



TRANSIENT WORKERS COUNT TOO

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Submission regarding “Prevention of Human Trafficking Bill”

1 Introduction

1.1 Overview of Submission

As an organisation, we were very pleased to hear that Mr Christopher De Souza MP plans to table a private members bill, the ‘Prevention of Human Trafficking Bill’ (‘the Bill’) and we are grateful to have been given the opportunity to participate in public consultations in relation to the preparation of this Bill.

We believe that comprehensive legislation aimed at preventing human trafficking is clearly needed in Singapore and its rigorous enforcement would contribute greatly to deterring the abhorrent practice of ‘trafficking in persons’ (‘TIP’), a practice which preys upon some of the most disadvantaged and vulnerable people in our region and globally.

This submission is intended to summarise our views on key issues relating to the potential scope and terms of the proposed Bill. Broadly speaking, our comments address:

- (a) the definition of ‘Trafficking in Persons’ and the scope of related offences;
- (b) penalty provisions and evidentiary matters; and
- (c) victim protection and access to justice.

In the absence of a draft Bill to comment on, we have formulated our submission as a series of general suggestions for the drafters to consider. Where possible, our comments have been formulated with reference to public comments that have been made by Mr De Souza and members of the Singapore Inter-Agency Taskforce on TIP (‘the Taskforce’) in relation to the purpose and likely terms of the Bill.

You will note from the content of our suggestions that our key concern is to ensure that the Bill adequately addresses the heinous practice of labour trafficking as suffered by the people whose interests we as an organisation represent, namely low-paid migrant workers in Singapore (which includes both male and female migrant workers in all relevant employment sectors) and foreign fishermen who dock in Singapore. While we are concerned about all forms of trafficking that take place in Singapore, we have left it to other NGOs, who work more closely with victims of sex

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trafficking, to make recommendations with particular emphasis on trafficking involving sexual exploitation.

1.2 Labour trafficking should not be overlooked

First and foremost, we wish to stress our position that the Bill should aim to address all forms of trafficking with equal emphasis. We are concerned that the high profile of 'sex trafficking' in the media and public discourse should not lead to the abhorrent practice of labour trafficking in Singapore being ignored or given lesser priority. While trafficking for the purposes of sexual exploitation is indeed a very serious crime and should be eliminated, 'labour trafficking' is also an abhorrent practice which results in the serious abuse and entrapment of some of the region's poorest and most vulnerable people.

1.3 Vulnerability to trafficking: The role of deceptive employment practices, debt, restrictions on change of employment and forced repatriation

In order to provide context to many of our specific submissions, it is important to emphasise the significant role that certain key underlying factors play in the prevalence of labour exploitation and hence trafficking in Singapore, namely:

- a) deception in the recruitment and employment process;
- b) intermediary placement costs (leading to workers often being significantly burdened by debt);
- c) restrictions on change of employment by migrant workers; and
- d) the practice of 'forced repatriation' by employers and their agents.

Our concerns in relation to these factors are outlined in greater detail in our submission to MOM regarding the Second Phase review of Singapore's employment laws.¹ However, we feel that it is important to highlight some of the key issues in the context of the proposed Bill.

1.3.1 Deception in the recruitment and employment process

In our extensive experience working with migrant workers in Singapore we have observed that prospective migrant workers are routinely misled by recruiters about the terms of their employment once they go abroad: a significant number of prospective migrant workers are promised more favourable conditions than they will actually attain and they are told that they will face lighter workloads, shorter hours and better pay than they do, in fact, receive.

1.3.2 High placement costs and economic duress

The great majority of migrant workers also take on placement costs that lock them into a commitment to go ahead with migrating, prior to discovering the deception that they have been victim to. Such costs are usually funded by debt, often underwritten by workers' families. These costs and debt place workers at a grave disadvantage vis-a-vis their employers. With placement

¹ See 'Proposals – Second Phase Review of the Employment Act and the Employment of Foreign Manpower Act' October 2013 http://twc2.org.sg/wp-content/uploads/2013/10/2013oct_submission_final_v2.pdf [accessed 30 March 2014]



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debts ranging from a minimum of six months' earnings to over a year's earnings in many cases,² these workers are not free to opt out of the process of placement if they find that their job expectations are not realised, nor do they feel able to protest at their treatment, however justifiably aggrieved they may feel. The coercive character of such debt obligations must be recognised in order to tackle the problem of labour trafficking in any meaningful way. To clarify, we are not suggesting that the presence of high placement costs amount to trafficking per se, but rather that high placement costs can be a significant contributing factor in cases of labour trafficking.

