TRANSIENT WORKERS COUNT TOO

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1. Introduction

1.1 Transient Workers Count Too ('TWC2') is a non-profit organisation in Singapore, dedicated to improving conditions for low-wage migrant workers. Besides advocacy, TWC2 assists such workers mostly when they are injured, owed salaries or mistreated.

1.2 In this paper, the term 'worker' is used to mean a migrant Work Permit holder. As at December 2014, there were 991,000 Work Permit holders out of a total population of 5.5 million residents.

2. Positive Developments

2.1 Since 2011 the government has taken a number of steps which have sought to enhance the position of migrant workers:

(a) New regulations require a weekly day off for domestic workers. However, this requirement has not been robustly formulated (see 3.3 below).

(b) The Ministry of Manpower ('MOM') now requires that workers be given a copy of its 'In Principle Approval for a Work Permit' letter ('IPA') before they travel to Singapore.

(c) A new law on the prevention of trafficking in persons was passed in 2014. While still too early to comment on its implementation, the victim protection provisions appear inadequate; for example, there is no right to work while investigations proceed.

(d) The government has indicated an intention to make pay slips mandatory, but no regulation has yet been promulgated.

3. State laws and policies of concern

3.1 **The Employment of Foreign Manpower Act ('EFMA') and related policies tie Work Permit holders to specific employers.** Workers may resign but they have no right to seek alternative employment without the consent of the previous employer, which, in the great majority of cases, is not given (there being no benefit to employers). Moreover, employers can terminate the employment of workers at any time without having to give any valid reason. Once dismissed, workers must be repatriated (subject to MOM's discretion in certain cases as discussed in 4.2 below).

Rights adversely impacted: Articles 2, 8, 23 and 25 of UDHR[1] and article 1 ILO Convention No 29. [2]

Recommendations: Work Permits issued to workers should not be tied to specific employers. Workers should have the right to seek alternative employment and be given reasonable time (recommended: 2 months) to do so after resigning or being dismissed.

3.2 **Foreign domestic workers ('FDWs') are still excluded from the Employment Act ('EA') and the Work Injury Compensation Act ('WICA').** The EA provides for maximum work hours, overtime pay and paid annual leave. The WICA provides for medical treatment, medical leave wages and compensation for permanent disability. Exclusion of FDWs from these laws denies basic employment-related rights to them and leaves them with unequal and disadvantageous terms of employment.

3.2.1 The government tries to justify the exclusion of FDWs from the EA by noting that FDWs are protected under the EFMA. However, it is vital to understand that EFMA does not provide equivalent or similar entitlements to those provided under the EA.

Rights adversely impacted: Articles 2, 8, 23, 24 and 25, UDHR.

Recommendation: FDWs should be covered by the EA and the WICA.

3.3 **Right to weekly rest day not guaranteed.** Whilst new EFMA regulations requires employers to provide FDWs with a weekly rest day, the term 'rest day' is not defined, leaving employers with discretion to determine the number of hours of rest given. No governmental intervention has been observed when employers interpret this to mean just a few hours. Moreover, the law allows employers and workers to mutually agree to forgo the rest day in

[1] *Universal Declaration of Human Rights,* GA Res 217A (III), UN Doc A/810 (10 December 1948) (hereafter '*UDHR'*)

[2] *Forced Labour Convention, 1930 (No 29)*, opened for signature 28 June 1930 (entered into force 1 May 1932) (hereafter *'ILO Convention No 29'*)

return for payment. Given the unequal bargaining power of FDWs, often the FDW's apparent 'consent' is not freely given.[3]

Rights adversely impacted: Articles 23 and 24, UDHR.

Recommendation: 'Rest day' should be defined as 'a continuous stretch of at least 32 hours' (a 24-hour day plus 8 hours' sleep before commencing the next working day). Laws should prohibit the waiver of more than 2 rest days a month, even by mutual consent.

3.4 **Migrant workers are unable to form their own independent unions.** The Trade Unions Act prevents non-citizens from holding office in a trade union without the approval of the Minister of Manpower ('the Minister'). The requirement to seek approval undermines the independence of any such union formed even if allowed. This prohibition, together with Singapore's Public Order Act (which criminalises the conduct of non-approved cause-related gatherings such as industrial strikes) effectively disables migrant workers from engaging in collective bargaining or other collective action on issues particular to migrant workers.

Rights adversely impacted: Articles 2, 20 and 23, UDHR.

Recommendations: Migrant workers should enjoy the same rights as other workers in Singapore to form and manage trade unions. Singapore's approach to trade unions and public gatherings in general should be liberalised to ensure that the interests of workers are represented in public life and democratic processes.

