



KONGRES KESATUAN SEKERJA MALAYSIA MTUC

Memorandum to the YB Minister of Human Resources on the need to develop strategies to prevent exploitation and poverty

WORLD DAY FOR DECENT WORK 7th OCTOBER 2010

Leaders and members from 240 unions affiliated with the Malaysian Trades Union Congress joined millions of workers worldwide on October 7, 2010 to highlight **the impact of globalization on jobs and labour standards, its devastating effects on wages and living conditions.**

Government's stand on Decent Work

The Human Resources Ministry has endorsed and committed to promote the International Labour Organisation's (ILO) Decent Work Campaign.

WHAT IS DECENT WORK

Decent work was defined by the ILO as "work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men"

- In 2001, the concept was further developed. Embraced by a vast majority of the members, the 2001 Conference emphasized the need to apply a broader and more comprehensive approach to the fostering of decent work and social security in the emerging global labour markets. This shift of approach was enshrined in the four equally important and interrelated objectives of the Decent Work

Agenda, even further developed in the 2008 ILO Declaration on Social Justice for a Fair Globalisation, summarizing them as follows:

- Promoting employment by creating a sustainable institutional and economic environment
- Developing and enhancing measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances
- Promoting social dialogue and tripartism
- Respecting, promoting and realizing the fundamental principles and rights at work.

As indicated in the introduction, the four pillars pinpointed that the various aspects of human living conditions in different parts of the world – as well as the conditions for national and global governance – have become ever more interconnected as a result of globalization. Establishing the Decent Work Agenda as a method of organizing its programmes and activities, the ILO made it a platform for external dialogue and partnership and the Agenda soon became a center-piece in the international discussion about how to promote the social dimension of globalization.

It is clear that the ILO in particular saw a closer relationship with the other UN bodies as a precondition for the organization to succeed in its work. Recognition that the social aspects of the globalization has been overshadowed by the economic and financial advantages, lead to the formation of a World Commission on the Social Dimension of Globalization. The World Commission released its report in 2004, stating that the global imbalances, generated by the globalization, were “morally unacceptable and politically unsustainable”. The commission suggested a number of measures intended to provide developing countries greater influence and control over their own participation in the globalization process.

Basic questions about Decent work in our country.

1. Does every woman and man in our country have the opportunity to obtain work that enables them and their families to live a decent life?

The answer is a definite **NO**. Government would argue that everyone who wants to work, jobs are available: unfortunately most such jobs cannot be defined as decent work.

Until recently, Government has repeatedly dismissed MTUC’s persistent demand for minimum wage legislation by merely stating that market forces and demand and supply will determine the minimum wage rates and employers who fail to pay a fair wage rate will not be able to attract sufficient workers to meet their requirement.

Unfortunately Government, while rejecting MTUC’s call for a minimum wage legislation has intervened and flooded the country with millions of migrant workers, with low wages and poor working conditions. MTUC sees government’s action as a deliberate attempt to suppress wages.

2. Can everyone in our country join a union as they please?

Again the answer is **NO**. Although we have more than 600 registered unions in the country, hundreds of thousands of workers are not allowed to join an independent union of their choice.

3. Wages, Competitiveness and Decent Work

Wage is the key element in promoting decent work. Wages to an employee, is a crucial factor for sustaining quality of life.

(MOHR Policy Statement)

4. Social Dialogue for Industry Harmony

The main goal of social dialogue is to promote consensus building and democratic involvement among the government, employers and employees at the national and enterprises level. Successful social dialogue has the potential to resolve important issues, enrich good governance, advance social and industrial peace and stability and increase economic progress. By engaging in dialogues the social partners are also able to build dynamic and flexible labour market institutions that can contribute to long-term workplace stability and harmony.

For social dialogue to succeed the following conditions must be present i.e.:-

- Respect for the fundamental rights of freedom of association and collective bargaining;
- Strong, independent workers' and employers' organizations with the technical capacity and knowledge required to participate effectively in the dialogue process;
- Political will and commitment to engage in social dialogue on the part of all parties;
- Appropriate institutional support.

(MOHR Policy Statement)

5. Are trade unions in our country free to perform their work without outside interference and without restrictions on organizing, bargaining and striking?

