

## 3h: Labour

### Preamble

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Malaysia's labour laws are a product of the former British colonial government's efforts to eliminate militant communists during the era of the post-war labour movement. The Trade Unions Ordinance 1940, in particular, had been revised a few times (up until 1950) to mandate the registration of trade unions and their separation into the categories of trade, industry and occupation, so as to divide and weaken the general unions supported by the people.

Post-independence, the Malayan government replaced the Ordinance with the Trade Unions Act 1959 but retained its restrictive provisions. Legislative suppression continued after the formation of Malaysia with the enactment of the IRA 1967, which was passed based on the restrictive features of the Trade Unions Act. Yet another piece of legislation, the Employment Act 1955, enacted before independence, contains many discriminatory features and lacks sufficient safeguards for workers to be protected against forced labour.

On top of legislative restraints to their rights, workers in Malaysia face an economic crunch. The privatisation of public services that took place in the 1990s led to the contract system being imposed upon workers employed in the lowest rungs of these services. The contract system for support services (e.g. cleaners and guards) in public premises (e.g. schools and hospitals) lopsidedly benefits the contractors, and over the years, this has resulted in the deterioration of treatment of and working conditions for service workers subsumed under the system—for example, they have lost benefits and basic labour rights such as annual increment and job security, as they are employed by private entities with a three-year turnover. They also do not have medical leave or annual leave—should they wish to take leave, they themselves must bear the financial cost of compensating the salary of the replacement worker during the duration of their leave. Malpractices are rampant across the country; countless cases abound of employers not contributing to the Employees Provident Fund and Social Security Organisation, not paying overtime rates adequately, unlawfully cutting wages, and hiring workers exceeding the retirement age, among others. The COVID-19 pandemic has exposed this broken system, as not only were these service workers not recognised as front-liners and given their dues in benefits and protection

such as personal protective equipment, they were also subjected to heavier workloads. The current system also favours cronyism and is manipulated by certain corrupt political elites to reward political loyalty. The procurement process is non-transparent and there is no accountability. Dependence on contractors is supposedly justified in the name of cost-saving, efficiency and service quality upgrade.

## I: Right to Freedom of Association

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The Trade Unions Act must be a law that promotes and protects the rights of all workers in all trades, regardless of nationality, gender or occupation, to defend their rights to form a trade union of their choice. Currently this law restricts the formation of trade unions and excludes many workers from forming and joining trade unions.

### **1. Amend the Trade Unions Act 1959 to remove barriers to establishment of organisations and strengthen the role of the Judiciary over the Executive.**

- i. Remove the restriction that trade unions can only register in accordance with their trade, industry and occupation, and lower the threshold of amalgamation of unions.
- ii. The powers of the Director General of Trade Unions should be restricted to registering unions and other administrative tasks.
- iii. If the government fails to respond to an application for registration of a trade union within 30 days, the union is deemed registered.
- iv. Suspension of unions should be referred to the courts.
- v. The legal provision for strikes should be in accordance with international labour standards.
- vi. Non-citizens should be given the right to become union officials after they are legally employed for one year.
- vii. Unions must be able to affiliate through general meeting without having to first seek governmental approval.

(Ng Yap Hwa, Labour Law Reform Coalition, Policy Town Hall Meeting, 3 October 2021)

## **2. Amend the IRA to remove all obstacles to workers' freedom of association and assembly.**

- i. Remove the restriction under Section 9(1) of the IRA 1967 that trade unions can only seek recognition from employers in accordance with employee categories, such as executive, managerial, confidential and professional.
- ii. Amend Section 9(4A)(b) of the IRA, which covers the powers of the Director General to verify the percentage of worker support for the trade union, to ensure that the result is decided by the number of votes cast, whether for or against the union, rather than by factoring in the total number of workers, i.e. by counting the number of uncast votes as a 'vote' against the union.
- iii. Amend sections of the Act that regulate strike and picket practices to be aligned with international labour standards.

(Ng Yap Hwa, Labour Law Reform Coalition, Policy Town Hall Meeting, 3 October 2021)

## **II: Right to Work, Benefits & Safer Workplaces**

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“Decent work for all” is a guiding principle of the ILO that is mainly concerned with the availability and provision of employment under conditions of freedom, equity, security and human dignity. It sets the standards for labour practices and ensures the interests of all workers are protected, irrespective of their nationality. Decent work is defined by the ILO as “work that is productive, delivers a fair income with security and social protection, safeguards basic rights, offers equality of opportunity and treatment, prospects for personal development and the chance for recognition and to have your voice heard”. If work is decent for all, there would not be problems of local workers refusing certain types of work that migrant workers are only too willing to take up to the extent that they are exploited over it.

## **3. Amend the Employment Act 1955 to induce workplaces to adhere to decent work standards, as defined by the ILO.**

- i. Cover all workers, both local and migrant, as well as foreign spouses of Malaysians and refugees who are in employment, regardless of their salary level.

- ii. Amend the current legal definition of a workweek; reduce it from 48 hours to 40.
- iii. Provide for 98 days paid maternity leave and 7 days paid paternity leave.
- iv. Prohibit all forms of discrimination, such as gender, ethnicity, sexuality and age.
- v. Fully implement and enforce workplace codes of conducts to curb sexual harassment. These codes should include proper, clear-cut redress mechanisms for victims, and enforce strict penalties upon transgressors.
- vi. Repeal the provision for labour contractors.
- vii. Amend discriminative terms contained in the clauses in the First Schedule of the Act and replace “domestic servants” with “domestic workers”.

(Irene Xavier, Persatuan Sahabat Wanita Selangor, Proposal 3H-1)

#### **4. Abolish contract labour in public services.**

- i. Fully absorb support service workers in public premises as full-time government employees. Direct employment will guarantee these workers their rights and ensure that they receive the same benefits as other civil servants under direct employment, such as doctors and teachers.
- ii. Regulate the procurement process, including the appointment of board members, to ensure transparency.
- iii. Ban all subcontracting.
- iv. Embark on legal reforms, such as removing secrecy laws and recruiting external parties as monitors.
- v. Embark on operational reforms, such as blacklisting contractors who violate workers’ rights and enforcing cancellation of bond money from contractors as security payment for workers.

(Danial Hakeem, Jaringan Pekerja Kontrak Kerajaan, Proposal 3H-2)

#### **5. Ensure a better future for Malaysians in the low-income category through legislation that prioritises Malaysian workers.**

(The Tamil Foundation/Group of Concerned Citizens, Proposal 3H-3)

- i. Fill the labour shortage in the country through laws that regulate the hiring of local Malaysians in all categories of work, whether skilled, semi-skilled or unskilled.

- ii. Restrict the hiring of foreign workers to sectors which bear severe labour shortages without depressing wages of local workers.
- iii. Set up a government department that responds to labour shortages by reskilling and retraining local workers, especially Indian Malaysians, to meet these demands. Manage the movement of displaced plantation workers from the rural to urban areas by training and equipping them with new skills that are relevant for employment in the cities.

(Workers Union; The Tamil Foundation/EWRF, Proposal 3H-4)

## **6. Enforce labour laws to protect migrant workers from exploitation.**

(Irene Xavier, Persatuan Sahabat Wanita Selangor, Proposal 3H-1)