4. Concerns regarding inadequate enforcement

4.1 **Lack of enforcement of terms of IPA.** The IPA states the basic terms of employment (including salary, allowances, deductions) and the duration of the Work Permit. In many cases, employers disregard the terms set out in the IPA and pay lower salaries, charge higher deductions (eg for food, accommodation) and impose additional deductions, such as unreasonable 'fines' for the most minor of worker infractions. Some employers seek to legitimise these variations by insisting on workers signing new contracts almost immediately after starting their jobs. Others simply claim that the employment conditions have been amended by a new verbal agreement. Workers are poorly placed to resist such demands since they can be dismissed and repatriated by the employer at any time, returning home with a net financial loss after taking into account placement and training costs (typically US$3,000 - $8,000). The government does not show sufficient determination to ensure that employers abide by the terms set out in the IPA and, when complaints are lodged by workers, does not give due weight to the economic duress that workers may have been under when they

[3] See http://twc2.org.sg/2015/03/01/acting-on-a-tip-off-twc2-rescues-a-maid-trapped-over-two-years-without-a-day-off/ and http://twc2.org.sg/2015/03/20/acting-on-a-tip-off-twc2-rescues-a-maid-trapped-over-two-years-without-a-day-off-part-2/ and http://twc2.org.sg/2014/10/04/no-salary-no-day-off-for-20-months-part-2/

allegedly 'agreed' to the inferior terms. Substituted contracts are therefore unjustly treated as valid.[4]

Rights adversely impacted: Articles 8 and 23 of UDHR and article 1, ILO Convention No 29.

Recommendation: The government should prohibit the variation of IPA terms where such variations are less favourable to workers than the IPA, even when by apparent 'mutual agreement'.

4.2 **After arrival in Singapore with IPAs, some workers discover that the jobs do not exist, with others dismissed within less than six months.** TWC2 regularly sees such cases, which leave the affected workers in deep financial distress. MOM's response has become more compassionate in recent years, using its discretion to allow these workers a short period in which to look for a new job locally rather than being immediately repatriated. However, the reality is that the chance of securing a new job locally is extremely small. Employers generally do not source locally to fill jobs that are customarily staffed by migrant workers; the practice is to go through recruiters and hire directly from source countries. Hence the affected workers, even when allowed by MOM to look for new jobs in Singapore, have no real job market to turn to. Secondly, MOM typically gives the workers only two weeks to secure new jobs, too short a time to be meaningful, with the effect that such workers are generally repatriated after the two weeks, to face severe financial difficulties.[5]

Rights adversely impacted: Articles 8 and 23, UDHR.

Recommendations: Work Permits should not be tied to specific employers. Workers should have the right to seek alternative employment and be given reasonable time (recommended: 2 months) to do so. Government policies should encourage the recruitment of workers already in Singapore. An employer who obtains an IPA for a worker, and then does not in fact employ that worker upon his arrival in Singapore, should pay compensation to the worker affected.

4.3 **Forced detention by employers and repatriation companies.** Despite the fact that such actions constitute a criminal offence under the Penal Code, and the government's assurances that it takes seriously cases of employers and their agents physically detaining workers in order to facilitate their repatriation or prevent them from lodging complaints with the authorities, we still routinely see this practice occurring.[6]

Rights adversely impacted: Articles 3 and 8, UDHR.

[4] See http://twc2.org.sg/2014/11/05/bhuiyan-and-friends-defeated/ and http://twc2.org.sg/2014/10/24/big-hole-in-ground-dug-with-big-hole-in-workers-pay/ and http://twc2.org.sg/2014/03/18/who-prospers-in-this-salary-saga/ and http://twc2.org.sg/2014/11/05/bhuiyan-and-friends-defeated-part-3/

[5] See http://twc2.org.sg/2014/02/27/scammed-worker-given-only-six-months-to-recover-his-4500-loss/ and http://twc2.org.sg/2014/11/05/bhuiyan-and-friends-defeated-part-4/ and http://twc2.org.sg/2014/03/30/gripped-by-two-repatriation-agents-monjor-is-taken-to-airport/

[6] See http://twc2.org.sg/2015/05/17/did-the-police-even-know-they-were-visiting-a-private-prison/ and http://twc2.org.sg/2014/12/17/injured-hossian-hidden-away-in-locked-container/ and http://twc2.org.sg/2014/11/13/with-injured-knee-uzzal-crawls-under-barbed-wire-to-escape-company-jail/

Recommendations: The government should treat such detention as a serious criminal offence, pursue criminal charges against those who seek to detain migrant workers and actively publicise its enforcement actions in this regard.