The Trade Union Act severely restricts unions organizing activities. Government's policies severely restrict collective bargaining and contrary to the provisions of the Industrial Relations Act it is almost impossible for trade unions

to institute strike action in furtherance of unfair dismissals, discriminatory practices and Collective Bargaining.

Social protection strategies need to adjust to suit contemporary situations as many societies have experienced changes in economic growth and in the composition and structure of families. These changes undoubtedly present a strong case for the expansion of the existing social protection system.

(MOHR Policy Statement)

6. Do people in our country have protection from the loss or reduction of income due to unemployment, discrimination, or any other kind of financial hardship that may be of concern to society?

Government has designed the laws in such a way to allow employers to reduce income by as much as 50% with impunity. Government has done nothing to ensure that employers who retrench their workers are paid termination benefits as stipulated under the Termination and Lay Off Regulations.

Government's intensive campaign to introduce Productivity Linked Wage System is aimed to permit employers to legally reduce employees' income without acceptable reasons. In recent months Government has given a new meaning to PLWS by changing from Productivity Linked to **Performance Linked Wages**. This new meaning allows employers to reduce income based on company performance even to employees who achieve higher productivity.

7. Do trade unions and employers' organizations engage in social dialogue in our country and are they involved in tripartite discussions with the government and other authorities on matters relevant to them?

Yes, trade unions and employers' organizations do participate in tripartite consultation but Government often ignores trade unions' view point. In the name of globalization employers' demands and views dominate the industrial relations practices.

The amendments (February 2008) to the Industrial Relations Act is a clear example of employers' domination. MTUC has highlighted the effect of the new amendments which include:

- Removal of discretionary powers of the Industrial Courts which, thus far has played a prominent role in settlement of labour disputes and promoting industrial harmony;
- Union busting made easier;
- Promote indiscriminate removal of union activists

- Government has imposed a maximum on the quantum of compensation for workers subjected to unfair and unlawful dismissal: Often delayed as a result of government's inefficient disputes settlement machinery.
- Promote so called labour flexibility
- Allow employers to reduce wages and long established monetary benefits.
- MOHR's proposal to make further drastic changes to the Employment Act 1955, Industrial Relations Act 1967 and the Trade Union Act 1959 is seen as the worst in 40 years. The amendments, when passed, would completely remove security of tenure for thousands of workers in the country.

Effect of the proposed amendment:-

- **Dismissal cannot be challenged**

The amendment drawn up at the behest of Multinational Corporations and potential investors is deliberately designed to empower employers to employ workers on fixed term contract for as long as they please. Even workers who have ten years service on a contract basis will have no right to seek redress in the event of termination. This is a drastic change from the current law and practice which accords the right to all workers, irrespective of their salary levels and length of service, including probationers and those employed on a contract basis to challenge their dismissals.

Important precedents set by our courts to safeguard workers rights will no longer be applicable. Even workers rights guaranteed under the Federal Constitution are ignored.

- **Removal of safeguards:No more Sunday rest day with your family**

The amendments, when passed, will remove most of the safeguards existing over 60 years. Employers would be permitted to impose unreasonable working hours, change weekly rest days as they please.

- **Women can be forced to work at night**

New laws would remove the supervisory role of the Labour Department to impose conditions on employers who require women workers to work at night.

8. Do women have equal opportunities at work or in obtaining a job? Do they have adequate protection against discrimination in law and in practice?

To a large extent Government has made effort to eliminate discriminatory practices against women: But Government has refused to intervene to stop employers from compelling women workers to retire earlier than male workers. A glaring example is the practices enforced by the Government linked corporation the Malaysian Airlines.

9. Does our country support further promotion of Decent work within the scope of ASEAN?

Our country has persistently refused to take on board the Decent Work Agenda within ASEAN.

10. Does our country prioritize Decent Work in its development cooperation, including when allocating development aid?

Government has consistently maintained that core Labour Standards have no place in trade agreements.

11. Job Security and Income Security

In recent years, in the name of globalization and as incentive to foreign investors Government policies has converted regular and secure employment to contract and irregular work.