In this regard, TWC2 has come across a number of cases where workers have been recruited into Singapore on the basis of a set of contractual terms ('Contract A') but soon after arrival, told to sign a new contract with significantly less favourable terms ('Contract B'). A worker who has paid high placement costs will typically accept the less favourable terms rather than risk being repatriated by his/her employer without having earned a cent, but is obviously only agreeing to do so as a result of economic duress. In our experience, the worker will then work under the terms of the new contract for a period of time before finally deciding to make a complaint about the unfairly substituted contract. When this occurs, MOM typically responds to the effect that because the worker performed work pursuant to the new contractual terms for a period of time, he/she must be taken to have accepted them and therefore has no right of redress under Singapore's employment laws. In the context of the proposed Bill and the TIP definition, recognition of the role of high placement costs and resulting economic duress is necessary in order to illuminate the coercive nature of the resulting employment arrangement and the rigorous application of the TIP definition in cases of alleged labour trafficking.

1.3.3 Restrictions on change of employment by migrant workers

It is important to note in this context that at present work permit holders cannot freely change employers. Currently, domestic workers can transfer to a new position provided they have the permission of their current employer (which the employer can choose to withhold for any reason) and obtain MOMs approval. Migrant workers in other sectors have traditionally not been allowed to transfer, even with a 'release' from their employer, though we understand that MOM is beginning to allow transfers in certain limited situations on a discretionary, case-by-case basis.

This may seem like a discrete 'employment law' issue but, on closer examination, this restriction is very significant to the issue of trafficking to the extent that it creates a regulatory environment which inadvertently enables labour trafficking to take place and continue in Singapore. The restrictions preventing migrant workers from changing employers inadvertently facilitate the

² Please refer to our 2011 study of repatriated Bangladeshi workers, which can be found at <http://twc2.org.sg/2012/08/12/worse-off-for-working-kickbacks-intermediary-fees-and-migrant-construction-workers-in-singapore/> [accessed 30 March 2014]

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employment of migrant workers in severely disadvantageous conditions, which can include labour trafficking. Lifting these restrictions and allowing migrant workers to seek new employment in Singapore without their prior employers' consent (subject, of course, to MOM's approval and control of total numbers of migrant workers), would reduce the demand for exploitative labour and would make combatting labour trafficking easier. Workers would be far less vulnerable to exploitation as they would be free to transfer to another employer who offers more acceptable 'market conditions'. There would be less incentive for employers to recruit workers under exploitative conditions as they would be unlikely to be able to retain such workers and the 'business model' of overseas middlemen, who are often key culprits in deceptive employment practices, would be significantly damaged. Empowering workers to help themselves out of exploitative arrangements would break the insidious links between deception, debt, vulnerability and trafficking.

In this regard, administrative policies should be implemented to limit the availability of fresh overseas hires (eg migrant workers recruited overseas) as opposed to migrant workers already in Singapore looking for new positions. Limiting the availability of fresh hires would help to improve the chances of obtaining a new job for workers already in Singapore. This would help to give substance to the proposed right of migrant workers to change jobs, a right which would reduce the imbalance of power between employer and employee that currently provides ripe conditions for trafficking practices. It would also align with the victim protection measures that we have suggested in paragraph 2.3.1(g) below: That giving a victim of trafficking a chance to seek employment is a critically important victim protection measure.

Simply giving workers a right to seek a new job in Singapore may not be sufficient to redress the power imbalance that exists between employers and prospective migrant workers if employers can, without adverse consequences, discriminate against hiring workers who are already in Singapore. TWC2's experience is that less-honourable employers prefer to hire fresh workers rather than workers who are already in Singapore, because they believe that the workers who are already in Singapore 'know the law' and are cognisant of their rights. This in itself is a red flag indicating a need for the government to counterbalance the tendency of some private employers to act in ways that undermine broader social objectives, including that of combatting trafficking.

1.3.4 Forced repatriation of migrant workers

Related to the above issues is the reality that migrant workers can be readily repatriated by their employers, with little or no notice, in circumstances where workers may have serious claims against their employers (eg for salary, unfair dismissal, injury and trafficking).³ While we are aware that MOM is endeavouring to put in place mechanisms to prevent this occurring, at the present time, our experience is that most workers do not believe that they have any rights to resist repatriation and most employers believe that they have complete power to decide when a worker should be repatriated, sometimes even utilising the services of repatriation companies or other persons to physically constrain and confine the worker before taking them to the airport under threat of physical or other forms of abuse.

³ Refer to the following link for a recent case study involving an attempted repatriation <https://twc2.org.sg/2014/03/30/gripped-by-two-repatriation-agents-monjor-is-taken-to-airport/> [accessed 30 March 2014]



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1.3.5 Conclusions in relation to vulnerability to labour trafficking

Clearly the issues raised above relate to features of Singapore’s employment legislation and the enforcement of such legislation and are not within the exclusive purview of the Bill. However, the nature of the public consultation and related media commentary has encouraged us to believe that the proposed Bill has the support of the Singapore government as a whole. Accordingly, we appeal to Mr De Souza, and those assisting him in the task of preparing the Bill, to raise these issues with other relevant organs of government in order to address some of the systemic factors that contribute to the problem of labour trafficking. In particular, we appeal to the drafters to advocate on the merits of amending Singapore’s employment legislation: (a) to enable migrant workers to seek new positions without the consent of their employers (subject to MOM approval); (b) to implement administrative policies to limit the availability of ‘fresh overseas hires’ of migrant workers and to encourage employers to employ migrant workers who are already working in Singapore; and (c) to clearly prohibit involuntary confinement and forced repatriation by employers and their agents. Furthermore, to the extent that existing laws may prohibit elements of such conduct (for example relevant provisions of the Penal Code which prohibit ‘wrongful confinement’), we urge relevant government stakeholders to ensure the rigorous enforcement of such laws.

