



MIGRANT WORKER
VULNERABILITY
IN THE JUSTICE SYSTEM

MIGRANT WORKER VULNERABILITY

In “Riots and Rights: Law and Exclusion in Singapore’s Migrant Worker Regime”, Prof Jaclyn Neo lists several factors **why migrant workers remain one of the most vulnerable groups in our society:**

- 1 Migrant worker’s unfamiliarity with the host state creates **apprehension, anxiety and fear.**
- 2 Migrant workers are **excluded from political processes** that directly affects them. Furthermore, they cannot form independent unions without approval from MOM which effectively disables them from engaging in **collective action** to protect and enforce their rights.
- 3 Migrant workers are more likely to suffer from **stereotypes, prejudices, racism, xenophobia, ignorance and discrimination.**
- 4 The economic activity that migrant workers engage in such as domestic and construction work tends to command little respect



LAWS & POLICIES: FOR OR AGAINST MIGRANT WORKERS?

Migrant workers are often seen as **purely transient economic actors** under the work permit regime. This tends to result in policies and laws which are economically expedient but fail to take into account **their discriminatory and exploitative impact**.

Economic Vulnerability

- 1 Employers are able to unilaterally cancel work permits which entails **repatriation of migrant workers to their respective home countries**.
- 2 Employers may withhold consent without reason which **prevents migrant workers from working different jobs**.

Social Vulnerability

- 3 Migrant workers are **unable to bring their families** with them and are unable to marry a Singapore citizen or PR without MOM approval.
- 4 Female migrant workers are **prohibited from becoming pregnant** or delivering a child during or after the validity period of her work permit.



Remember the Little India Riots?

More than 50 migrant workers were repatriated after the riots even though their involvement was found to be **“less egregious”**! Without valid visit passes, migrant workers may be expelled at any time without recourse or due process.



EASY TO ENFORCE RIGHTS MEH?

Although the Ministry of Manpower and other governmental bodies have taken steps to introduce policies and laws to protect migrant workers, their effectiveness largely depends on **workers being willing to report their employers** for any transgression.



According to a 2013 survey by the Singapore Management University (SMU),

65% of injured and salary-claim workers surveyed reported having been **threatened by their employers** with premature repatriation.

SALARY AND INJURY CLAIMS MAY TAKE SEVERAL YEARS TO RESOLVE.



During that time workers often have trouble accessing food, housing and medical care.

Some employers fail to comply to EFMA regulations and meet workers' needs even after their WP is cancelled.

2017 report by SMU

Workers are often unable to earn an income during this period.

They are unable to get permission to change employers and remain unemployed or are physically unable to work due to their injuries. This further deters workers from bringing claims.



Case in point!

In the recent Parti Liyani case, a police report was made by the Liew just 2 days after Ms Liyani expressed her intention to lodge a complaint to MOM about being required to work illegally at Karl's residence and his office.

According to a 2017 report by SMU,

The current legal process remains **unaccommodating** to migrant worker vulnerability, deterring workers from **enforcing their rights**.



CONFUSION & DISEMPOWERMENT

Workers are often not treated with courtesy and respect or fail to receive appropriate quasi-legal support from MOM officers, lawyers or doctors. This adds to the already overwhelming experience of going through an unfamiliar, foreign legal system.

LACK OF TRANSPARENCY

Workers are not told and fail to understand the evidentiary requirements required for making claims. This is because previous decisions and records are not published. Furthermore, the flexibility of the labour court system allows for excessive discretion by Labour Court judges who are actually public officers of MOM.



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LACK OF BARGAINING POWER

Workers with salary claims are not allowed legal help in mediation.

This often results in them settling for offers which are less than satisfactory.

According to a 2016 Universal Periodic Review submission by TWC2, the **typical settlement amounts to only a quarter to a half of what the worker is owed**. During the trial process, some workers might still be forced to represent themselves because they are unable to afford legal help while their employers are represented by highly trained lawyers.



DIFFICULTY IN ENFORCING JUDGEMENTS

Employers often fail to comply with judgements and orders - some employers might refuse to pay, negotiate downwards or declare bankruptcy to avoid payment.

AGAINST ALL ODDS:

Going through the criminal justice system as an Accused

Migrant workers face greater difficulties as an Accused in the criminal justice system. They may **resort to pleading guilty even if they believe they are innocent** as it is shorter and more cost-efficient to serve out the sentence.

Lack of Familiarity with their Host State

Language barriers may prevent accused migrant workers from accurately understanding charges, answering questions and stating their defence during police investigations and criminal trials.

The trial judge found Parti Liyani's **credibility to be lacking** due to "material inconsistencies" in her evidence, as Parti had been interviewed by the police in Bahasa Melayu instead of **her native, Bahasa Indonesia**.

Lack of Economic Resources

Migrant workers cannot afford costly legal services. While pro bono legal services such as CLAS are available, such schemes only cover offences under certain statutes and require applicants to undergo strict means and merits testing.

According to Alex Au from TWC2, about **half of the applications** that the NGO helps workers with are rejected.

Lack of Social Support

Migrant workers are less likely to have peers who can afford bail. During lengthy criminal procedures, they cannot find new employment and often depend on resource-constrained NGOs to provide shelter, food and financial assistance.

The migrant worker NGO, **HOME**, provided Ms Liyani with support during her trial which stretched on for **4 years**.

The work permit regime keeps migrant workers economically and socially vulnerable.

▶▶ THE WAY FORWARD?

According to Prof Jaclyn Neo, "where the law sanctions unequal rights, this often leads to unequal treatment and discrimination in society".

It is time to consider **a reform of the systems and laws** regarding migrant workers. Academics and NGOs have suggested the various **recommendations**:

Amendments to Employment Act, Employment of Foreign Manpower Act, Work Injury Compensation Act and other related regulations and policies

- Repeal the regulation that gives employers the unilateral right to cancel or refuse to cancel the WP of a worker
- Repeal the law that requires a WP holder to be deported on grounds of pregnancy or when they are diagnosed with infectious diseases

Bridge the gaps in legal processes to aid migrant workers

- Improve claims process through access to information and enhancing safeguards
- Improve claims reporting mechanisms and injury prevention
- Increase transparency and effectiveness of mediation processes
- Provide greater access to pro bono legal services



▶▶▶▶ THE WAY FORWARD?

- Extend support for migrant workers in terms of housing, medical care, and food**
- Enhance stakeholder engagement and education**



- Strengthen enforcement regime**

- Establish a dedicated unit to help WP holders enforce judgements
- Extend Special Pass period for WP holders to enforce judgements
- Penalties should be increased and strictly enforced for employers who engage in practices such as failing to pay judgements and settlement orders, pay or underpay employee salaries.



Recommended Readings

- Jaclyn Neo (2015), "Riots and Rights: Law and Exclusion in Singapore's Migrant Worker Regime".
- Tamera Fillinger et al. (2017), "Labour protection for the vulnerable: An evaluation of the salary and injury claims system for migrant workers in Singapore"

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CAPE, or the Community for Advocacy & Political Education – a student organisation based in Yale-NUS College – was founded in 2017 by students from Yale-NUS College and the Law Faculty of the National University of Singapore (NUS). An independent and non-partisan community, we aim to build capacity for political literacy and constructive participation in Singapore's civic democracy.

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