

# Comparing Trade Union Laws and Labour Protections in the Commercial Realms of Malaysia and Kazakhstan

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## Abstract

This article analyzed the specifics of the Federation of Malaysia and the Republic of Kazakhstan, as two lead contemporaries of the developing world, espousing correct measures to regulate the relationship between trade unions and labour force. Kazakhstan, which has emerged as a multi-confessional and multi-ethnic specificity, it is imperative to explore the experience of peer countries. In this context, Malaysia, an Asian Tiger economy, has her own experience in maintaining the relationship between state and religion. Kazakhstan, emerging as a lead Asian-Panther in the first quarter of the 21<sup>st</sup> century, focused on improving the state's policy on trade unions, regulating the activities of labour associations in view of international trade requirements, while defining the complex aspects of the relationship between trade unions and labour. Kazakhstan differentiated her model of a CIS country dominated by the representatives of Internationalization. Hitherto, the country chosen for comparison was Malaysia, which has excellent development indicators. The current study determined the specific features of the two countries in the in terms of trade and union composition, the structure of public administration, labour rights, activities of labour associations, dialogue and volume, the urge to upgrade standards of the trade cycle via historical and comparative analysis.

**Keywords:** Trade Unions, Kazakhstan, Malaysia, labour, ILO, Labour laws, WTO

## **Introduction**

Hitherto, immediately post dissolution of the Soviet Union, diplomatic relations between Malaysia and Kazakhstan were established in 1992. Albeit there has been an increase in cooperation in the inter-governmental, commerce and trade, and cultural and humanitarian realms. Malaysia differs significantly from Kazakhstan in its state-territorial structure. Malaysia, which is a federation, comprises 13 states and two federal territories (Kuala Lumpur and Labuan Island). The legal status of the states is governed by the federal constitution and individual state constitutions. The nine heads of the States, that is, Sultans, Penang, and Malacca are headed by a governor with a government-constitutional monarchy.<sup>i</sup>

Kazakhstan, which is a unitary and autocratic state in Central Asia, has been ranked 9th largest in the world according to its area. It is officially a democratic, secular, unitary, and constitutional republic. Although, the relationship between the two countries is based on small articles in media, there are no such studies in the academic context that analyze the secular system of the two countries and the peculiarities in the relationship between the state and religion. The current study, from this point of view, has its own specifics.<sup>ii</sup>

## **The Purpose**

The Republic of Kazakhstan witnessed incredible economic growth with its real GDP growing at least 9% per year between 2000 and 2007.<sup>iii</sup> Inevitably, is this economic growth sustainable? Kazakhstan's current development and the factors that would impact its economic growth and prosperity. Kazakhstan shares many characteristics with the Asian Tigers, such as strong international investment, a low tax burden, a small government debt, a well-developed banking system, a paternalistic managing style, and citizens possessing entrepreneurial drive. Unfortunately, Kazakhstan's economic development differs from the Asian Tigers. Although Kazakhstan has immense mineral and petroleum wealth, its bureaucratic, corrupt, overbearing legal system could prevent Kazakhstan from reaping this wealth. Then the Dutch Disease and Resource Curse further complicate matters. Finally, Kazakhstan joined the new Customs Union with the Russian Federation and Belarus, aligning its economic growth to Russia's economy.<sup>iv</sup>

The purpose of the current study was to focus on the trade features of the relations between the two countries. It analyzed the specifics of the Republic of Kazakhstan and the Federation of Malaysia on the relationship between trade unions and the labour equities. Albeit regarding Kazakhstan, which possesses a multi-confessional and multi-tier trade, it is extremely imperative to study the experience of other developed countries. In this context, Malaysia, as a lead manufacturer of rubber and palm oil, has her own experience of relation between the laws of trade Unions and labour protection.<sup>v</sup>

### *Significance of the Trade Unions*

The decline in density can be attributed to several reasons: the inability of trade unions to organise new establishments. It can be attributed in part to lowered worker interest and stiffened management opposition to unionism, unfavourable changes in the political and legal environment for collective bargaining and by management actions such as creating additional pseudo managerial posts. It can be argued that much of the decline in Malaysian trade union density is also due to increased management resistance to new unionism and reduced worker interest in unions, induced by a tougher economic environment abetted by a more pro-employer legal environment. Trade unions all over the world are under attack by the very forces, drivers, and consequences of globalization. The TUC General Secretary in UK, argues that increasing global economic competition and capital mobility, rise of cross-border production networks combined with outsourcing, neo-liberal economic policies, rapid pace in technological innovation, privatisation, contraction of the manufacturing sector and expansion of the services sector, changes in production processes, and growing employer resistance to unionization have reduced the number of “organisable” workers, exacerbated difficulties in union organizing and adversely affected membership commitment to unionism. Weak enforcement of labour laws also contributes to union membership inertia.<sup>vi</sup>

The Malaysian trade union movement is faced with several challenges, notably from neoliberal policies and changing structures of employment. Malaysian unions are generally small, fragmented, and regional. This is also due to the strict requirements of the Trade Union Act 1959. Trade unions can be seen as imperative instruments for protecting workers’ interests. Yet, former Prime Minister Dr. Mahathir had declared that trade unions were ‘superfluous’

lacked strong involvement in national development policy and were 'meek and conservative'. With many small unions, the movement is highly fragmented, based on trades, occupations, industries, and establishments, and further separated on a regional basis, that is Peninsular Malaysia, Sabah, and Sarawak and with an ethnic dimension (see Rowley and Bhopal, 2002; 2005). The legal and institutional environment is not favourable to the development of a strong trade union movement. The government has the absolute right to grant union registration or withhold it. At the level of the workplace legislation restricts the subjects of bargaining (transfers, promotions, layoffs, retrenchments, and job assignments deemed outside its scope), and the ability of unions to strike. Thus, it can be argued the scope of bargaining directly affects the extent of social dialogue. Thus, a significant segment of the working population remains unorganised.<sup>vii</sup>

Trade unions in Kazakhstan operate within the framework of the Law of the Republic of Kazakhstan "On Professional Unions" (2014),<sup>viii</sup> which defines trade unions as public associations aimed at representing and protecting the labour and social and economic rights and interests of their members. Regional and sectoral organizations: Trade unions in Kazakhstan are organized on a regional, sectoral, and global basis, with formal institutional relations linking them. Workplace representatives: Unions train workplace representatives to assist members with job-related issues and advocate for improved working conditions and salaries.<sup>ix</sup>

Trade unions have significantly influenced society by advocating for measures such as improved parental leave, equality legislation, better protection for migrant workers, and the national minimum wage.<sup>x</sup> They have also contributed to the elimination of child labour, improved worker safety, and the reduction of working hours.<sup>xi</sup>

Hitherto, there has been a decrease in the number of trade unions, union density, and union membership in both industrialized and emerging nations, including Kazakhstan. The trade union movement in Kazakhstan has faced serious oppression, with a regressive law on trade unions adopted in 2014 and direct attacks on independent unions in 2017.<sup>xii</sup>

***The crux of labor interdependence:***

One of the four categories of principles and rights related to the ten core ILO Conventions is the freedom of association and right to collective bargaining. The conventions in this category are Convention 87 (Freedom of Association and Protection of the Right to Organize Convention 1948) and Convention 98 (Right to Organize and Collective Bargaining Convention 1949). Convention No. 87 states that all workers' and employers' organizations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration, to organize their activities and to formulate their programs. Failure by the government to ratify this convention is seen as a denial of the freedom of association and had profound effects on the drafting of the TUA. Jomo and Todd (1994) and Maimunah (2003) state that tactics used by employers to control the workforce have included indefinitely delaying union recognition applications, victimizing, or promoting activists to remove them from the shop floor and forming company-sponsored inhouse unions. The problem of recognition, or rather the lack of it, by employers has been a longstanding one, with unionists accusing employers of intentionally delaying recognition while using allegedly unfair practices to dampen unionism in the workplace (The Star 1996). In an MTUC survey of union officials in the mid-1970s, some 31 % stated that their employers had transferred their active union officials to make it inconvenient and difficult for them to carry out their union activities' (MTUC, Report of the General Council 1976-1978: 284). Employers argue that to be cost competitive and attract FDI that they must lower labour costs, reduce the skills gap and be more proactive in drafting labour legislation that supports the recruitment of foreign labour, the mobility of labour and flexible work schemes (Shamsuddin 2006).

From 1919 to the present, a total of 402 ILO instruments have been adopted (190 conventions, 6 protocols, 206 recommendations).<sup>xiii</sup> Of this array, a special place is occupied by the norms and provisions laid down in international conventions, which the ILO classifies on several grounds as follows: 10 Fundamental Conventions; 4 Governance (Priority) Conventions; and the remaining 176 conventions, which are referred to as the Technical Conventions. It is true, of course, that the fundamental conventions play a major role among the instruments listed above. The table below gives the total number of countries, by world region, that adopted and ratification of all ILO fundamental conventions<sup>xiv</sup>:

Country	Fundamental ILO Conventions									
	Freedom of association		Forced labour		Discrimination		Child labour		Occupational safety and health	
	C087	C098	C029	C105	C100	C111	C138	C182	C155	C187
Africa (54)	50	54	54	54	53	54	53	54	22	15
Americas (35)	33	34	34	35	34	34	33	35	12	6
Arab States (11)	4	6	11	11	7	10	11	11	2	1
Europe (51)	51	51	51	51	51	51	51	51	30	28
Asia and the Pacific (36)	19	23	30	27	29	26	27	36	9	8
<b>Total:</b> <b>187</b>	<b>157</b>	<b>168</b>	<b>180</b>	<b>178</b>	<b>174</b>	<b>175</b>	<b>175</b>	<b>187</b>	<b>30</b>	<b>28</b>

The provided table highlights an intriguing observation: the principle of freedom of association, which serves as a fundamental cornerstone for all ILO endeavours concerning labour relations and is enshrined in the ILO Declaration on Fundamental Principles and Rights at Work (1998)<sup>xv</sup>, has regrettably not gained widespread acceptance in numerous member states of the ILO.<sup>xvi</sup>

One of the country's economic policies and strategies has been to maintain a low wage structure to remain attractive for foreign investors and FDI and enhance further competitiveness in the international market arena. Foreign workers have been brought in legally as well as illegally through contractors from Indonesia, Thailand, Burma, Philippines, Cambodia, Sri Lanka, India, Nepal, and Bangladesh.<sup>xvii</sup> This is a convenient and inexpensive way to obtain labour

services, but it is easy to abuse workers' rights through this system. The formal IR system is weakened by the emergence of an informal system controlled by contractors and employers. While illegal immigrant workers are helpless because they cannot be identified in the formal system, legal immigrant workers face various tactics by employers and contractors to keep them out of trade union membership Government policy since last year is that organising must include foreign workers.<sup>xviii</sup>

While on the one hand, it offers an opportunity for trade unions to offer protection to this group, it also poses a challenge. The very nature of their short-term employment means that they may not be keen to take up membership. According to Cruz (2004), MTUC's findings depicted that contract workers (more than 70 % of them are construction workers) had no security of tenure or social protection.<sup>xix</sup> Contributions to SOCSO and EPF are unheard of and are, therefore, more vulnerable in the event of injury, disease, or death. In case of job loss, they have no avenue for assistance, as most contracts are mere verbal agreements. Workers in the informal sector are not protected under labour legislation, and are therefore not able to enjoy, exercise or defend their fundamental rights. Furthermore, they work in unsafe and unhealthy working conditions, have low or irregular incomes, work long hours, lack of access to training, financing and technology and health care. They are also vulnerable to harassment (including sexual harassment) and other forms of exploitation and abuse, including corruption and bribery.<sup>xx</sup>

Hitherto, examining the experience of Kazakhstan, which created its own system of laws and regulations in the field of labour dispute problems, designed to protect the interests of workers and help ensure a minimum level for residents. Thus, analyzing problems requiring study of issues on the application of labour legislation, development of recommendations for improving and taking measures to inform judicial practice in this category of cases. We have studied the activities of the International Labor Organization (hereinafter referred to as the MOT), which is the world agency of the United Labor Organization. Kazakhstan reports on labour issues, labour disputes, trade unions of workers, workers, and others. Case studies depicts labour disputes, strikes by workers in the regions of Kazakhstan, as well as their solutions. The study makes recommendations of the following nature, when considering disputes regarding the

recognition of legal relations as labour, courts should distinguish between civil law relations and labour relations. The relevance of the research topic due to the need to develop and introduce new modern mechanism for resolving individual labour disputes, including pre-trial and non-judicial methods of conflict resolutions.<sup>xxi</sup>

### **An Oblivious Tactical Advantage-The Labour Centre of the Organisation of Islamic Cooperation**

Since both Malaysia (since 1969) and Kazakhstan (since 1995) are bonafide members of the Organisation of Islamic Conference (OIC), there is much more to explore for the common domain of labour laws of both the countries.<sup>xxii</sup> The labour laws based on the provisions of the OIC Charter on strengthening efforts and cooperation to achieve sustainable and comprehensive human development and economic well-being amongst Member States. This phenomenon further establishes the need to address major employment, labour and social protection challenges facing Member States, particularly ensuring decent work, sustainable social security, by reducing poverty under the purview of the OIC legislature. The fundamental thought process creating a collective platform to promote enhancement of working conditions, strengthening social partnership, increasing decent employment opportunities, and developing a sustainable social protection system.<sup>xxiii</sup>

The Headquarters of the Centre is located at Baku, the Republic of Azerbaijan. The host country provides all necessary facilities for its smooth functioning by providing diplomatic immunities and privileges. The Centre may, upon a proposal from the Executive Board and under a General Assembly resolution, establish in any other country, offices, or institutions, which are subsidiary to it or are under its supervision.<sup>xxiv</sup>

The Centre is enjoying the status of fully-fledged legal person as an international organisation, using its full legal capacity to exercise its functions and fulfil its objectives as defined in this Statue. The Centre, its staff members and their family members is be provided, under the Vienna Convention on Diplomatic Relations of 1961, with all immunities and privileges that are granted to missions and members of diplomatic staff as well as their family members accredited in the Republic of Azerbaijan. The Centre is a Specialised Institution of the OIC, as



defined by the Article 24 of the OIC Charter.<sup>xxv</sup>

***The common labour values:***

Unions' leadership is a commitment, a commitment to the cause of improving the livelihood and protecting the rights of the hundreds of thousands of workers. In this context, some questions that need to be addressed to union leaders at include:

1. Are leaders doing enough?
2. Do all members attend and participate actively in meetings regularly?
3. Are all resolutions/action plans successfully implemented?
4. Are there mid-point reviews, or feedback mechanisms in place to monitor the progress of the various action plans implemented?

Some of the MTUC's major weaknesses are the absence of a sound research centre run by professionals, the inability to settle differences (within and outside the organization) and even smug optimism, notes Fernandez (1997). Allegations of misappropriation of funds by union leaders do not put the union movement in a positive light among members and the regulatory authorities.<sup>xxvi</sup> Leadership falls on all the principal officers, members of the General Council and officials of affiliated unions. They should be dynamic, forward looking and will set the pace for the future of the movement. **Research proposal** for Labour Union leaders are:

- ❖ strongly believe in the need for greater solidarity.
- ❖ have a clear sense of purpose, urgency and direction;
- ❖ be highly ethical and be seen as being one; be knowledgeable, inquisitive and well-informed.
- ❖ be dynamic, dedicated, and have the will to protect the interests of labour, including the vulnerable groups such as women and migrant workers.
- ❖ ensure that democratic practices prevail within the movement.
- ❖ be honest, have integrity and sincerity. The ICFTU-APRO Education Policy (2004) states that trade union leaders:
- ❖ Implement effective trade union governance.
- ❖ Develop, implement, and evaluate strategic plans.

