Singapore 2018 and GCM goals: Within reach

Commentary on the current gaps in Singapore's regulation of work migration, and recommendations for action, in anticipation of the adoption of the

Global Compact for Safe, Orderly and Regular Migration

Date of report: 30 October 2018.

Synopsis

In December 2018 it is expected that Singapore will adopt the United Nations' Global Compact for Safe, Orderly and Regular Migration. The Compact comprises 23 wide ranging Objectives, several of which are aligned with those pursued by NGOs seeking to protect and promote the welfare of low-wage migrant workers. In this paper we examine these particular Objectives of the Compact (the "Head III Objectives") and present our analysis of where and how far Singapore falls short in their attainment.

While the Compact is not legally binding on signatory States, it does envisage that each State will undertake measures for implementation. We conclude this paper with the measures that we consider should be included in Singapore's implementation plan for the Compact. Some of these entail an overhaul of existing frameworks (such as the abolition of the sponsorship system for work permits); others seek only that existing legislative protections be given substantive effect through stiffer penalties and more rigorous enforcement (eg. of requirements to issue detailed itemised payslips and the prohibition against retention of employees' passports). We also consider reforms necessary for the protection of migrants' human and labour rights as envisaged by the Compact, such as access to healthcare and justice, and rights to travel and to a family life.

Glossary

ASEAN:	The Association of South East Asian Nations
ASEAN Consensus:	The ASEAN Consensus on the Protection and Promotion of Rights of Migrant Workers adopted by the ASEAN members states on 14 November 2017

Compact:	The Global Compact for Safe, Orderly and Regular Migration
EA:	Employment Act (Singapore)
EFMA:	Employment of Foreign Manpower Act (Singapore)
FDW:	Foreign Domestic Worker
IPA:	In Principle Approvals issued by MOM for work permit applications – a document issued by MOM to employers to inform them that their work permit applications have been approved (subject to certain conditions to be fulfilled) and to inform prospective foreign workers that respective employers have been successful in their work permit applications for them
KET:	Key Employment Terms
MOM:	Ministry of Manpower (Singapore)
NGO:	Non-Governmental Organisation
TWC2:	Transient Workers Count Too
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
WICA:	Workplace Injury Compensation Act (Singapore)
WSHA:	Workplace Safety and Health Act (Singapore)

Preamble

On 11 July 2018, following the adoption of the New York Declaration for Refugees and Migrants[1] by the member states of the United Nations, co-facilitators from Switzerland and Mexico circulated the final draft of the Global Compact for Safe, Orderly and Regular Migration ("the Compact")[2] , inviting UN Member States to conclude the negotiations on the Compact by 13 July 2018.

The Compact is scheduled to be adopted during the intergovernmental conference convening from 10-11 December 2018, in Marrakesh, Morocco. However, as of 29 October 2018, it appears that the United States, Hungary and Australia have indicated they will not be signatories to the Compact, and the participation of Austria and Poland is also in doubt.

[1] http://www.unhcr.org/57e39d987

[2] Jürg Lauber, Permanent Representative of Switzerland, and Juan José Gómez Camacho, Permanent Representative of Mexico.

The scope and overarching aim of the Compact

The Compact should not be mistaken as an instrument aimed primarily at protecting or enhancing the rights of migrant workers. As evidenced by the Preamble the Compact is intended to present a *"non-legally binding, cooperative framework"*[3], a *"milestone in… international cooperation on migration"*[4] that acknowledges *"no State can address migration alone"*[5], and which maintains *"the sovereignty of States"*[6].

The political driver behind the Compact is *"enhanced cooperation on international migration"*[7] with an unwritten subtext of strengthening the abilities of the signatory States to control their borders and migration flows, and an overarching aim of reaping social, economic and political benefit from safe, orderly and regular migration, *"making it work for all"*[8]. To that end, the Compact draws a distinction (but does not define where the line is drawn) between refugees[9] and migrants, with only the former being entitled to the protections of international refugee law. That said, the Compact claims to *"place individuals at its core"*[10], and there is threaded throughout recognition of humanitarian issues arising from migration and of the vulnerabilities particular to migrants.

Two other key distinctions are drawn (but also undefined) in the Compact: as between (a) countries of "origin, transit and destination" and (b) "regular" and "irregular" migration. While the term "migrant" is not defined the Compact's scope, it is clearly not limited to those who migrate in search of work. However, there appears to be an underlying presumption that that is the primary driver of migration (as opposed to refugee) flows.

The Objectives

The Compact is undoubtedly an ambitious programme of reform, with objectives ranging from specific, relatively well-defined goals such as making remittances cheaper[11] to lofty ideals of *"empowering migrants… to realise full inclusion"*[12]. Some might view it as a smorgasbord of well-intentioned aspirations with no end date in sight for implementation and unlikely to ever be brought to full fruition. Nonetheless, as might be expected of any changes to be made on a global scale, the

[3] Global Compact on Safe, Orderly and Regular Migration, Final draft 11 July 2018, para 7.

[4] Ibid, para 6.

[5] Ibid, para 7.

[6] Ibid, para 7.

[7] Ibid, declaration, page 1.

[8] Ibid, para 9.

[9] the subject of a sister Global Compact on Refugees, the final draft of which was issued on 28 June 2018; http://www.unhcr.org/5b3295167

[10] Global Compact on Safe, Orderly and Regular Migration, Final draft 11 July 2018, para 15.

[11] Ibid, Objective 20.

[12] Ibid, Objective 16.

Compact arguably represents the first step in a journey; a collective pronouncement, if nothing else, that mass migration issues should float to the top of the global political agenda.

There are in total 23 Objectives, which to all appearances are set in the text in no particular order of priority. Despite the seeming randomness, the Objectives can be seen as broadly falling under the following four Heads:

- Head I: Enlightened policy-making through enhanced data intelligence
- Head II: Control/Influence over migration flows
- Head III: Enhanced support for migrants, which further subdivides into
  - Head IIIa: Work-related support
  - Head IIIb: State, social, community and consular support
- Head IV: Leverage migration for sustainable development

A more detailed classification of the objectives under these four Heads is shown in the Appendix, though it is acknowledged that some objectives could be viewed as falling under more than one Head.

