

A DIGNIFIED LIFE FOR ALL:

SUBMISSION TO MINISTRY OF MANPOWER

SECOND REVIEW OF THE EMPLOYMENT ACT Chapter 91

Introduction

1 We welcome the Ministry of Manpower's (MOM) consultative approach in its review of the Employment Act (EA) , Phase 2, with a view to protect the well-being of vulnerable workers, particularly those in non-traditional work arrangements.

2 We note that the Phase 1 review has been completed, with the Employment, Parental Leave and Other Measures Bill currently being considered in Parliament. The Phase 2 review is even more crucial as it deals with protecting the rights of vulnerable sectors of the workforce. MARUAH is glad to note that MOM also seeks greater protection for the vulnerable and the marginalised in our community that include persons with disabilities (PWDs)¹, especially those with mental illnesses; contract workers for daily services such as cleaning, security and maintenance, and foreign migrant workers.

3 The EA stipulates basic minimum standards, which employers have to ensure and provide for its workforce. Besides the EA, Singapore also has other obligations through provisions from international law to ensure that the rights of workers are safeguarded. Singapore observes the principles of the Universal Declaration of Human Rights (UDHR), has ratified the Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Singapore has also ratified 23 International Labour Organisation (ILO) Conventions². The ILO resolution concerning decent work and the informal economy offers guidelines for the government, the unions and the community on meeting the needs of informal workers.³ MARUAH urges MOM to ensure

¹ Singapore ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2012 and is obliged to exercise the articles within the CRPD, specifically articles 26 and 27 which are employment-related.

² http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103163

³ http://www.ilo.org/public/libdoc/ilo/GB/285/GB.285_7_2_engl.pdf See paragraph 31 to 34.

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compliance with its international commitments in this Phase 2 review. MARUAH reiterates on key aspects of these commitments here:-

- a) The UDHR urges the State to adhere to certain basic commitments on the rights of workers. These obligations are laid out in articles 23, 24 and 25 of the UDHR and include anti-discrimination measures, the right for workers to form and join trade unions, the workers' right to rest and leisure and the right to security in the event of unemployment.⁴
- b) In the CRPD, articles 26 and 27 requires the State to prohibit discrimination against PWDs, to ensure equal treatment in terms of just and fair working conditions and remuneration, to promote educational and professional advancement opportunities including providing reasonable accommodation at the workplace for all PWDs.⁵
- c) Singapore is also a member of the ILO, an inter-governmental body whose work premises on respecting *fundamental principles and rights at work* in order to ensure all sections of society benefit.⁶ Singapore is signatory to six of its eight fundamental conventions, which protect workers. These Conventions are:
 - i) Forced labour Convention, 1930 (No. 29)
 - ii) Right to Organise and Collective Bargaining Convention, 1949 (No. 98),
 - iii) Equal Remuneration Convention, 1951 (No. 100)
 - iv) Minimum Age Convention, 1973 (No. 138)
 - v) Abolition of Forced Labour Convention, 1973 (No. 138)
 - vi) Worst forms of Child Labour Convention, 1999 (No. 182)

4 Singapore has signed on to other ILO Conventions such as the ILO Tripartite Consultation Convention No. 144, Maritime Labour Convention and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).⁷ These commitments are positive steps towards protecting the workforce but are only useful if sufficiently domesticated through national laws, enforced and implemented well. We

⁴ <http://www.un.org/en/documents/udhr/>

⁵ <http://www.un.org/disabilities/convention/conventionfull.shtml>. The State does not hold any reservations towards articles 26 and 27 (http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-15&chapter=4&lang=en).

⁶ <http://www.ilo.org/asia/about/lang--en/index.htm>

⁷ <http://www.ilo.org/asia/countries/singapore/lang--en/index.htm>

have listed some ideas on how Singapore can take positive steps towards fulfilling these commitments in our “Main Recommendations” section.

5 However MARUAH also notes reservations made by the State on some of these Conventions and the lack of ratification on key Conventions that can ensure that the human rights of all workers are protected. As such MARUAH urges MOM to review and progressively work towards fully ratifying all eight fundamental ILO Conventions – including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Discrimination (Employment and Occupation).Convention, 1958 (No. 111).⁸ In addition the State also needs to remove the reservations made on CEDAW, CRC and on CRPD.

MARUAH makes the following as detailed recommendations.

6. Main recommendations

A) Contract work

- i. Define the term “contract work” further, taking into account how contract workers are being used in different industries. The needs of the industry must be balanced with other factors such as the impact non-traditional work arrangements can have on the career progression, income security and social security of young people who are just entering the workforce.
 - There should be a mandate on the proportion of traditional vs. non-traditional work arrangements in a given company depending on industry to avoid “exploitation” of labour. [as highlighted in MOM’s Annex A1 on Term Contract Workers, fifth bullet]
 - Ministries and Statutory Boards hire individuals on a contract basis but are not covered under the EA. This exposes them to fluctuations in the job market and vulnerability of social security status. It also hinders the state

⁸ <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

of progression within the job. The rights of these workers need to be protected as well.

