firm Hytex “used labour brokers

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<sup>421</sup> ILO, *Managing labour mobility*, 28.

<sup>422</sup> Kaur, “Shifting Geographies of Migration in Southeast Asia,” 360.

in Burma, Bangladesh, and Vietnam to recruit migrant workers for a Nike supply factory in Malaysia ... [who] paid about a year's wages to the labour hire company for the privilege of employment".<sup>423</sup>

Furthermore, these agents often use fake documents and promises of employment to recruit migrant workers, which then lead to these migrants working in Malaysia with undocumented, precarious status.<sup>424</sup> Malaysia's construction sector is characterized by multiple subcontracting chains. There tends to be one to four layers of subcontracting, with most general workers (who tend to be migrants) employed indirectly through agents.<sup>425</sup> These subcontracting chains have negative consequences for migrant construction workers' health and safety. Although fatalities in the construction sector are higher than other sectors, the lack of direct employment relations means that "[i]t is a norm that major contractors take no responsibility for accidents that beset general workers at the sites."<sup>426</sup>

The transnational connections inherent in the employment agency industry challenge BWI's ability to address these issues. In the above example, the relationship between labour brokers spans between Malaysia, Burma, Bangladesh, and Vietnam. However, as a global union federation with affiliate unions in each of these countries, BWI is relatively well-placed to tackle the activities of the international employment agency industry, if the institutional appetite can be found for such a complex undertaking.

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<sup>423</sup> Kaur, "Transnational Migration Regimes in Malaya/Malaysia," 251.

<sup>424</sup> ILO, *Consultations with Labour Attachés and Consular Officials in Malaysia on the Protection of Migrant Workers*, 11.

<sup>425</sup> Chang, *Global Construction and Asian Workers*, 9.

<sup>426</sup> *Ibid.*, 11.

In conclusion, five themes were identified from qualitative interview data. First, BWI's institutional history and sectoral focus led it to become a forerunner among global union federations advocating for migrant workers. Its concern for migrant workers leads BWI to act beyond the negotiation of GUFs, because other repertoires of action may be more effective for migrant worker protection. This connects with the results of the survey data of 93% of documented workers reporting their written contract is not being complied with, and 83.19% of documented workers reporting their identity papers are being withheld from them by their employer. In this context, it is clear that negotiating improved contracts through GUFs does not improve migrant workers' working conditions unless the material conditions of their exploitation are changed.

Second, Malaysia's political and legal environment constrains the work BWI can do within the country, especially in regard to migrant workers. This is also reflected in the survey results which demonstrate the extent to which existing laws are not implemented properly to protect migrant workers (such as the lack of enforcement regarding payment of overtime) as well as laws designed to exploit migrant workers (such as the Immigration Department's issuance of work permits that stipulate that migrant workers cannot join associations). Furthermore, it links back to the analysis of Bridget Anderson, Ruth Gomberg-Munoz and Laura Nussbaum-Barberena, and Guy Mundlak regarding the role that laws play in facilitating migrant worker exploitation. Therefore, BWI takes part in the local governance struggle over changing the normative framework and cultural logic at play in the Malaysian context in a bid to change the treatment of migrant workers.

Third, advocating for migrant workers requires new strategies to unite both migrant workers and local unions, demonstrating how a GUF like BWI can take effective action beyond the negotiation of GFAs. This is reflected in the literature on new strategies for organizing, especially the work of Laura Liu, Héctor Cordero-Guzmán et al., Janice Fine, and Jane Wills on the shift away from traditional forms of unionism and towards strategies of community-based advocacy. This is also reflected in the survey results showing the complete disconnect between migrant workers and unions, with no respondents being part of a union, and just under half of the respondents responding, “I don’t know”, when asked if they were a member of a union. Strategies like the recruitment of nationality-specific organizers and the development of SMS hotline for migrant workers to get advice on their own time are indicative of the turn towards community-oriented advocacy activities.

Fourth, BWI’s global campaigns are shaped by the local contexts in which they are pursued. The work Castree, Coe, Ward & Samers and Andrew Herod underline the usage of spatial strategies and new domains of mobilization in order to make local activities effective at different scales. Rather than being unidirectional and top-down, the campaigns are necessarily reciprocal with local actors in order to be effective. Fifthly, cautious optimism regarding the future of the trade union movement is the final theme emerging from the interviews. This echoes Aziz Choudry and Mondli Hlatshwayo’s call to recognize migrant workers as a source of new forms of organizing and a potential force in the union movement. Finally, I identified a lacuna within the qualitative interview data: the absence of employment agencies and how their recruitment practices cause exploitation in the

conversations with union employees.