2 Specific Submissions

2.1 Definition of ‘trafficking in persons’ and related offences

2.1.1 Bill should utilise the UN definition in its entirety

We note that the working definition of ‘trafficking in persons’ published as part of the current public consultation utilises the first part of the definition provided by the UN Protocol⁴ but does not include the second part of the UN Protocol definition which states that “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

We regard this final sentence in the TIP definition provided in the UN Protocol as a vital component of the definition as it provides illustrative examples of different forms of exploitation that are intended to fall within the concept of TIP (provided, of course, that the other elements of trafficking are also met). Without the inclusion of such guidance in the definition of TIP, we are concerned that one type of trafficking (for example, sex trafficking) may become the focal point of the new law, to the exclusion of other forms of trafficking, such as labour trafficking. The risk is that investigators, prosecutors and judges may be reluctant to identify TIP in cases that do not correspond to the archetypal ‘sex trafficking’ case but which nevertheless meet all of the necessary elements of the

⁴ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (Signed 15 November 2000, entry into force 25 December 2003)

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definition. Accordingly, we urge the drafters of the Bill to utilise the TIP definition provided by the UN Protocol in its entirety.

2.1.2 Need for further guidance on application of definition

We submit that it would be very beneficial for some of the key terms used in the TIP definition to be elaborated upon either in the Bill or its implementing regulations. For example, we would like to see reference to ‘deceptive recruitment’, ‘indebtedness’ and ‘threats of repatriation’ listed as examples of the means by which victims are kept in exploitative situations. This could be achieved, for example, through the use of a sub-section which requires that in applying the TIP definition, “regard shall be had to all of the circumstances of the case including, without limitation: (a) the extent to which the alleged victim is burdened by debt or financial penalties in connection with his/her predicament; (b) the extent to which the alleged victim has been deceived as to significant aspects of his/her conditions of employment (including any evidence of contract substitution) (c) the extent to which a person has exercised control over an alleged victim by threats of repatriation; (d) the extent to which a person has exercised control over an alleged victim by threats of exposing the victim to authorities; (e) the extent to which the worker has been physically confined or subjected to surveillance” etc. In this regard, we encourage the drafters to refer to the ‘indicators of trafficking’ developed by the International Labour Organisation (‘ILO’).⁵

In relation to use of confinement and surveillance in connection with trafficking, we note that employers frequently curtail workers’ access to means of communication in order to prevent workers from seeking help. This is especially the case for domestic workers (who are often confined to the home of their employer) as well as some male workers who are sometimes physically locked into a building to prevent them from seeking help while their repatriation is being organised by the employer (refer to 1.3.4 above).

In relation to the role of debt and punitive financial conditions in trafficking, we note that there are essentially two categories of debts/financial penalties by which migrant workers in Singapore are frequently burdened. Firstly, there are the loans taken by workers to pay for hefty recruitment and job placement fees (refer to 1.3.3 above). Secondly, some employers find mechanisms to create new debts and financial penalties once a worker is in Singapore to trap migrant workers in exploitative employment situations. The following are examples of this second category of debt/financial penalty: (a) employers imposing fines on a worker in the event that the worker wishes to quit his/her job; and (b) employers imposing financial penalties, sometimes with associated debt obligations, in the course of employment (eg fines for mistakes made by workers, exorbitant fees for basic goods and services such as food and accommodation). There are obviously financial incentives for many of these practices (eg to reduce salary payments) but they are also used as an effective tool to restrict the freedom of workers to lodge complaints, change jobs etc. In cases where debts are created, the employer and/or intermediary agents will use coercive measures to ensure that the worker pays or works-off the debt before the worker is free to leave his/her employment.

⁵ International Labour Organisation ‘Operational Indicators of Trafficking in Human Beings’ September 2009 http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf [accessed 30 March 2014]



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Finally we note that, aside from the use of ‘debt’ as a way to control workers, some employers withhold amounts from workers’ salaries under the guise of ‘compulsory savings’ but then tell workers that the worker must forfeit those funds if they quit their job. This is another example of how employers can use the financial vulnerability of victims to prevent workers from making ‘free’ choices and exercising their rights.