TWC2's Perspective

As a non-profit organisation in Singapore dedicated to improving conditions for low-wage migrant workers, we laud many of the objectives of the Compact, particularly those aimed at enhancing support for migrants (the "Head III Objectives"). Whether in its own right or in conjunction with the ASEAN Consensus, the Compact is a potential platform for the development of an advocacy agenda aimed at closing the gaps between the ideals that can be seen underlying the Head III Objectives and present realities in Singapore. The following section presents an analysis of where such gaps lie in respect of selected Head IIIa and Head IIIb Objectives, with particular reference to migrant workers.

The Compact and the ASEAN Consensus

In terms of cross-border efforts of the ASEAN member states for the implementation of the Compact we would expect that such efforts will to some degree overlap with streams of work on the ASEAN Consensus (on which TWC2 has previously commented*). Singapore's national responses to both should be coordinated, if not unified.

Further, demonstration of its commitment to the Compact would also require Singapore to reach out in the spirit of partnership to countries from which it draws its migrant labour, seeking to work with them to fulfil those objectives which require bilateral or multilateral cooperation. To that end, engagement and support from the relevant government ministries and executive bodies will be vital.

*http://twc2.org.sg/wp-content/uploads/2018/01/Commentary_by_TWC2_on_ASEAN_consensus_v3.pdf

Gap analysis on Head IIIa Objectives (Work-related support)

Objective 5: Enhance availability and flexibility of pathways for regular migration

The key phrase in this objective is "regular migration", and not merely migration which is "regular" but which *"facilitates labour mobility and decent work reflecting demographic and labour market realities"*[13] , which we read as code for "regular migration" being a means to address mismatches of labour/skills demand and supply across national markets.

Big Data? Yes, please!

It is widely acknowledged that Singapore has a high proportion of migrant workers in its labour force, of which the "overwhelming majority… are here to do the jobs that Singaporeans do not want to do… to help build our homes, keep our roads clean, and make our lives just a little more comfortable"*.

Notwithstanding the importance of these contributors to the comfort and wellbeing of Singaporeans, there is a paucity of publicly available disaggregated data on them. TWC2 has searched in vain for statistics as simple as a breakdown of foreign workers by nationality, let alone more granular data such as turnover rates, average salaries, length of stays, number of returnees etc.

If such disaggregated data is not already in the possession of national authorities, TWC2 expects that, in pursuit of the first Objective of the Compact – to collect and utilize accurate and disaggregated data as a basis for evidence-based policies – greater effort will be made to gather and analyse disaggregated data. It is our sincere hope that, in the spirit of open and transparent government and willingness to engage with civil society in policy-making, more sources of disaggregated data will be made publicly available, so as to enable all stakeholders to contribute their views and analyses and to leverage the research capabilities of NGOs active in this sector.

*https://www.gov.sg/factually/content/do-you-know-how-many-types-of-foreign-workers-we-have-in-singapore

Singapore, being heavily dependent on migrant labour, has relatively developed pathways for migrant labour to enter its domestic economy. Acutely aware of the scarcity of other natural resources for wealth generation, its government has long viewed its working population as a critical resource meriting active management in pursuit of economic development goals. What it has arguably been less successful at is managing "regular migration" in a manner that *"optimises education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability"*[14] .

Some of the actions called for under this Objective would give the average Singaporean concerned about supportable populations on our small island extreme pause for thought, such as the call to *"facilitate access to procedures for family*

[13] Global Compact on Safe, Orderly and Regular Migration, Final draft 11 July 2018, para 21.

[14] Ibid, para 21.

reunification for migrants at all skill levels through appropriate measures that promote the realisation of the right to family life"[15]. Presently Singapore issues a myriad of categories of work passes/permits, but the right to settle dependents is only available to those who carry passes in the professional and skilled classes[16]. The majority of working migrants in Singapore do not belong to these classes and do not have this right. It has to be questioned if such a discriminatory policy is sustainable if the spirit of the Objective is to be observed. A softer reading of this Objective could however entail the realisation of rights to family life through other measures, such as more generous home leave allowances or visitation rights for family members.

Another potentially contentious action is for signatory States to reach cross-border labour mobility agreements with *"sector-specific standard terms of employment"*[17]. Currently the Philippines and the Republic of Indonesia mandate the use of standard contracts for the employment of their nationals as domestic workers[18], but to our best knowledge Singapore's government has not expressed enthusiasm or support for such initiatives.

Mandating the use of standardised employment contracts has the potential to suppress, if not put an end to, the widespread and invidious practice known as "contract substitution"[19]. TWC2 has long advocated for Singapore to impose standard employment contracts for low-wage workers (both nationals and migrants)[20] and, as a stepping stone, welcomes the recent Parliamentary statement that downwards revisions of salaries may be disallowed altogether, pending consultation[21]. We stress, however, that the value of standardised employment contracts cannot truly be realised unless its terms confer substantive rights on employees, and employees have recourse to effective, timely and affordable mechanisms for enforcing those rights. NGOs and the pro bono legal community could also encourage the development of common law remedies against "contract substitution" by assisting workers who seek to have contracts signed under duress voided[22].

[15] Ibid, para 21(i).

[16] See https://www.mom.gov.sg/passes-and-permits

[17] Global Compact on Safe, Orderly and Regular Migration, Final draft 11 July 2018, para 21(a).

[18] And curiously, it seems ASEAN has also produced a template, see http://asean.org/storage/2016/08/S8_Standard-Employ-Contract-2006.pdf

[19] Though an inroad against this practice has recently been made in Singapore's common law by Liu v Haniffa, in which a High Court judge went "so far as to state that even if there was a written contract of employment which provides for a monthly basic salary of less than the sum stated in the IPA, the burden would lie on the employer to show why the IPA figure does not reflect the true salary"; [2017] SGHC 270 at para 33.