4.4 **Approach of MOM in 'mediating' salary claims.** When an employee lodges a complaint over unpaid or under-calculated salary payments, the government adopts a 'mediation' approach without first assessing whether an offence has been committed under the EA or the Penal Code.[7] Although the Minister told Parliament on 11 May 2015 that all cases are now investigated, in our experience, the MOM launches into mediation without first establishing if the worker in question has been wronged. This process disadvantages the aggrieved worker, because if he/she has been wronged, the just outcome should not be a compromise settlement through mediation, but full payment of arrears with interest. The mediation-first approach is therefore unjust and misguided.[8]

4.4.1 TWC2 has seen several cases where during mediation, MOM officers have sought to persuade workers to accept far lower amounts than they are rightfully due[9]. Based on the cases we have seen, the typical settlement amounts to only a quarter to a half of what the worker is owed. Even if the employers are later prosecuted the workers did not have a right to the full amount since the prior compromise settlements were considered 'full and final'.[10]

4.4.2 Investigations are often stymied by lack of documentary evidence. Not having an entitlement to pay slips or to payment through bank transfers means that in many instances workers are unable to prove their salary-related claims.

4.4.3 Furthermore, MOM does not permit workers in salary disputes to seek alternative employment freely. The limited possibilities under the 'Temporary Job Scheme' involve low-skill jobs (eg in sanitation and agriculture), unsuitable to many better-skilled workers. The lack of job mobility (see 4.2 above) denies workers access to income to cover basic needs and undermines the negotiating position of workers in mediation sessions.

Rights adversely impacted: Articles 7, 8, 23 and 25, UDHR.

Recommendations: The government should make it mandatory for employers to issue pay slips and pay salaries through bank transfers. Investigations should be expedited and mediation (if any) should not commence until investigations are complete. Meanwhile, workers should be free to seek alternative employment.

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[7] Refer to the Penal Code's provisions in relation to 'Cheating'

[8] See http://twc2.org.sg/2014/12/28/genius-engineering-part-3-nearly-100-skilled-electricians-lost/ and http://twc2.org.sg/2014/11/29/contractor-folds-220-workers-likely-to-lose-out-on-salaries/

[9] See http://twc2.org.sg/2014/11/05/bhuiyan-and-friends-defeated-part-2/

[10] See http://twc2.org.sg/2014/07/27/woolim-part-4-employer-pleads-guilty-fined-36000/ -- an instance when MOM commenced proceedings against the errant employer only after TWC2 publicised the case.

4.5 **Ineffective inquiry regarding work-place injuries.** Although WICA provides a number of worker rights in connection with a workplace injury, the initial process of determining whether an injury is work-related is prolonged and at times defective. Firstly, it takes months, during which the worker's right to medical treatment under WICA insurance is suspended. Secondly, MOM allows parties to object to the validity of the claim almost up to the end of the process (which could be more than 12 months after the accident), by which time valuable evidence held by the employer may have vanished. Thirdly, with Work Permits tied to an employer, and without the right to job mobility, fellow employees (even Safety Officers) who witnessed the accident are easily coerced by the employer into denying that an accident occurred at work. Many injuries are thus unjustly decided to be non-work-related, thus depriving workers of their rights[11].

Rights adversely impacted: Articles 8 and 23, UDHR.

Recommendations: Safety Officers should be independent of the employer[12]. Job mobility must be assured to Work Permit holders. An employer's objection to validity of a claim must not be entertained more than one month after lodgement of the claim and MOM must make a determination regarding validity within 3 months. Medical care should not be suspended pending enquiry about validity, but rather paid out through the medical insurance coverage which all employers are required to hold for their employees (separate from WICA insurance).

4.6 **Insufficiently robust tribunal process.** When parties to a dispute regarding salary or injury claims are unable to reach a settlement, the matter is referred to the Commissioner of Labour in a hearing called 'Labour Court'. Migrant workers are severely disadvantaged in these proceedings:[13] they have to argue their cases alone, without any legal representation or NGO support; the proceedings are held in private and in a language foreign to them; there are no clear rules of evidence; and there are reports that forged evidence tendered by employers has been relied upon by the court.. Finally, there are no written grounds of decision provided by the Commissioner, making it hard to appeal the findings.

Rights adversely impacted: Article 8, UDHR.

Recommendations: Workers should be permitted to nominate a prescribed number of persons present to assist and speak for them in all relevant conferences and hearings. Hearings should be open to the public. Written grounds of decision should be provided. Robust rules of evidence should be introduced.

4.7 **Non-enforcement of Labour Court awards.**[14] The process for enforcing a Labour Court order involves further applications to the Magistrates' Courts and obtaining a writ of

[11] See http://twc2.org.sg/2014/05/17/where-the-nose-leads/ and http://twc2.org.sg/2015/05/01/bees-want-to-kill-me/ and http://twc2.org.sg/2014/02/18/alams-disappearing-accident/

[12] TWC2 recommends that Safety Officers should not be employees of the construction contractor, but be employees of independent safety companies the same way that independent auditors come from outside the company.