2.1.3 Clarification of potential applicability to Foreign Domestic Workers

We are concerned about the somewhat mixed messages being given about the application of the proposed laws to foreign domestic workers (‘FDWs’). On the one hand, Mr De Souza has indicated that FDWs would be unlikely to be protected under the terms of the proposed law but then, later stressing his commitment to the concept of equality before the law, indicated that they would not be specifically excluded from the law.

To elaborate, during the first public consultation session on 19 March 2014, Mr De Souza indicated that he didn’t see domestic workers benefitting from the Bill on the basis that (i) he doesn’t want the law to turn 200,000 odd Singaporean employers into ‘people traffickers’; (ii) domestic workers have protection under other legislation such as the Penal Code, the Women’s Charter and the Employment of Foreign Manpower Act (‘EFMA’); and (iii) he doesn’t want the definitions in the Bill to be ‘diluted’ by being drafted to respond specifically to FDW concerns.

In response to the first of Mr De Souza’s concerns (making criminals out of Singaporean employers of FDWs), Mr De Souza has pointed out that the definition of ‘trafficking in persons’ has numerous elements to it. It is not an easy definition to satisfy in the abstract and it is particularly hard to prove beyond a reasonable doubt in the context of a criminal trial. Accordingly, allowing the TIP definition its natural and full interpretation is not likely to make criminals of 200,000 Singaporean employers. The fact that some Singaporean employers restrict the freedom of movement of FDWs employed by them is a very problematic human rights issue in itself, but is not likely, without the presence of other factors (such as force, deception or abuse of power and the purpose of ‘exploitation’) to be enough to satisfy the TIP definition. If, on the other hand, all of the elements of the TIP definition can be made out (and again, we stress, this represents a high bar to jump), then the consequences provided under the new law should follow. In this regard we note that TWC2 has always been very careful to distinguish between the more restrictive and exploitative circumstances of many domestic workers’ employment conditions and the more narrowly defined concept of ‘trafficking in persons’.

In relation to the second of Mr De Souza’s concerns (that FDWs are protected under other existing laws), we would like to point out that the stated rationale for enacting a new law on people trafficking, in the words of the briefing paper for the public consultation, is ‘to ensure that Singapore’s legislation adequately addresses the complexity of TIP crimes and that penalties are commensurate with the crimes...different pieces of legislation were enacted for different purposes

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at different times and not to address TIP as a specific phenomenon. This can result in gaps and inconsistencies in how we deal with TIP'. We fail to see why this reasoning would not apply equally to the potential trafficking of FDWs.

In response to the third concern (diluting the law by including FDW concerns), it is important to clarify that we as an organisation do not suggest that the definition of TIP should be modified or diluted to include concerns specific to FDWs but merely that the law-makers and government recognise that FDWs can in some cases be victims of trafficking within the terms of the definition and that appropriate policies and guidelines are put in place to identify and respond to these instances within the terms of any new law.

Finally, we encourage those engaged in public discourse on this issue to seek to ensure substantive equality before the law. When law-makers and government agencies publicly voice doubts as to the potential applicability of the Bill to FDWs, they run the risk of inadvertently legitimising the development of an investigation/enforcement culture which turns a blind eye to potential cases of trafficking which involve FDWs. They also risk sending a message to would-be perpetrators and victims that the new law will not apply to such cases, which may encourage perpetrators to think that their conduct is not 'trafficking' (and therefore permissible) and deter potential victims from reporting potential trafficking cases to the authorities.

2.1.4 Who will be caught by offences?

We submit that any person or entity involved in a TIP offence should be capable of being prosecuted under the new law. The Bill should encourage Singaporean authorities to exercise Singapore's jurisdictional reach to its fullest, including in cases where the victim is not in Singapore but the alleged perpetrator within Singapore's jurisdiction (for example, Singapore-based manning agents involved in the trafficking of fishermen as discussed further in paragraph 2.3.6 below).

As drafted, the proposed trafficking definition would appear to apply to any person or entity involved in trafficking (eg employers, employment agencies, recruitment agents, manning agents, contracting companies etc) and we support the breadth of its reach in this regard. All supporting provisions should be drafted so as to enhance the law's applicability to all of those involved in the process of trafficking.

2.1.5 Create an offence of 'forced repatriation'

For the reasons outlined in the introduction above, we submit that it would be very helpful in achieving the objectives of the Bill to create a new offence of 'forced repatriation of potential trafficking victims'. The creation of such an offence would help to ensure that potential trafficking victims are not removed from Singapore by their employers before they have a chance to seek the protection of authorities. This would send a clear message to employers and their agents that it is the role of the government, not private parties, to decide whether or not a worker should be deported from Singapore involuntarily, particularly when allegations of trafficking are involved.