[20] See, for example, http://twc2.org.sg/wp-content/uploads/2018/03/TWC2-Proposed-Amendments-to-EA-2018.pdf

[21] See https://www.todayonline.com/singapore/mom-may-ban-employers-lowering-wages-work-permit-holders

[22] See Wartsila Singapore Pte Ltd v Lau Yew Chong [2017] SGHC 76 for a discussion of the relevant legal principles.

Objective 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work

This objective is possibly the Holy Grail for any NGO working towards improving migrants' welfare. It comprises of 2 (sub) objectives; (a) facilitate fair and ethical recruitment, and (b) safeguard conditions that ensure decent work. Both raise a number of questions, not least "what practices are fair and ethical in recruitment?", and "when is work decent as opposed to indecent?".

Several of the issues dealt with under this Objective rank highly on the agendas of migrant labour rights activists, not least exorbitant recruitment fees[23] , retention of passports by employers, exploitation by employers using termination/repatriation as threats to coerce desired conduct from migrants, and the lack of effective complaint and redress mechanisms. A point-by-point analysis of the actions committed to under this Objective would warrant a whole other discussion paper, but for present purposes we focus on the following "headline" issues, notated as A, B, C, D and E below.

Objective 6: (A) Recruitment fees

Paragraph 22(c) of the Compact calls for signatory States to *"prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers"*. Undoubtedly this issue is most effectively tackled at the upstream end of labour supply chains (i.e. in countries of origin) but as a destination country, Singapore:

- licenses and regulates employment agencies[24] ;
- limits fees that employment agencies can charge to the equivalent of one month's salary for each year of contract, subject to a maximum of two months' salary[25] ;
- criminalises the demand or receipt of "kickbacks" from foreign workers as a condition of employment or the abetting of such conduct[26] .

Despite these provisions, empirical research by TWC2[27] and others have found that first-time low-wage migrant workers, particularly from Bangladesh, pay the equivalent of 2 to 4 years' of basic salary. Repeat migrant workers generally pay less, but it is still in the order of a year's basic salary or more.

At the heart of the disjoint in Singapore's low wage migrant labour market that gives rise to unwarranted economic rents is a structural lock-out: prospective workers simply have no way of

[23] An issue to which Singapore's government appears sympathetic, see https://refugeesmigrants.un.org/sites/default/files/ts6_singapore.pdf, para 6.

[24] Employment Agencies Act (accessible via http://sso.agc.gov.sg)

[25] Employment Agencies Rules 2011, s.12 (accessible via http://sso.gov.sg)

[26] Employment of Foreign Manpower Act, s.22A and s.23 (accessible via http://sso/agc/gov/sg)

[27] See http://twc2.org.sg/2017/02/05/average-recruitment-cost-hit-15000-in-2015-for-first-time-bangladeshi-construction-workers/

knowing what jobs are available or how to apply for them. By leaving hiring entirely to private parties, Singapore has permitted a situation to develop wherein employers and intermediaries with connections exploit their control of information and access to extract rents. Compounding the problem, the restriction on job mobility that is the result of the sponsorship system, together with the discretion given by law to employers to terminate an employee's employment at any time and without the need to show cause enable employers to extract "kickbacks" for the privilege of keeping a worker in employment. Kickbacks come in various guises including unwarranted wage deductions. Whether intentionally or not, that system has conferred on employers a not insignificant legal power which they are incentivised to exploit in a market where the supply of labour far exceeds demand.

An obvious solution would therefore be to set up a more transparent hiring platform. Leveraging digital technology this would enable prospective workers in countries of origin easy access to information and to applying for desired jobs. Complementing that, abolition or reform of the sponsorship system and a more assured right for a migrant worker to look for a new job should the old one be terminated would go a long way to increasing workers' bargaining power and thus eliminating kickbacks.

An alternative model could be one where would-be migrants apply directly to Singapore's government for the right to work in Singapore at nil or minimal administrative cost. Once the right is acquired, the migrant may enter Singapore and freely offer his labour in an open marketplace for a fixed period of time[28]. Control on the use of foreign manpower and the size of the pool can continue to be exercised through quotas, whether applied at national or enterprise level, whether relative or absolute in expression. Similar frameworks have been tried and tested in other advanced economies such as the Republic of Korea. Such a model would have the added advantage of giving Singapore's government better control of our domestic labour market, exercised towards optimising the foreign labour pool by selecting those best able in terms of skill and experience to serve national needs, rather than in the current model where migrants are chosen by recruitment agents or employers on the basis of their ability to pay. Further potential benefits could arise in reduced costs of regulation and enforcement and lower turnover rates in the migrant labour pool that could in turn incentivise both employers and workers to invest in up-skilling. Undoubtedly such a radical change in the framework for the regulation of foreign labour should not be undertaken lightly, yet we cannot see any reason why it would be impossible for the authorities to test a new system through a pilot scheme that minimises the risk of disruption while allowing them to assess feasibility and the cost/benefits of implementation.

Objective 6: (B) Retention of passports

Paragraph 22(h) of the Compact calls for signatory States to *"take measures to prohibit the confiscation or non-consensual retention of … travel or identity documents from migrants"*.

[28] With the corollary that there is no guarantee of the migrant landing a job.

Presently the possession or control by a person of a foreign travel documentation belonging to another without reasonable excuse is an offence in Singapore[29]. MOM has issued guidance that *"employers should not keep the passports of their foreign workers or FDWs"*[30]. Notwithstanding the prohibition, the retention of passports by employers of low wage migrant workers remains a widespread practice in Singapore, in part due to employers' fears of forfeiting their security bond, in part due to lack of public knowledge of the prohibition, and (relatedly) because of lack of enforcement[31] .

Whether fear of forfeiting a security bond would constitute a "reasonable excuse" for retaining a foreign worker's passport has not, to our best knowledge, been tested in a Singapore court[32] , though in TWC2's view ignorance of the law certainly is not. The lack of enforcement demonstrates a lack of regard by the authorities for the right of low wage migrant workers to retain possession of their identity documents – a right which such workers usually do not claim for themselves for fear of incurring the displeasure of employers who are in control of their right to work in Singapore – and stands in stark contrast to the rigour with which prohibitions against offences such as spitting and littering are policed in areas where migrant workers congregate. Non-consensual retention of their passports by another is an abuse of a fundamental right which few Singaporeans would tolerate. It is high time for the authorities to take steps to end the abuse of that same right for migrant workers.