- In June 2007, multi million Ringgit profit making British American Tobacco terminated 16 of their employees from the maintenance department and appointed private contractors to bring in workers on contract to carry out their work. Although BAT's action is clearly in violation of the Code of Conduct for Industrial Harmony, the Director General of Labour refused to act on the unions' complaint of unfair labour practice.
- US based MNC Goodyear retrenched permanent workers and engaged contract workers to replace them. French MNC Lafarge terminated their permanent workers and replaced them with contract workers. Regretably in all the above cases YB Menteri, rejected the unions' appeal to refer the unfair and unjust termination to the Industrial Court.
- In Port Klang, both North Port and West Port employ more than 40% of the workforce through contractors: And private contractors often reject Malaysian applicants in favour of foreign workers.
- Government Linked Company, Malaysian Airlines has employed a number of private contractors at the expense of hundreds of long serving MAS employees.

The union believes that the contracting out of their core activities cost MAS more than their regular employees.

Promoting and Sustaining Employment

Employment security in the current economic scenario is a matter of concern to many especially the workers. Due to the highly competitive international market, employers sometimes have to implement strategic measures such as downsizing, outsourcing and restructuring of operations in order to remain competitive, and this has often resulted in the displacement of workers. The questions of job security versus employability has become a topic of much debate today. **(MOHR Policy Statement)**

12. Foreign Workers

Trade unions in the country have always been suspicious of Government's motive for flooding the country with millions of foreign workers in the last 15 years.

Although Government says that foreign workers are needed to fulfill labour needs MTUC has repeatedly asserted that Government's action is deliberately aimed to help major corporations to suppress wages and curb trade unions' pressure for decent work.

The Immigration Department Enforcement Director, Datuk Ishak revealed that **investors will not want unions to be formed in their establishments. Through outsourcing, it would be difficult for unions to be formed.**

Government's actions are clearly in breach of article 10 of the Malaysian Constitution and makes a mockery of the provisions of the Industrial Relations Act 1967.

In 1998, Government ratified the ILO Declarations on Fundamental Principles and Rights at Work: But their action seems to be in direct contradiction.

The new labour law amendments which came into force since February 2008 compels unions to organize foreign workers in order to secure union recognition but the Immigration Department continue to curb their right to join a union.

This again is seen as a conspiracy between Government and employers to deny union recognition and collective bargaining rights.

Q: Should foreign labour outsourcing be banned?

A: Outsourcing is the best solution for the government to manage foreign workers.

Q: Why?

A: There are two scenarios

One is that as companies get bigger, they will need more manpower and with outsourcing they can get workers in a more organized way.

Two, outsourcing is good as it will attract foreign direct investment. Investors will not want unions to be formed in their establishments.

Through outsourcing, it would be difficult for unions to be formed as the outsourcing company, and not the factory, would be the employer.

Datuk Ishak Mohamed, Enforcement Director Immigration Department

NST July 20, 2008

Strategies to Prevent Exploitation

We urge the Government to amend the Employment Act 1955 to:

- Provide for a minimum monthly salary of RM 900.00
- Require employers to obtain prior permission of the Director General of Labour before terminating employees on grounds of redundancy and or restructuring;
- Empower the director General of Labour to inquire into complaints of abuse of contract system and outsourcing to convert regular and permanent jobs to irregular and precarious work thus denying decent work; and
- Widen the scope to cover all employees including domestic workers;

Ministry of Human Resources (MOHR) should have a more prominent role:

- maintain a register of all employers who employ foreign workers and carry out statutory inspection on a regular basis in determining requirements and needs;
- in determining minimum wages
- and working conditions for all foreign workers including domestic helpers;
- to regulate and monitor all recruitments on government to government basis
- to ensure that the UN declaration on labour rights and workers rights under Article 8 of Malaysian Constitution are guaranteed.

Right to organize and Collective Bargaining

- and licenses of all recruiting agents should be abolished;
- until such time recruitment on a government to government basis is implemented all licenses for recruitment should not exceed one year and should be subject to renewal based on reports and recommendation of MOHR.

Right to organize and Collective Bargaining

The Trade Union Act 1959 should be amended to remove all legal restrictions and obstacles so that millions of workers in the country will be able to freely join a trade union and collectively bargain for better wages and working conditions.

It is now three years since the controversial amendments to the Industrial Relations Act 1967 came into effect. Contrary to our expectations, we have not witnessed any significant improvement in the time taken to resolve union recognition claims which is a pre-requisite for the right to collective bargaining.

Government should remove the ban on picketing during the pendency of recognition claim.