2.2 Penalties and Evidentiary Issues

2.2.1 Encourage the creation of documentary evidence.

In order to enhance the government's ability to successfully prosecute trafficking cases, we propose that:



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- a) the Bill/Employment Act should include a requirement that a written employment contract specifying basic terms and conditions of employment⁶ must be deposited by the worker with MOM for all vulnerable migrant workers (eg work permit holders) upon their commencement of work in Singapore. At the time of depositing the contract, the MOM officer should question the worker (without the employer or employment agent being present)⁷ and verbally confirm with the worker whether or not the contract reflects the conditions upon which he/she was recruited. Furthermore, the law should require that any subsequent contract made or purportedly made between the two parties which is less favourable to the worker than the original contract shall be illegal, null and void unless the contract has been deposited by the worker with MOM and an MOM officer has questioned the worker (without the employer or employment agent being present) and verbally confirmed that the worker has freely consented to the subsequent contract; and
- b) the Bill/Employment Act should include the requirement for mandatory pay slips and the electronic transfer of salary payments.⁸

2.2.2 Burden of proof should be reversed

It is important to recognise that potential victims of labour trafficking can do very little to provide documentary evidence of their predicament without access to documents such as employment contracts and pay slips. If employers and agents do not use written employment contracts, pay slips and electronic transfers of salary, it is more difficult for the legal system to effectively protect workers' rights in general and, in the context of a trafficking allegation, to facilitate robust decision-making about whether a worker has been trafficked or not. Without documentary evidence regarding employment terms and salary payments, there is often very little physical evidence to support allegations of trafficking and cases must be decided solely by reference to the conflicting verbal testimony of the parties involved.

⁶ These terms should include, at a minimum, duration of contract (fixed, or ongoing albeit subject to renewal of work pass); nature of work; basic monthly salary; deductions (nature and amount); allowances (nature and amount); normal hours of work covered by basic salary (days of the week plus start time and finish time); rest day; estimate of overtime hours and overtime rate; rate for work on rest day (if applicable, but consistent with law); items to be provided by employer (if any) (eg tools, uniform, protective gear); items to be provided by employee (if any) (eg tools, uniform, protective gear); and leave entitlement.

⁷ Refer to our website for an example of the problems associated with obtaining a truthful account from a worker when the worker is questioned in the presence of an employment agent <http://twc2.org.sg/2013/07/17/beautician-relies-entirely-on-agent-who-puts-her-on-path-to-jail/> [accessed 17 April 2014]

⁸ See 'Proposals – Second Phase Review of the Employment Act and the Employment of Foreign Manpower Act' October 2013 http://twc2.org.sg/wp-content/uploads/2013/10/2013oct_submission_final_v2.pdf [accessed 30 March 2014]

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In our view, employers and agents would be incentivised to ensure that their recruitment practices are better documented and more transparent if the Bill were to reverse the onus of proof in TIP cases, so that the burden is on an accused person to demonstrate that an alleged victim wasn't trafficked, rather than the prosecutor needing to prove every aspect of the case beyond a reasonable doubt. It is important to bear in mind in this regard, that investigators and prosecutors have a great deal of discretion in relation to which cases to pursue and so the least meritorious cases will be weeded out long before questions of onus of proof come into play.

2.2.3 Appropriate penalties

We submit that to reflect the grave nature of the crime of TIP, penalties should include fines as well as imprisonment and should not be capable of being compounded.

In addition, corporate bodies and individuals (including directors, significant shareholders and employees of a relevant corporate body) who are convicted in connection with trafficking offences should be barred from participating in similar activities in the future (for example, incorporating or registering an employment agency; employing migrant workers; holding a directorship in a company that is a registered recruitment agency or employer of migrant workers).

2.2.4 Compensation for victims of crime

In addition to criminal penalties, restitution for the victim should be mandatory under the Bill, so that (a) perpetrators must face the full consequences of the harm that they have inflicted; and (b) victims can be assisted in recovering from the crime that has been perpetrated against them and are more likely to report their grievances. This is particularly relevant for victims of labour trafficking, for whom economic considerations often dictate their continued acceptance of exploitative employment following labour trafficking. This is a separate issue from that of civil compensation, raised in 2.3.5 below. That said, provisions would need to be included whereby any amounts recovered by a victim through a civil claim would be taken into account in determining criminal compensation amounts (and vice-versa).

2.3 Access and Victim Protection

2.3.1 Encouraging victims to come forward

We firmly believe that this Bill can only reach its full potential, in terms of deterring and preventing TIP, if victims are encouraged and empowered to report instances of trafficking to governmental authorities. The alternative is that the most vulnerable victims will remain hidden, for fear of the consequences of reporting the crime, and Singapore's prosecution efforts will be largely limited to those cases discovered by government law enforcement officers through their own efforts. As a result, the proposed law would only ever address the proverbial 'tip of the iceberg'.

In this regard, we submit that basic victim access and protection measures should include the following, at a minimum:

- a) **(immunity from prosecution for related offences)** Central to the protection of the victim is ensuring that the Bill prevents trafficked persons from being prosecuted, detained or punished for the illegality of any acts that they have been involved in as a direct consequence of their situation as trafficked persons.