Objective 6: (C) Rest days and long working hours

Paragraph 22(k) of the Compact calls on States to review laws and practices to *"ensure that they include considerations of the specific needs and contributions of women migrant workers, especially in domestic work …"*. Since almost all foreign domestic workers (FDWs) are women, the issue of adequate rest days for domestic workers would come under this goal. Currently, Singapore legislation requires employers to grant a weekly day off to FDWs[33], but at the same time allows employer and employee to mutually agree on having the FDW work on a rest day provided there is compensation in lieu[34]. Compensation could take the form of a monetary sum. The reality of power relations is such, however, that the "mutual agreement" may not be one that the FDW freely entered into. Some additional safeguards are called for and TWC2 recommends that no more than two rest days per month may be legally traded away.

Singapore law does not define any minimum duration of 'rest day' and employers have been known to use the term to mean just a few hours. This is unsatisfactory and cries out for better regulation.

[29] Passports Act, s.47(5), accessible via http://sso.agc.gov.sg

[30] See https://www.mom.gov.sg/faq/work-pass-general/can-an-employer-keep-a-workers-passport

[31] It would appear, from Ma Wenjie v Public Prosecutor [2018] SGHC 137, that no prosecution has ever been brought against an employer for contravening s.47(5) of the Passports Act.

[32] TWC2 maintains that employers' desire to control the movement of their employees would not be sufficient; see http://twc2.org.sg/2011/10/01/fact-sheet-retention-of-passports-and-important-personal-documents/

[33] Employment of Foreign Manpower (Work Passes) Regulations 2012, Fourth Schedule, Part I, paragraph 12.

[34] Employment of Foreign Manpower (Work Passes) Regulations 2012, Fourth Schedule, Part I, paragraph 13.

Excessive working hours is not only a problem for FDWs. Research by TWC2 found that two in three construction workers do more overtime than the maximum number of hours permitted by law[35]. Both employers and employees may be happy with this situation – employers get more labour from each worker employed while employees earn more – but fatigue and lack of sleep pose hidden risks for workplace safety. Stronger enforcement of existing law is needed.

Objective 6: (D) Job mobility

Paragraph 22(g) of the Compact calls on States to *"allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden".*

Singapore's sponsorship system is fundamentally contrary to this Objective and needs to be thoroughly reformed. Even when administrative discretion is applied, as described on page 13, and selected workers are permitted to change employers, the success rate in landing a new job is poor for a number of eminently correctable (but not corrected) reasons. In any case, administrative discretion is no substitute for a legally-based right; without being able to rely on a right, the vulnerability of migrant workers will not be much reduced in practical terms. Furthermore, as discussed on pages 16 and 17, migrants on Special Passes are denied the right to work altogether and is an area that needs substantial reform as well.

Objective 6: (E) Human and labour rights violations

Paragraph 22(e) of the Compact calls for signatory States to *"enact and implement national laws that sanction human and labour rights violations"*. Paragraph 22(f) further exhorts such States to ensure that *"international human rights and labour law is observed"*. Measures should be taken *"to allow migrants to fully exercise their human rights"* (paragraph 22(h)) and migrant workers should be provided *"with the same labour rights and protections extended to all workers in the respective sector, such as the rights… to the highest attainable standard of physical and mental health"* (paragraph 22(i)).

In its Preamble the Compact is stated as resting on, inter alia, the Universal Declaration of Human Rights and the International Labour Organisation conventions on promoting decent work and labour migration. These instruments should (and we very much hope will) form the declaratory standards to which Singapore will aspire in its implementation of the Compact.

Singapore's current approach to human rights, at its most flattering, could be summed up by the word "pragmatic"; *"we take a practical, not an ideological approach to the realisation of human rights"*[36]. Whether pragmatism should be the primary consideration driving the development of any nation state's human rights culture is a matter clearly open to debate as a matter of moral and

[35] See http://twc2.org.sg/2017/04/25/68-of-construction-workers-work-illegally-long-hours/

[36] National report submitted to the UN Human Rights Council 15 October 2016, para 4.

political philosophy, but one which is perhaps not constructively entered into for present purposes. We propose instead an examination of the claims made by Singapore in its most recent report to the UN's Human Rights Council as part of the Council's universal periodic review of member states, with particular reference to legislative protections and access to justice.

Legislative Protections

Singapore claimed that *"Like local workers, foreign workers are protected by… the Employment Act (EA) and Workplace Safety and Health Act (WSHA). In addition, foreign workers, especially the lower-skilled and lower-income workers, are accorded additional protection under the Employment of Foreign Manpower Act (EFMA)"*[37].

All formally accurate, of course. But how do those various claimed statutory protections operate in reality?

Low-wage, male migrant workers in Singapore predominantly labour in our construction and marine industries. There are also substantial numbers employed in the cleaning and landscaping of public spaces by contractors engaged by public authorities. These are industries with intrinsically higher risk environments in terms of workplace safety and which would be expected to have higher rates of injuries and/or more severe injuries unless appropriate risk mitigation is in place. That correspondingly requires greater resources to be invested in monitoring and enforcement, which is the responsibility of MOM's Occupational Safety and Health Division. However, though the WSHA was enacted in 2006[38], ten years later the High Court considered that *"the sentences hitherto imposed for* [the offence of failing to take necessary measures to ensure the safety and health of employees at work insofar as this was reasonably practicable] *are on the low side; they do not adequately utilise the sentencing range prescribed by Parliament and do not have sufficient deterrent effect"*[39] .Under the WHSA[40] it is employers who are charged with reporting injuries resulting from workplace accidents above certain thresholds of severity. Quite rationally they will consider the trade-off between the risk of enforcement for failure to report[41] and such loss as might result from an investigation and possible stop-work order and could decide to either suppress the report altogether or bring pressure on medical personnel (particularly in-house personnel) to downgrade the severity of the injury[42]. Further, as workers are tied to their employers as their work permit sponsors, pressure can be brought to bear, not only on workers to keep their injuries in the dark, but on their colleagues to bear false witness. The end result, not surprisingly, is evidence of systematic

[37] Ibid, para 87.