BWI demonstrates how effective global unionism does not necessarily require the negotiation and signing of GFAs. Reciprocity with local unions can occur through other repertoires of action available to BWI. When it comes to reciprocity with Malaysian unions, BWI participates in the governance struggle over transforming the dynamics between capital and labour through strategies such as knowledge dissemination, training, formal worker representation, resource provision, union formation, and the development of transnational trade union networks. These strategies can be more effective for migrant worker protection in the Malaysian context. Since BWI's history and sectoral focus have led it to explicitly prioritize migrant workers, acknowledging strategies beyond GFA negotiation is crucial for BWI's success. The restricted political and legal environment in Malaysia results in BWI focusing on transforming the cultural norms governing the treatment of migrant workers, since the law in its current state provides little protection. By transforming the cultural norms that divide migrant workers and local unions, BWI demonstrates that it has access to other useful strategies for transnational labour solidarity beyond the signing of GFAs. Lastly, BWI's global campaigns demonstrate that it does not take a top-down approach, but rather a reciprocal one that focuses on tailoring the campaigns to local contexts to ensure success.

## Conclusion

This thesis focused upon the challenges of incorporating migrant construction workers within unions. I sought to determine the factors that facilitate the exploitation of migrant construction workers in Malaysia, and the effectiveness of the global union federation BWI in advocating for these workers. While migrant worker advocacy is both a noble goal and a persuasive strategy for reversing union decline, the factors that perpetuate migrant worker exploitation pose a challenge. Although global union federations are most well known for their negotiation of global framework agreements, my focus was on the other strategies that BWI utilizes amidst the governance struggle over the treatment of migrant workers in Malaysia. These strategies include knowledge dissemination, education and training, formal worker representation, resource provision, union formation and recruitment, and the development of transnational trade union networks.

In my case study of Malaysia's construction sector, it is readily apparent that the historical-political context and legal environment of Malaysia facilitate the continued exploitation of migrant workers. The legacies of colonialism and post-colonial economic transformation, as well as the restrictive nature of contemporary laws and regulations, restrict the labour protections available to migrant workers. Furthermore, BWI's transnational migrant worker advocacy initiatives have a reciprocal relationship with the local context in Malaysia, which is necessary for any progress to be made. As shown through surveys with migrant construction workers and interviews with BWI employees, there is not a unidirectional, top-down relationship between the global and the local. Indeed, even the distinction between

the global and the local is not clear-cut. There is difficulty inherent in cultivating a reciprocal relationship with migrant workers due to their temporariness and heterogeneity, the long-term focus of BWI's advocacy initiatives, and the depth of reciprocity required as labour migration advocacy necessitates complex transnational relationships. Despite BWI's best efforts, its effectiveness at migrant worker advocacy is necessarily curtailed by the structural factors that facilitate exploitation.

Due to the lack of valid empirical data, my surveys attempted to fill this gap by gathering information on migrant construction workers in Malaysia. Thus, the surveys provide a breadth of data regarding the aspects of migrant construction workers' lives and working conditions in the Malaysian context. The survey gathered empirical data in four areas: demographics, household information, financial circumstances, and working conditions. In total, 200 migrant construction workers completed the survey during the period of July 2016 to September 2016, coming from Nepal, Indonesia, Bangladesh, Myanmar, Pakistan, and Vietnam. The general findings of the survey indicated that respondents were uniformly male; educated at the primary or secondary school level; support dependents in their home country; earn the minimum wage but not paid for overtime; pay the foreign worker levy only if documented; unionized and unfamiliar with unions in general; work an average of 10+ hours per day; lack knowledge regarding their working status as employees or subcontractor (with the commensurate legal implications); the widespread phenomenon of precarious and forced labour; and the indebtedness of migrant construction workers.

I coupled the analysis of Malaysia's construction sector with a discussion of the global institutions interacting with Malaysian trade unions: namely, global union federations. Today's global union federations are rooted in the history of trade unions and International Trade Secretariats, their precursors. Global union federations are key players in trade union internationalism. The transnational activities of Building and Wood Workers' International (BWI), a global union federation for the building, building materials, wood, and forestry sector, are especially relevant in the context of Malaysia's construction sector. My analysis of the interviews conducted with BWI employees of the Asia Pacific regional office in Kuala Lumpur, Malaysia identified five emergent themes. First, BWI's institutional history and sectoral focus influences its priorities regarding migrant workers, leading it to become the forerunner of global union federations advocating for migrant workers' rights. Second, Malaysia's political and legal environment constrains the work BWI can do within the country, especially in regard to migrant workers. Third, advocating for migrant workers requires new strategies to unite both migrant workers and local unions. Fourth, BWI's global campaigns are shaped by the local contexts in which they are pursued. Fifth, there is cautious optimism regarding the future of the trade union movement. As well, I discuss a notable silence within the interviews: the lack of discussion of employment agencies and how recruitment practices reinforce the precarity and exploitation of migrant construction workers.