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- b) **(protection from sudden/forced repatriation)** In our view, one of the greatest impediments to accessing protection is the ability of employers to forcibly repatriate workers with little or no notice. Once the worker is out of the country, there is little or no prospect of them making a complaint under the proposed new law (due to lack of access to relevant authorities, lack of access to legal assistance, geographical barriers, language barriers and the cost involved in pursuing a complaint from abroad). We submit that either the MOM or the Immigration and Checkpoints Authority ('ICA') should be actively involved in questioning every out-bound worker before they leave Singapore about any claims that they might have in connection with their employment in Singapore (including any trafficking claims). This could happen in an airport context (by use of a mandatory questionnaire for migrant workers to be used by ICA officials on departure) or by requiring that workers must have an exit interview with MOM and be granted an 'exit permit' prior to their being repatriated by their employers. The questionnaire does not need to be long and complicated: a few basic questions should be enough.
- c) **(food, shelter and basic needs)** Appropriate shelter and food needs to be provided along with basic financial assistance to enable victims to purchase daily necessities and cover basic costs (such as phone cards and public transport within Singapore).
- d) **(primary healthcare and counselling)** Victims should have access to free primary healthcare and counselling services.
- e) **(protection from harm/threats from perpetrators)** Victims should be kept safe from harm and the threat of harm from perpetrators, including by not having their identity publicly revealed during proceedings.
- f) **(access to consular assistance)** Victims should be given immediate access to diplomatic and consular representatives from their home country.
- g) **(right to pursue alternative employment)** To ensure that reporting a trafficking offence does not compound the economic distress suffered by trafficked workers, the Bill should provide a right to seek new employment in Singapore and obtain a 'fresh' work permit, should the worker be successful in finding a new job (subject to MOM approval). This doesn't require that the government is obliged to provide the worker with a new job, only that the worker is free to accept a new job if they are able to secure one. One added benefit of this approach is that a worker who is able to find gainful employment would no longer require government support in terms of food and shelter, while their trafficking case is being assessed.
- h) **(sensitive approach to repatriation)** To the extent that repatriation of a victim is pursued, policies should aim for the safe and, if possible, voluntary return of trafficked persons and should take into account the possibility of reprisals against the victim in their home country and the risk of re-trafficking.

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- i) (**clear entitlement to protection**) Protective measures provided by the Bill should be enacted as entitlements, rather than discretionary measures, so that workers can be confident that they will be protected if they report instances of trafficking. To achieve this, such entitlements should also be widely publicised in relevant languages.

2.3.2 Victims need protection even if there is no perpetrator in Singapore

The Bill should be clear that in order to qualify as a ‘victim’ of trafficking, one need not be required to establish that there is a perpetrator who can be brought to justice in Singapore. Often perpetrators may be beyond the reach of Singapore’s jurisdiction – that should not mean that victims are denied protection and practical support.

2.3.3 Victims should be entitled to protection from the point of coming to the attention of authorities

Relevant authorities should not be required to reach a conclusion that a person has been subjected to trafficking in order to be able to provide protection. An in-depth interview by a trained investigator should be able to identify prima facie evidence of trafficking or trafficking indicators. If such factors are demonstrated, the injured party should be treated as a victim of trafficking until such time as their case is resolved. It is also important to bear in mind that if ultimately a criminal case cannot be successfully brought against an alleged perpetrator, that does not necessarily mean that the victim should no longer be considered a victim. Criminal law standards of proof are very hard to satisfy and there will be many genuine victims who may never see a perpetrator convicted in a court of law.

2.3.4 Victims shouldn’t become criminals if they cannot prove their case

Related to the point made above, if a criminal case cannot be successfully made out against an alleged trafficker, the ‘victim’ should not be subject to prosecution for giving false evidence or related offences. We have known workers who are unable to prove a salary claim or a work injury claim due to lack of evidence being prosecuted under section 177 of the Penal Code.⁹ The Bill should make it clear that ‘victims’ who come forward should not be subject to prosecution under such laws if the victim’s case is not ultimately sustained in a court of law.

2.3.5 Civil compensation

The Bill should establish a victim’s right to be compensated for the harm perpetrated against them, via a civil claims process. This will ensure that victims can be ‘put right’ to some degree following their ordeal. Allowing such claims would also bolster the deterrent effect of the new law. This is because civil cases will allow perpetrators to be held to account in instances where the criminal law cannot, either due to the criminal evidentiary burden of proof or due to the practical limits on the number of cases that government investigators and prosecutors can take on at any given time.

⁹ See our website for an example of a worker charged with making a false report in the context of a workplace accident and injury <http://twc2.org.sg/2013/11/21/injured-worker-struggles-to-get-treatment-is-charged-for-lying-instead/> [accessed 17 April 2014]



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2.3.6 The unique requirements of trafficked fishermen

In recent years there has been growing awareness in Singapore and globally about the prevalent practice of trafficking of commercial fishermen and the difficulties associated with identifying and prosecuting those responsible and protecting the unfortunate victims of this abhorrent practice.

The following is an extract from a report prepared by Dr Sallie Yea on the subject entitled 'Troubled Waters: Trafficking of Filipino Men into the Long Haul Fishing Sector through Singapore' in 2012. This extract has been selected because it highlights many of the indicators of trafficking that are present in these cases involving fishermen deployed through Singapore.

The study found that the type and level of exploitation of Filipino fishermen deployed through Singapore, principally on Taiwanese vessels, was akin to that found in recent studies of Thailand and Eastern Europe. Men were variously subjected to excessive working hours, no days off, extremely substandard living conditions, including inadequate food, lack of treatment for injuries and sickness, lack of protective gear whilst working, and enforced isolation – sometimes for years – on the vessels. Further, many participants' recounted experiences of physical and psychological abuse by the captain or senior officers on the vessels. Apart from conditions on board, the study found that men were universally deceived during the recruitment process, with the nature of deception including agreements concerning remuneration, working conditions and, in some cases, deception about the actual job that was to be performed in/ through Singapore. Deceptive recruitment and the witting deployment of a person into a situation of exploitation are key defining elements of human trafficking.¹⁰

We recognise that positive developments have been made in recent times in Singapore to help identify and respond to these cases, including the establishment of a Seafarer's Welfare Centre at the Jurong Fisheries Port and the interest taken by the Taskforce in the difficulties faced by fishermen whose boats dock in Singapore. Nevertheless, the Singaporean government and NGO community have a very long way to go before it could be said that we are doing all that we can to prevent, protect and prosecute in this area.

Accordingly, we urge the drafters of the Bill to consider the special needs of commercial fishermen whose situation differs from migrant workers employed under Singapore's employment laws and, where necessary, to highlight relevant issues to their counterparts in various arms of government. In particular, we submit that the following areas need to be addressed in order to better respond to instances of trafficking in this sector:

- a) **(NGO access to potential victims)** The recently-established Seafarer's Welfare Centre at the Jurong Port is not currently accessible to a range of independent NGOs who may provide a

¹⁰ December 2012 http://twc2.org.sg/wp-content/uploads/2013/01/Troubled_waters_sallie_yea.pdf pages 8-9. [accessed 28 March 2014]

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valuable role in assisting trafficked fishermen. This is because the welfare centre is on the port side of the fence that demarcates the immigration/customs clearance zone from the boats and port. We urge the drafters to consider means by which NGOs can be given access to the welfare centre and to fishermen who have not passed through the immigration checkpoint. We also submit that the welfare centre should be fitted with a number of landline telephones (with an attached list of useful telephone numbers) to assist trafficked fishermen in contacting authorities and other bodies who can assist them. In this regard, we attach a drawing of a proposed welfare centre which would include private cabins for fishermen to meet and discuss their difficulties with NGOs or other agencies and an immigration/customs pathway through which a fisherman can enter Singapore (subject to prevailing rules) or through which innocuous materials such as documents, literature, phone cards, clothing and medical supplies can be passed between fishermen and NGO representatives. Relevant NGOs such as TWC2, HOME and Healthserve should be given liberal access to this centre.

- b) **(facilitation of immigration clearance and 'rescue')** The Bill or its implementing regulations should include a clear mechanism whereby victims can be taken through the immigration checkpoint at the Jurong Port and given shelter and protection, notwithstanding that they may not be in possession of their passports or other identification documents.
- c) **(access to shelter and protection)** We urge the drafters to take care in drafting the general victim protection measures in the Bill to ensure that they apply to fishermen and are accessible to them (in light of practical as well as legal considerations).
- d) **(ability to file a complaint)** The Bill should ensure that foreign fishermen have a mechanism for reporting their trafficking allegations and for following up those allegations.

In many instances, it may be possible to identify a perpetrator in Singapore (eg a Singapore-based manning agent) who is knowingly involved in aspects of the trafficking process and is therefore within reach of Singaporean law enforcement agents. In this regard, we note the following point made in Dr Yea's report that '[a]lthough undoubtedly the exploitation of men's labour takes place at sea, financial exploitation (including debt bondage, non-payment of salary, deductions, penalties, removal of documents and so on) takes place in Singapore. The recruitment process, particularly the contracts and agreements that men are bullied to signing in Singapore are a central feature of men's exploitation.'¹¹

Where this is not the case (ie there is not clear connection with a Singapore-based person or entity), complaints should be received and investigated by Singaporean authorities and passed on to the relevant foreign authorities for the purposes of bi-lateral or multi-lateral cooperation in prosecuting traffickers.