[38] Following 3 major workplace accidents in 2004 which collectively led to 13 fatalities and numerous other injuries.

[39] Public Prosecutor v GS Engineering & Construction Corp [2016] SGHC 276, para 5.

[40] Or more precisely under the subsidiary Workplace Safety and Health (Incident Reporting) Regulations (accessible via http://sso.agc.gov.sg)

[41] Penalty for first offence being a fine of maximum S$5,000.

[42] Misconduct which both MOM and MOH are clearly aware of, given their joint circular urging medical practitioners to "not be unduly influence (sic) by any other parties" when issuing medical leave certificates to injured workers.

under-reporting[43] . TWC2 believes that mandating dual reporting by healthcare personnel would help to put MOM's injury reporting *"system on notice and help ensure that the worker's medical needs are appropriately addressed"*[44] , with appropriate safeguards in place for those who inadvertently but in good faith make false or inaccurate reports of work-related injuries.

Double Jeopardy

Another legislative instrument concerning workplace injuries is the Workplace Injuries Compensation Act (WICA), which provides a no-fault statutory route to compensation for injuries "arising out of and in the course of employment". Under WICA, employers are liable to compensate workers for such injuries, irrespective of whether they are covered by insurance (though such insurance is legally required). In practice MOM not only provides the insurer with a copy of the notice of compensation assessed as payable, but also allows insurers to be party to WICA proceedings and to raise objections to compensation awards, including on the grounds that the insurance policy is not engaged.

It was observed by the High Court in MST Ruma Khatun v T & Zee Engineering Pte Ltd & Anr [2017] SGHC 115 that these *"various steps taken in practice [in the administration of WICA] do not match the terms of WICA in various ways".* In particular, the Court cast doubt on the legality of allowing insurers to raise objections to compensation awards which procedurally are made against employers; paras 15, 16.

Startlingly, MOM's response to the Court's observations was that it would *"study how the existing practice can be clarified in the primary or subsidiary legislation"* (Straits Times, 27 May 2017). While it may well be true that MOM can have Parliament amend legislation at its bidding, TWC2 would respectfully suggest that the constitutionally proper response would be to change its practices to bring them into conformity with the terms of WICA.

Singapore also claimed that *"employers are required by law to pay their workers' salaries on time. Excessive deductions from workers' salaries are prohibited. We amended the EA in 2015 to make it mandatory for employers to issue all workers key employment terms in writing and itemised pay slips.…* [Under EFMA] *employers who wish to reduce the worker's basic monthly salary or increase fixed monthly deductions, from what was declared in the IPA letter, must obtain the worker's written consent and inform MOM, before effecting the change"*[45] .

We make the following observations in response to the above claims:

- Failure to issue Key Employment Terms (KETs) and itemised payslips amounts only to civil contraventions under the EA, enforceable by negligible fines of up to a maximum of S$400

[43] See http://twc2.org.sg/2018/05/15/do-moms-injury-statistics-hide-more-than-they-reveal/

[44] See http://twc2.org.sg/wp-content/uploads/2018/06/20180619-brief2_injuryreporting-TF-V08.pdf

[45] National report submitted to the UN Human Rights Council 15 October 2016, para 88.

for repeat contraventions[46] . MOM quite openly acknowledged that it would *"adopt a light-touch enforcement approach and focus on educating employers in the first year"*[47], yet the first year has passed, and we have failed to find any evidence of MOM enforcement despite some intensive searching. TWC2 regularly comes across migrant workers whose salary claims are jeopardised by the absence of detailed itemised payslips, and despite surfacing these cases to MOM, employers are not taken to task for failing to issue payslips.

- EFMA is not a legislative instrument primarily directed at enhancing foreign workers' rights. It regulates the employment of foreigners and sets up the work pass system by which it is solely (prospective) employers who can apply for work passes, i.e. a system of sponsorship (or patronage, even). Under EFMA, sponsoring employers can apply to terminate a foreign worker's work permit at will[48] . In the event that his permit is cancelled, that worker is also not entitled to seek alternative employment, and in all likelihood will face repatriation. A national who is un(der)paid or not paid his salary will likely be seeking alternative employment in short order. A foreign worker facing the same circumstances is caught between a rock and hard place; either he attempts to seek redress and face the prospect of his work pass being cancelled by the employer as a retaliatory or evasive response, or he continues to work despite being un(der)paid in the hope of eventually receiving his due. Unscrupulous employers can not only exploit this dilemma, but also draw workers in even deeper by making false promises of future payments. Thus, in reality, such *"additional protections"* as offered under EFMA are merely mitigating against self-created hazards.

In conjunction with the above, it is worth noting that in the last two or three years, the Ministry of Manpower (MOM) has been offering migrant workers with valid salary and related claims a few weeks to seek new employment locally without first having to be repatriated. This however is offered as a discretionary measure by investigating officers; it is not conferred on migrant workers as a right. Since no migrant worker can rely on this as a right, it does not provide any protection to him when he encounters non-payment of salary or other exploitative practices; he cannot be sure that he will be given the chance to look for a new job. Moreover, the period given to the worker to find a new job is too short to be meaningful, which, coupled with employer resistance to hiring workers who have previously lodged complaints at MOM, results in a very poor success rate, a fact that ministry officials themselves have privately admitted.

Access to Justice

Singapore stated, quite correctly, that *"For civil cases, the Legal Aid Bureau[49] provides aid to Singaporeans who satisfy both a means and a merits test... For criminal cases, anyone facing a*

[46] Employment (Administrative Penalties) Regulations 2016, accessible via http://sso.agc.gov.sg

[47] See https://www.mom.gov.sg/newsroom/press-releases/2016/0331-issuance-of-itemised-pay-slips-and-key-employment-terms-with-effect-from-1-april-2016

[48] Employment of Foreign Manpower Act, s.9(2), accessible via http://sso.agc.gov.sg

[49] Run by the Ministry of Law.

capital charge can be assigned counsel by the State free-of-charge, regardless of means and nationality. The Criminal Legal Aid Scheme[50] *also provides aid to applicants who satisfy both a means and a merits test."*[51]

So here then, is a rather obvious question: given that virtually all low-paid migrant workers are subject to income tax as tax residents[52] , why should they not also be eligible for aid to pursue civil claims from the Legal Aid Bureau?