- ❖ Encourage and develop future leaders including women.
- ❖ Encourage participation in union activities and committees.
- ❖ Develop, implement, and evaluate organising plans.
- ❖ Develop, implement, and evaluate corporate campaigns as places of trust and responsibility of the shoulders of trade union leaders. It therefore calls for a highly dedicated group of people.

### **The Way Forward**

Unfortunately, due to distances of culture, region, and constitution, both Malaysia and Kazakhstan have failed to establish, common grounds based on trade unions, labour force and have yet to capitalize on the merits of the OIC Charter. This step requires a through analysis of law makers, politicians, and academicians, who should jointly propose a common-ground tactical framework, to enable merits of the OIC Charter to be introduced in the system. The analysis resulted in five themes: “*Characteristics of women’s labour*”, “*Analysis of labour laws differentiation*”, “*Evaluation of labour rights discrimination*” and “*Characteristics of the new labour legislation of the Republic of Kazakhstan*”,<sup>xxvii</sup> “*Characteristics of workers with a special social status*”. We analysed the essence of the method of differentiation of labour legislation, which affects the establishment of special working conditions for women and workers with family responsibilities.<sup>xxviii</sup> This research establishes a correlation between the content of legal norms and the level of guarantees of gender equality in the labour market. The analysis depicts that family circumstances, gender equality are factors influencing the formation of labour legislation, state policy in the field of wage labour. The creation of a favourable environment for labour relations of the considered categories of workers should be carried out through labour contracts, acts of the employer, social partnership agreements, collective agreements.<sup>xxix</sup>

However, priority should be given to normative acts of national action. Ensuring gender equality in fact always requires the implementation of special measures by the employer, which must be guaranteed by a coercive state mechanism.<sup>xxx</sup> This analysis is commendable for Kazakhstan, a country with a transition economy, when business does not have high social activity, and state power is in a period of transformation.<sup>xxxi</sup> Importance should be given to the

monitoring and implementation of international obligations in the field of ensuring the prohibition of discrimination, the implementation of best practices and standards.<sup>xxxii</sup> The post-Soviet law of Kazakhstan recognises the priority of international law over national law, and this channel should be maximally used to promote the value of gender equality.<sup>xxxiii</sup>

## **Conclusion**

Overall, the number and membership of trade unions remains stagnant in Kazakhstan, but graciously on the rise in Malaysia. However, the rate of increase is not at the rate of increase of the workforce, therefore resulting in a decline in trade union density. There is a sustained shift in the work environment, that is, more skilled workers, more female workers, greater flexibility in job design and use of information and communication technology.<sup>xxxiv</sup> Malaysia's dependency on global markets, accompanied by the need to attract foreign investors and keep investments certainly poses major challenges, but the trade union movement will have to continue to fight an uphill battle in trying to organize the unorganized into a union of their own choosing. It should be made very clear that none of the proposals in this article is intended to obviate the need for unions to continue to use traditional, face-to-face methods of organising and motivating their members. The appeal is for unions to become more flexible, more inventive, and more modern in how they organise and serve each of their members. The challenge is to do it all in a systematic, pro-active way. The challenge for union leaders is to build a union movement that can respond effectively to the threats and opportunities that it faces with the growing influence of MNCs and the growing numbers of bilateral trade agreements. Leaders would also have to build effective alliances with civil society and enhance international trade union solidarity. Trade unions will have to reinvent themselves and be seen as relevant and responsible by the public. Trade unions can help in improving occupational health and safety, decent work and social dialogue with government and employers. It is therefore imperative that workers secure union recognition. Unions must secure their position by demonstrating their value to current and potential members. Ultimately, the future of trade unions in Malaysia and their ability to play an active role will be determined by their ability to influence the policies adopted by employers and governments, as well as their success in convincing workers to join and remain in their ranks.

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