- e) **(better regulation of manning agents)** Singapore based manning agents for fishing vessels need to be better regulated to ensure that they are not in any way assisting or complicit in TIP offences.

Finally, we note that foreign fishermen generally fall outside of the Maritime Labour Convention and therefore are at grave risk of being considered beyond the reach of Singapore's TIP law enforcement

¹¹ Ibid page 21



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efforts. Accordingly, we urge the drafters to explore, alongside colleagues in other branches of government, the question as to how Singaporean authorities can readily identify and respond to instances of trafficking on foreign-flagged fishing vessels docking in Singapore and enforce Singapore's proposed new anti-trafficking law to the fullest extent. There are a number of different ways in which this issue could be considered, some of which are as follows.

Explore Full Reach of Singapore's Jurisdiction

Firstly, we urge the government to undertake a rigorous legal analysis of the extent to which Singapore may already have power under international law to enforce its criminal laws against foreign-flagged ships. For example, while Article 27 of the UN Convention on the Law of the Sea ('UNCLOS') generally prevents a State from applying its criminal laws to a foreign vessel in the State's territorial waters, Article 27 does allow such action to be taken in certain scenarios, namely:

- a) if the consequences of the crime extend to the coastal State;
- b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
- d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.¹²

Some scholars in this area have suggested that trafficking at sea could arguably be considered a crime that both disturbs 'the good order of the territorial sea' and 'with consequences that extend to the coastal State' within the meaning of Article 27¹³, and therefore within the jurisdiction of the port state (in this case, Singapore), notwithstanding that the relevant vessel carries a foreign flag.

Furthermore, Article 28 goes on to state that the provisions in Article 27 'do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.'¹⁴

Accordingly, at a minimum, we urge the drafters to include a provision in the Bill giving relevant Singaporean authorities powers of boarding, investigation and arrest in relation to foreign-flagged vessels, to better enable local prosecutions (where a criminal act has taken place in Singapore, for example, with the complicity of a Singaporean manning agent) and regional cooperation (for example, in order to arrest a suspect for the purposes of extradition to another country).

¹² Refer to the Convention on the Law of the Sea 1982

http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf [accessed 14 April 2014]

¹³ Rebecca Surtees 'Trapped at Sea. Using the Legal and Regulatory Framework to Prevent and Combat the Trafficking of Seafarers and Fishers', *Groningen Journal of International Law*. Vol. 1, No. 2: Human Trafficking, page 114.

¹⁴ *Supra* nt 13.

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Consider Flagging Requirements

We urge the government to consider the proactive steps being considered by New Zealand in relation to this issue. New Zealand's parliament is considering a bill which would require all foreign charter vessels within its waters (including fishing vessels within New Zealand fishing zones) to be reflagged as New Zealand vessels.¹⁵ The primary purpose of this bill is to enable New Zealand to address the mistreatment and underpayment of foreign crews on fishing vessels and to prevent trafficked fishermen from falling through international law enforcement gaps.

Explore obtaining greater powers through multi-lateral regional agreements

We encourage the government to consider the use of multi-lateral agreements with other countries in the region to gain greater powers over vessels docking in Singapore, either through amending existing agreements (such as the Tokyo MOU, discussed below) or forming new agreements.

Singapore is currently a signatory to the Memorandum of Understanding on Port State Control in the Asia-Pacific Region of 1993 (the 'Tokyo MOU') along with 17 other countries in the Asia Pacific Region.¹⁶ This MOU was put in place to give port states certain powers and responsibilities in relation to foreign flagged vessels for the purpose of verifying that the competency of the master and officers on board, and the condition of the ship and its equipment comply with the requirements of international conventions and that the vessel is manned and operated in compliance with applicable international law. The UN Protocol is not currently listed as a relevant instrument under the Tokyo MOU but certainly could be in the future and the use of the Tokyo MOU to tackle the human trafficking would readily fit within the purposes of the Tokyo MOU, the preamble to which recognises the importance of improving 'the living and working conditions at sea'.¹⁷

3 Conclusion

Once again, thank you for this opportunity to participate in this very important public consultation. If you have any queries regarding our submission, or any of our related research, we would welcome the opportunity to provide further information.

¹⁵ See the Fisheries (Foreign Charter Vessels and Other Issues) Amendment Bill <http://www.legislation.govt.nz/bill/government/2012/0075/latest/DLM4794406.html> [accessed 14 April 2014]

¹⁶ Refer to the Tokyo MOU Organisations website [Organization | Memorandum of Understanding on Port State Control in the Asia-Pacific](http://www.tokyomou.org/organization) [accessed 17 April 2014]. Signatory countries are Australia, Canada, Chile, China, Fiji, Hong Kong(China), Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Papua New Guinea, The Philippines, The Russian Federation, Singapore, Thailand, Vanuatu and Vietnam.

¹⁷ Tokyo MOU http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf [accessed 17 April 2014]



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Attachment

Proposed layout of Fishermen-NGO contact centre