In our view, the discrimination against non-nationals in access to the Legal Aid Bureau is unjustifiable and clearly contrary to paragraph 23(g) of the Compact, which calls for signatory States to *"[e]nsure that migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them… and that the delivery of justice is impartial and non-discriminatory".*

On a related note, enforcement of court orders to pay due salaries is effectively non-existent. While an elaborate process has been set up that allow migrant and local workers to lodge and prove their claims, with the process ending in either an agreed settlement registered with a District Court (if settled at mediation) or a Tribunal order (equivalent to a court order) if the case is taken to a Tribunal, subsequent enforcement of the order has generally proven to be ineffective. MOM offers no significant assistance to workers at this stage of the claim process. Workers find themselves having to engage lawyers at considerable cost, possibly more than the claim itself is worth, and even then, the legal hurdles are often insurmountable[53], and the ordered amounts unrecoverable. Migrant workers are further disadvantaged by not having the right to stay on in Singapore to pursue their cases.

To leave low-wage migrant workers empty-handed because the State has provided no effective mechanism to enforce court orders for owed salaries is an egregious violation of their labour rights. A low-cost, expeditious and effective system needs to be designed and implemented. Complementing it should be an insurance scheme for unpaid wages that employers must mandatorily participate in.

Objective 18: Invest in skills development and facilitate mutual recognition of skills, qualifications and competencies

Most of the actions called for under this Objective will require cross-border or inter-institutional cooperation. One particular action that does not is a call to *"enhance the ability of migrant workers*

[50] Operated by the Law Society.

[51] National report submitted to the UN Human Rights Council 15 October 2016, para 76.

[52] https://www.iras.gov.sg/irashome/Individuals/Foreigners/Learning-the-basics/Individuals--Foreigners--Required-to-Pay-Tax/

[53] See the example of a case documented in detail by TWC2 at http://twc2.org.sg/2018/06/17/when-court-orders-are-worthless-the-zach-engineering-case/

to transition from a job or employer to another by making available documentation that recognises skills acquired on the job"[54] .

While it is common for employers to renew the work permits of their employees on each annual or biennial expiry, it is relatively rare for migrant workers in the non-domestic sectors to transition between employers. Whereas terminations of employment in the domestic sector is usually due to changes in the personal circumstances of employers, TWC2 observes from our casework that terminations in the non-domestic sectors are more likely to occur when workers raise salary disputes or work injury compensation claims, resulting in less than amicable partings that prompt employers to cancel the work permits of claimant workers. Prospects for re-employment reaches near vanishing point once these workers are issued with Special Passes[55] pending the resolution of their claims and thereafter, repatriation. In short, presently there is virtually no labour mobility of work permit holders in non-domestic sectors, without first having to go home and paying high recruitment fees to brokers all over again.

We have commented above on the consequence of the adopting of a sponsorship system for the issuance of work permits (see Objective 6: Recruitment Fees and Objective 6: Job mobility). The sponsorship system institutes a time-limited monopsony of each permit holder's labour, whereby the only buyer that he may sell his labour to for the duration of the permit is his sponsor, unless his sponsor consents to his transfer to another employer. With scant prospects of alternative employment in view there is little incentive to invest in self-development, even were such opportunities available at a cost affordable to him. On the flip side, an employer who faces no competition for his workers will see little point in offering learning and development opportunities as a means to improve staff retention rates.

In the face of such dysfunctionalities in the low wage migrant labour market it seems hollow to even attempt any meaningful discussion of how Objective 18 can be achieved as far as these workers are concerned. Nevertheless, we start with a call made previously; for the abolition of the sponsorship system as a precursor to the development of healthy market forces for these workers, forces that will incentivise both workers and employers to invest in their future productivity, to the collective good of all.

[54] Global Compact on Safe, Orderly and Regular Migration, Final draft 11 July 2018, para 34(i).

[55] Though there is hearsay evidence that in rare instances MOM may exercise a discretion to assist such workers to find alternative employment.

Gap analysis on Head IIIb Objectives (State, social, community and consular support)

Objective 7: Address and reduce vulnerabilities in migration

The two primary root causes of vulnerability for work migrants in Singapore are indebtedness due to high recruitment costs, and job immobility and precarity due to the sponsorship system. We observe that Singapore has neither the political will or a strategy to address these issues. We have described above the many ways in which these primary factors produce vulnerability and it is not necessary to detail them again here. We have also described above what needs to be done; it is not as if no solutions are conceivable.

What State action we have seen tends to be focussed on addressing the effects of vulnerability instead of the root causes, eg, non-payment of salaries and arbitrary lowering of agreed salaries, but quite often these are either half-measures offering incomplete solutions or suffer from poor enforcement.

Singapore's antagonism towards civil society and independent voluntary welfare organisations also works against Objective 7. In the area of support and advocacy for migrant labour, sustained efforts at discrediting and silencing independent civil society and occasional efforts at limiting their financial resources undermine what should be a major resource of expertise, and contributor to social support for migrants and policy development. Neither does the government make any serious attempt to consult civil society when amending or formulating policies, with the unsurprising result that policies birthed in the ivory towers of the ministries are often poorly thought through and less than optimal.

Just to give one example, the policy that migrant workers whose work permits have been cancelled by their employers must remain in employer housing often results in exacerbating workers' vulnerability rather than reducing it. Typically, the cancellation of the work permit would have followed the launch of a salary or work injury claim by a worker, turning the employer-employee relationship acrimonious. The environment in company housing is understandably perceived by the worker as one fraught with tension and risk, where bullying, seizure of identity documents and evidence that he might need to support his claim, planting of false evidence, and kidnapping for the purposes of forced repatriation may easily arise. A policy that insists on workers remaining in this environment is contrary to Objective 7.