Scholarship on labour organizing tends to focus on successes and on contexts where labour was once powerful. While these are important cases to research, it is

also necessary to look at cases where labour is constrained. In many contexts, the labour movement never saw a heyday, and thus the anxiety over labour's weakening loses sight of the reality that there are places where labour was never strong. These places are equally worthy of study, especially if there is an emancipatory aim behind the research. Another reason is that labour migration from the Global South to the Global North has different characteristics than South-South labour migration, but migration research tends to focus on these South-North flows. Malaysia is the largest net importer of labour in Southeast Asia, yet there is little data on its millions of foreign workers. As well, the enforced temporariness of labour migration poses different challenges than immigration does. While it is important for the labour movement to consider strategies to encourage and incorporate immigrants in organizing initiatives, immigrants are in a less precarious position than temporary labour migrants. Organizing these migrants is often an uphill battle, as they tend to lack the same legal rights and protections. Finally, this research aimed to contribute to the body of literature on migrant construction workers and fill a gap in knowledge regarding global union federations. Migrant construction workers are not as popular a topic of research as, for example, migrant domestic workers, despite their numbers and the similarly gendered nature of construction work. By analysing the actual experiences of construction migrant workers in Malaysia, I hoped to illuminate the challenges of migrant worker advocacy, and to illustrate possible ways forward for inclusive, effective organizing even in contexts where labour is constrained.

As processes and institutions from the global scale collide with conditions at

the local scale, these interactions lead to outcomes unique to each place. Malaysia is one such place where local conditions interact with translocal processes with distinct consequences. My historical overview of the development of Malaysian labour demonstrates how the colonial foundations of the state, the transformation of the economy, and legal restrictions have led to the fragmentation of the Malaysian labour movement. This fragmentation not only makes it difficult to cultivate labour solidarity, it also contributes to the current lack of protections and exploitation of migrant workers, as underlined in the survey results from the migrant construction workers.

BWI as a global union federation must contend with the local context of Malaysia, and the relationship between the global and the local is not so straightforward as a top-down, unidirectional flow. Rather, it involves reciprocity between the two. I also discuss the transnational activities of BWI, and the emergent themes identified through my interviews with BWI employees. The relationship between the global union and local unions, Malaysia's repressive political and legal environment, the challenges of migrant worker advocacy, and the uncertain optimism regarding the future of the labour movement are the four common strands running throughout the interviews. Notably, the role of the international employment agency industry was left unremarked upon. The transnational connections inherent in this industry challenge BWI's ability to address issues such as the rampant corruption, high levels of indebtedness, and lack of access to justice. However, the exploitation of labour intermediaries could provide an opportunity for migrant worker advocacy, though it would be a complex transnational undertaking.

Despite my fieldwork indicating that BWI's relationship with the Malaysian context is reciprocal, that is not to say that it is easy, or that it cannot be improved upon. There is difficulty inherent in cultivating a reciprocal relationship with migrant workers due to their temporariness, as well as their heterogeneity. Construction work in Malaysia is particularly characterized by the diversity of its migrant workers. If the targeted migrant workers are homogenous, organizing would be less challenging; for example, migrant domestic workers in Malaysia are predominantly Indonesian and Filipina, which may encourage solidarity among workers. As well, the focus of BWI's organizing initiatives is invariably more long-term than what migrant workers care about. Understandably, migrant workers are more concerned with their short-term survival, rather than organizing and fighting to improve conditions for future workers. Finally, reciprocity is not as simple as engaging with local actors. Labour migration necessarily involves actors from *other* local contexts who must be engaged with—sending countries' governments, affiliate unions, etc.—which results in complex transnational relationships. Therefore, reciprocity between the global and the local should really be characterized as reciprocity between the global and the multiplicity of locals. With interactions involving so many different actors, with diverging and conflicting interests, a global union federation like BWI cannot easily determine the best strategies for advocacy. However, by meticulously maintaining and strengthening its relationships, it has access to a plurality of perspectives from which it can draw upon in its attempts to bolster transnational labour solidarity.

Finally, my fieldwork research did not focus explicitly on the role of the Malaysian state plays regarding migrant construction workers and their working conditions. Because I was concerned with the prospects of mobilizing and advocating for these workers, my research dealt specifically with the workers themselves and BWI's local attempts at advocacy. My approach was grounded in the experiences of individuals, rather than the structures at play. Nonetheless, these experiences occur against a backdrop of the Malaysian state. Its role in planning labour migration and disciplining migrant workers was not examined in-depth. This represents a future avenue of inquiry, specifically in terms of questioning how the Malaysian state's treatment of—and dependence upon—migrant workers relates to efforts to maintain its own power and existence.

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