- ii. Ensure income security and social security for workers under contract.
 - Termination or renewal of contract needs to come with sufficient notice for the worker.
 - Employers should not be allowed to continuously renew contracts of the same worker without an equal raise in remuneration, if he/she is deserving of the increase.
 - Deductions should not exceed 50% of salary as stated in Section 32 of the EA; the percentage should be further reduced, especially for low-income earners.
 - There has to be greater regulation as well as penalties to ensure that employees are remunerated fairly at the end of the term of contract, without excessive and unnecessary deductions from their salary.
- iii. Establish a mechanism or governance body to regulate, enforce, ensure that contract jobs do not become a mainstay across the different types of work and to assist in dispute resolution.
 - It is unclear who is the authority in relation to contract work. Some national-level guidelines are needed to ensure that across industries there is some consistency in identifying contract work.
 - This body, which can be in the form of an ombudsman, should therefore be independent of MOM. Its main task should be to investigate and scrutinise potential abuse in the system
- iv. Educate on the available protection available for professionals, managers and executives (PMEs) on contract.
 - Protection for those in \$2.5K to 4.5K bracket should be extended to those PMEs on contract terms
- v. Workers have a right to have an institution whom they can raise any dispute for possible resolution, like the ombudsman model suggested above
- vi. Decentralised negotiations or mediation should be the first step in dispute resolution particularly for industries that may be prone to disputes and have a

poor track record with regard to employee welfare. Some examples include construction, cleaning, and landscape maintenance industries. Medical benefits need to be made available to those in all categories of informal employment. The current portable medical benefits scheme⁹ takes into account the reality that people do change employers and it encourages employers to increase the portability of inpatient and hospitalisation benefits. Those in contract work and other informal arrangements are all the more susceptible to changing employers and it is important that a similar scheme be made available to them.

B) Outsourced Workers

- i. Improve their bargaining power by providing certification courses or skills upgrade to go up the pay-scale, especially for cleaners, etc.
 - o Alternatively, these certification courses may be pegged to a monetary benefit for both employer and employee.
- ii. Regulate the bidding system on procurement of services by ensuring a minimum wage is secured for workers in a particular industry, as opposed to compromising their well-being by a ‘race to the bottom’ by lowering worker’s wages.
- iii. Ensure that companies have set aside a principal amount to provide for the wages of outsourced workers.
- iv. Legislate “due processes” to make transactions transparent and allow for workers to garner bargaining power through the formation of a union or association.

C) Freelance Workers

- i. Expand the current working definition of a “freelancer” to an independent “contracted worker” so that protections under the EA can be extended to them as well.
- ii. Provide resources on contract writing and negotiation skills training for freelancers to equip themselves with the “right” information.
 - o MOM can set up a legal aid resource online to offer legal education of contract writing, negotiation, etc. for new or experienced freelancers.

⁹ <http://www.mom.gov.sg/employment-practices/medical-benefits/Pages/medical-benefits.aspx>

- There is currently little that a freelancer can do, in the event of non-payment or discrimination. We suggest that a dispute resolution body be set up to mediate disputes between freelancers and their employers.

In the case of contracts exceeding \$2,000, there should be a clear and cost effective way for freelancers to obtain payment. This would be akin to how CASE is able to provide assistance to dissatisfied consumers.

D) Dispute resolution

- i. A Whistleblower Act should be enacted to enforce :
 - a) On Anti-discrimination and sexual harassment
 - b) Compliance on Definitions of Contract Workers
 - c) On Transparency of transactions
 - d) On abuse of worker's rights

E) Development of the Non-Traditional Workforce

- i. Workers in non-traditional work arrangements should be supported in the formations of associations for mutual support & learning. MOM should recognise that these associations can have a significant impact on the development of employees in the sector. Notably, Article 23 of the UDHR¹⁰ provides for the right to form unions for the protection of an employee's interests and this is echoed in Article 27 (2) of the ASEAN Human Rights Declaration¹¹.
- ii. More needs to be done to protect marginalised groups such as PWDs, those with special needs or workers who risk being sexually harassed. Assistance should be provided to these individuals to understand the work arrangements, requirements and obligations of both parties under contract as well as their avenues for recourse in the event of dispute or discrimination.
- iii. Incentivise skills upgrading and professional development for all members of the workforce.

¹⁰ <http://www.un.org/en/documents/udhr/>

¹¹ <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

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- Skills development and professional training or certification should not be limited to those in white collar or permanent jobs, it is something that has to be extended to members of the non-traditional workforce. This will improve the productivity and standard within the respective industries and empower this often marginalised group to work towards developing themselves and bettering their skills. There should also be incentives for employers to send their workers for training and development.

Conclusion

The bulk of non-traditional workers usually come from existing socially marginalised groups such as PWDs and the elderly. This, coupled with a lack of adequate holistic support, has meant that many are not living a life with dignity. For example, many menial jobs are taken up by the elderly because of lack of choice and the overemphasis on paper qualifications. These jobs offer piecemeal or lower wages which often are not sufficient in protecting these individuals socio-economically. Furthermore, means-based testing in healthcare subsidies for instance might jeopardise these groups further by labelling them competent of caring for themselves when the reality might be far from it. Other developed countries have developed a concept of decent work conditions for all workers. While the number of workers on non-traditional work arrangements are on the rise, we ask that governance be heightened to ensure that contract work is not used as an excuse or loophole, and that workers are being trained to be employed on permanent contracts and that workers earn living wages and have social security. These conditions are embedded in the ILO Conventions, in the UDHR and the ASEAN Human Rights Declaration. Making the amendments to the Employment Act to factor in the rights of such workers is a step in the right direction and we commend MOM for this initiative and hope to see a sincere effort in meeting their needs.