Possibly the most vulnerable group of migrant workers in Singapore are those who have been placed on Special Passes (a form of temporary stay visa) after filing salary or work injury compensation claims with the authorities. The claimants are barred from leaving the country until the cases have concluded[56], yet a condition of Special Passes is that they are not allowed to undertake paid

[56] Rare exceptions are made allowing the worker to return home even while the case is pending. However, it is on the condition that should he be required to attend any hearing, the worker must return to Singapore at his own cost to do so

employment. Cases take several months (in a minority of cases, more than 12 months) to conclude, during which these individuals are reliant on the goodwill of friends or relatives, or on such assistance as NGOs are willing and able to give, or (let's be frank) resort to working illegally for their daily sustenance. The latter puts them at further jeopardy, but it can be argued that the policy relating to Special Passes is what created the Hobson's Choice for them.

In the case of salary claimants, there has been some relaxation of this policy, and workers may be given an opportunity to seek new jobs locally without first being repatriated. However, this is not a right, but an option given at the discretion of the case officer at MOM, and the option may be refused without knowable grounds. In any case, as mentioned above, the period given to workers to look for new jobs is too short to be meaningful, and the chance of actually getting a new job is very low. For all practical purposes, the policy relaxation remains a half-measure with little improvement for workers' circumstances.

Special Pass workers with injury compensation claims do not even have this option. They have to remain out of work even if they have recovered from their injuries and are physically able to work, simply because matters relating to the quantum of compensation are pending.

On a separate (but not entirely unrelated) note, TWC2 questions whether the system of Special Passes does not amount to a form of detention, contrary to the spirit of Objective 13[57] and Article 13(2) of the UDHR[58], albeit the "detention centre" in question is a sizeable and pleasantly landscaped island.

Objective 15: Provide access to basic services for migrants

Sadly, this Objective does not identify what are *"basic services"*, save that it implies *"health needs"* and *"quality education for migrant children and youth"* are within its scope.

Difficulties that migrant workers can face in getting medical treatment following workplace accidents have been outlined in the commentary under Objective 6 above. In TWC2's experience the conduct of medical personnel at government hospitals who face no conflict of interests in

even though the cost of airfare and temporary accommodation is no small matter for a low-wage migrant worker. It is also highly disruptive to whatever new employment he might have been able to take up in his home country or in a third country. Hence, for all practical purposes, this possibility of being allowed to return home even before his case has concluded is not a realistic one. In the main, a worker put on a Special Pass is stuck in Singapore whether he likes it or not.

[57] To "use immigration detention only as a measure of last resort and work towards alternatives". TWC2 further notes the African Group's objections to the language of Objective 13 and its (apparently related) call to abolish criminal sanctions for irregular migration, but rather wonders whether the Group is confusing "criminalisation" with "detention". Not all crimes are punishable by incarceration, and vice versa detention is not necessarily the result of a criminal conviction. It is true that under Singapore's Immigration Act attempts to enter illegally is a criminal offence punishable by imprisonment of up to 2 years, but immigration detention does not necessarily have to result from a criminal conviction. Detention centres for (would-be) migrants are typically operated by countries popular as destinations for political asylum seekers and other "irregular migrants", who are not necessarily branded as "criminals". Singapore, apparently, does operate a few (see https://www.globaldetentionproject.org/countries/asia-pacific/singapore).

[58] UDHR Art 13(2) Everyone has the right to leave any country, including his own, and to return to his country.

attending to migrant workers as patients seldom gives rise to concerns on standards of care. Whether on-site clinics operated by many large construction and marine companies, who are also accountable to those who remunerate them, are as conscientious in observing their Hippocratic Oaths is rather more questionable, as it is for those at private healthcare institutions who obtain payment for their services from employers.

And if justice is a "basic service", TWC2 reiterates that migrant workers should not be discriminated against in access to legal assistance from state operated agencies, such as the Legal Aid Bureau.

Increasingly, basic banking should be seen as a basic service. Especially in advanced economies such as Singapore, non-cash payment systems are proliferating, with encouragement by the government. Not having a bank account may soon become an insurmountable hurdle for a migrant worker in accessing retail, transport, and other daily needs. Yet commercial banks in Singapore make it very difficult for migrant workers – the precise conditions vary from bank to bank – to open bank accounts on their own[59]. Banks generally require employers to support workers' applications and typically also impose minimum sum balances that prove a major deterrent to low-wage workers. There is no effort by the State to lay down new banking regulations that will overcome these impediments.

Objective 16: Empower migrants and societies to realise full inclusion and social cohesion

Singapore is itself a country whose "natives" are themselves predominantly the descendants of migrants from China, India and numerous other contributors to its rich, cosmopolitan culture. The integration of large migrant flows into settled and developed communities will always be a complex balancing exercise of conflicting interests and we would not presume to know where ideally any balance should be struck. Singapore claims to be *"fully committed to the protection and promotion of the human rights of our citizens"*[60]. We can only hope that it will, in time, be as willing to make the same commitment to migrants who may well become the forbears of its future citizens.

Objective 22: Establish mechanisms for the portability of social security entitlements and earned benefits

TWC2 finds itself quite unable to critique Singapore's attainment of this Objective in the absence of *any* security entitlements or benefits for its low-wage migrant workers.

[59] See http://twc2.org.sg/2017/08/25/going-cashless-over-half-of-work-permit-holders-dont-have-bank-accounts/

[60] National report submitted to the UN Human Rights Council 15 October 2016, para 4.

Conclusions

Albeit that the Compact is non-legally binding, Singapore should (if it has not already) commit resources for implementation, in response to the collective encouragement by signatory States to *"develop, as soon as practicable, [an] ambitious national response… such as through voluntary elaboration and use of a national implementation plan"*[61].