[13] See http://twc2.org.sg/2014/12/28/genius-engineering-part-3-nearly-100-skilled-electricians-lost/

[14] See http://twc2.org.sg/2014/12/28/genius-engineering-part-3-nearly-100-skilled-electricians-lost/

seizure and sale. Upfront bailiff charges (approximately $5,000) are unaffordable to low-wage migrant workers, especially when experience has shown a very low chance of success. No other route for enforcing payment of awards has been instituted by the government.

Rights adversely impacted: Article 8, UDHR.

Recommendations: Failure to honour a Labour Court order should be a criminal offence with the penalty of imprisonment. Directors and officers of companies should be held personally liable. The government should set up a fund to ensure that workers are paid out in cases where the responsible employer fails to comply with the Labour Court order.

4.8 **No right to work or social support during WICA process.** Under WICA, an injured worker is entitled to medical leave wages within the first 12 months after the accident, but only for the period of time certified by a doctor as necessary for his recovery. However, the worker is prohibited from working for the duration of the WICA determination process (which may stretch beyond 12 months). When the period of medical leave is over, or when the case has exceeded 12 months, the worker is left with neither the right to seek employment nor any social support,[15] yet must remain in Singapore until the matter is finalised.

Rights adversely impacted: Articles 8, 23 and 25, UDHR.

Recommendation: The government should set up a fund to provide financial support to those not entitled to medical leave wages, until the WICA process is concluded.

5. Systemic and structural factors of concern

5.1 Singapore's legal regime for the employment of migrant workers is based on an employer-sponsor model – similar to the 'kafala' system practiced in some Middle East countries and often criticized by human rights experts. The employer has a great deal of power over many aspects of the worker's life in Singapore including, significantly, the absolute discretion to deny the worker the opportunity to change jobs by simply refusing to consent to a 'transfer'. A worker's employment can be terminated by the employer for no just cause at any time. Taking into account the large sums demanded from workers (in both source countries and Singapore) for placement and training and which reinforce the economic vulnerability of migrant workers, this system is conducive to serious exploitation and human rights abuses.[16]

5.2 The Singapore government's requirement that construction workers receive prior training in source countries exacerbates the problem. Training centres (many with ties to

[15] See http://twc2.org.sg/2014/12/11/chodawre-looking-at-maybe-a-year-more-of-enforced-unemployment/
[16] See http://twc2.org.sg/2015/01/18/with-each-job-here-saide-gets-poorer/

Singapore companies) charge thousands of dollars for 3-month courses with no guarantee of employment.[17]

5.3 In cases where deceptive recruitment practices are involved (including the 'contract substitution' scenarios noted in 4.1), the employer-sponsor model can enable forced labour to occur with relative impunity.

Rights adversely impacted: Article 23 UDHR and article 1, ILO Convention No 29.

Recommendations: In addition to our recommendations regarding job mobility (see 4.2 above), the government should overhaul the recruitment system in a way that centralises the recruitment of foreign workers through a State-run process[18] that does not rely on agents or other intermediaries and which features minimal administrative fees. Where training courses are required, the fees for these should be regulated and the government should ensure that the number and nature of training opportunities fairly reflect the market demand for workers.

6. Concluding remarks

6.1 Finally, in addition to the specific comments above, we urge the government to consider becoming party to important international conventions which impact upon the status of migrant workers including the ICCPR,[19] ICESCR,[20] and ICRMW,[21] as well as important ILO Conventions pertaining to migrant workers and related employment rights, including No 97,[22] No 189[23] and No 87.[24]

6.2 In short, it is time for Singapore to take greater steps towards ensuring that all members of its community are treated fairly and decently.

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[17] See http://twc2.org.sg/2014/11/22/a-visit-to-a-skills-training-centre-in-bangladesh/

[18] One possibility is to have a register of job applicants at Singapore's diplomatic missions abroad, where applicants must apply in person, without intermediaries. Singapore employers should be required to only hire from applicants in this register.

[19] *International Covenant on Civil and Political Rights,* opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

[20] *International Covenant on Economic, Social and Cultural Rights,* opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)

[21] *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,* opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003)

[22] *Migration for Employment Convention (Revised), 1949 (No 97)*, adopted 1 July 1949 (entered into force 22 January 1952)

[23] *Domestic Workers Convention, 2011 (No 189)*, adopted 16 June 2011 (entered into force 5 September 2013).

[24] *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87)*, adopted 9 July 1948 (entered into force 4 July 1950)