Based on our analysis as presented above, we conclude the following reforms should be included in Singapore's national implementation plan in pursuit of the Compact's Objectives:

(a) abolish the system of sponsorship for the issuance of work permits and introduce in its place a mechanism for prospective migrants to apply directly to Singapore authorities for the right to enter and work in Singapore for a fixed period of time for any eligible employer. We believe that such a reform would:

- re-introduce competitive forces into the migrant labour market that would reinstate a measure of bargaining power to migrant workers in their search for employment, thereby reducing potential for their exploitation by employers;
- reduce or, if possible, eliminate opportunities for prospective employers to extract unwarranted economic rents in the form of "kickbacks" for sponsoring work permits, and thereby reduce enforcement costs;

(b) radically reform the recruitment system to eliminate the role of recruitment agents or at least curtail their power to charge excessive recruitment fees at all points of migrant labour supply chain, by having a new system built on digital technology that ensures easy access by prospective migrant workers to information about available jobs, and which also enables them to apply directly for those jobs, and have the recruitment transparently documented and transacted through the system itself. Such a new system, shorn of demands for fees would:

- allow Singapore's authorities full control of the gateway for entry into the domestic labour market, including the selection of applicants best able to serve national needs;
- allow easy retrieval of details surrounding the terms of recruitment and employment, thus permitting quicker and more assured resolution of future disputes; and
- reduce migrant workers' vulnerability to exploitation and abuse due to their indebtedness.

Both (a) and (b) will incentivise both employers and employees to invest in learning and development to enhance future productivity;

[61] National report submitted to the UN Human Rights Council 15 October 2016, para 4.

(c) mandate the use of standardised employment contracts for low wage workers with terms that confer substantive rights and protections on employees, and institute timely, effective and affordable mechanisms for the enforcement of such rights;

(d) stiffen the penalties for contraventions of requirements to issue legally mandated documents to employees, such as detailed itemised payslips, and step up enforcement of those requirements;

(e) for FDWs, limit the number of rest days that can be traded away to no more than two per month;

(f) enforce the law on excessive overtime hours;

(g) reform and liberalise housing rules to the extent necessary to avoid putting migrant workers in situations where they are susceptible to abuse;

(h) end the detention in Singapore of claimants in salary and work injury disputes through Special Passes and allow claimants to seek alternative employment as soon as possible;

(i) raise public awareness of the prohibition against retaining employees' passports in the absence of a reasonable excuse for doing so, and take enforcement measures against employers who flout the prohibition;

(j) reform the system for enforcing court orders to ensure that expeditious, low-cost and effective avenues are available;

(k) establish a mandatory insurance scheme for unpaid wages;

(l) increase sentences sought for offences committed under the WSHA. It is also open to national authorities to incorporate as a matter of course reviews of bidders' workplace safety records in their procedures for public procurement and reject those with a poor history;

(m) institute reporting of workplace injuries by healthcare professionals, with appropriate safeguards in place for those who inadvertently but in good faith make false or inaccurate reports of work-related injuries;

(n) reform administrative procedures for claims under WICA to bar insurers from taking part in proceedings and raising objections to compensation awards, except where the claim is made against the insurer[62];

(o) open access to the Legal Aid Bureau and other state operated agencies that offer legal assistance for the pursuit of civil claims;

[62] Under s.32(1) of WICA.

(p) increase home leave allowances for work permit holders or alternatively grant visitation rights for family members; and

(q) increase public availability of disaggregated data on Singapore's migrant worker population.

Transient Workers Count Too is of the opinion that all the above suggestions are realistic and can be implemented in a space of just a few years. The standards set out in the GCM are within reach, provided there is political will to do so. TWC2 looks forward to the implementation of the above recommendations. We expect to be making periodic reports in the years to come with the aim of measuring progress.

Transient Workers Count Too
5001 Beach Road #09-86
Golden Mile Complex
Singapore 199588

Website: www.twc2.org.sg
Phone: +65 624 77 001
Email: info@twc2.org.sg

30 October 2018

Transient Workers Count Too is a registered charity in Singapore, dedicated to fair treatment and better conditions for migrant workers in Singapore.

Our Direct Services wing provides social work and quasi-legal support to migrant workers, helping them understand their rights and navigate the bureaucracy; free meals for destitute migrant workers; medical subsidies when no other source of support is available; transport subsidies and housing assistance for the neediest; supplemented by regular outreach to migrant communities. We work closely with pro-bono lawyers in pursuit of strategic cases. We organise sports and activities to keep injured workers active and to enable them to socialise and raise their spirits.

Our Advocacy wing comprises teams that do research and prepare policy papers; give talks and manage programmes for public engagement; and maintain an active social media and web presence that regularly documents the interesting cases we come across. We also stand ready to engage with policy-makers when opportunities arise.

Transient Workers Count Too is a member of Migrant Forum in Asia (www.mfasia.org).

APPENDIX

GCM objectives, clustered for the purposes of this report

HEAD I: Strengthen knowledge and analysis of migration
1. Collect and utilise data as a basis for evidence-based policies

HEAD II: Controlling/influencing migration
4. Ensure that all migrants have proof of legal identity and adequate documentation
9. Strengthen the transnational response to smuggling of migrants
10. Prevent, combat and eradicate trafficking in persons in the context of international migration
11. Manage borders in an integrated, secure and coordinated manner
12. Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral
13. Use migration detention only as a measure of last resort and work towards alternatives
23. Strengthen international cooperation and global partnerships for safe, orderly and regular migration

HEAD III: Enhanced support of migrants	
IIIa: Work-related support	**IIIb:** State, social, community and consular support
5. Enhance availability and flexibility of pathways for regular migration	3. Provide accurate and timely information at all stages of migration
6. Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work	7. Address and reduce vulnerabilities in migration
18. Invest in skills development and facilitate mutual recognition of skills, qualifications and competencies	8. Save lives and establish coordinated international efforts on missing migrants
	14. Enhance consular protection, assistance and cooperation throughout the migration cycle
	15. Provide access to basic services for migrants
	16. Empower migrants and societies to realise full inclusion and social cohesion
	17. Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration
	20. Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants
	21. Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration
	22. Establish mechanisms for the portability of social security entitlements and earned benefits

HEAD IV: Leveraging migration for sustainable development
2. Minimise the adverse drivers and structural factors that compel people to leave the country of origin
19. Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries