

Memorandum

From

Labour Law Reform Coalition

To

**Minister of Human Resources
Datuk Seri YB Saravanan Murugan**

Concerning

Trade Union (Amendment) Bill 2022

On 15 July 2022

Background

After the 2018 general election, the Malaysian government started the labour law reform exercise. One of the motivations is to implement the US-Malaysia Labour Consistency Plan, a requirement for Malaysia's participation in the Trans-Pacific Partnership Agreement.

In 2019, the Ministry of Human Resources website published the ministerial proposals on labour law reform for public engagement, including the proposals on Employment Act, Trade Union Act and Industrial Relations Act.

Based on the ministerial proposals, the Labour Law Reform Coalition (LLRC, formerly known as Decent Work Working Group) organized a few consultation meetings to deliberate the government proposals. More than two hundred unionists participated in the discussion and gave valuable inputs.

We submitted our reform proposals on the Employment Act to the Ministry of Human Resources (MOHR) in January 2019. Subsequently, we handed over our reform proposals on Trade Union Act and Industrial Relations Act to the then Minister in April 2019.

Since then, the ministry held multiple consultation meetings with LLRC leaders, and we have communicated our concerns on freedom of association, collective bargaining and basic rights and benefits of Malaysian workers.

LLRC continued to monitor the implementation of the Industrial Relations Act after its passing in the parliament in October 2019. We urged the Minister to enforce the Act as soon as possible so that workers and unions can enjoy new rights. As a result of the engagement, eventually the Minister implemented the Act on 1 January 2021.

The government passed the Employment Act (Amendments) Bill in the House of Representatives in March 2022. We thanked the Minister for accepting our proposals to increase the maternity leave to 98 days and to introduce the paternity leave of 7 days.

Realising the importance of the consistency between Employment Act, Sarawak Labour Ordinance and Sabah Labour Ordinance, LLRC held two consultation meetings in Kuching and Kota Kinabalu on 11-12 June 2022 respectively.

Together with this memorandum, we also submit a memorandum on Sarawak Labour Ordinance and Sabah Labour Ordinance on behalf of union leaders from Sarawak and Sabah.

Given that the Trade Union (Amendment) Bill 2022 will be tabled for second reading in the Mid-July parliament session. LLRC would like to get the Minister's attention on several important issues in the bill.

In Support of the Principle of Freedom of Association

First and foremost, LLRC wishes to express our wholehearted support of the proposed amendments to the Trade Union Act that is in line with the principle of

freedom of association. This is the first step towards the ratification of ILO Convention 87 on Freedom of Association and protection of the right to organize.

The removal of the restriction on worker organizing in accordance with trade, industry, occupation and establishment is crucial. The existing Trade Union Act violates workers' freedom to choose unions of their own choice.

In the past few decades, the Trade Union Affairs Department (JHEKS) has imposed strict segregation of trade union membership by industry. For example, the Electrical Industry Workers' Union (EIWU) was not allowed to organize electronics workers, which is considered the same industry in many other countries.

Moreover, the Paper and Paper Products Manufacturing Employees' Union's (PPMEU) claim for recognition was rejected at a company producing a mixture of products such as paper and aluminium packing materials. The company challenged the decision and said PPMEU could not represent its workers.

The unreasonable provision inherited from the British colonial administration has weakened the trade union movement in the past 50 years. The removal of the provisions will solve the problems of segregation by industry and union representation forever.

Pertaining to the amendment of section 12(2) that will result in more than one union to be formed at a workplace, as stated in our press statement dated 16 June 2022, we call on MOHR to hold an immediate dialogue with trade unions on the proposal before the second reading in the parliament.

Historically, Malaysian Trades Union Congress (MTUC) already called on the government to ratify ILO Convention 87 in 1971 and campaigned relentlessly for implementation of freedom of association. LLRC's symposium on freedom of association in September 2019 also passed a resolution to call for ratification of Convention 87. We believe that freedom of association will bring benefit to the 94% unorganized Malaysian workers in the long run.

The Fourth Schedule is a Knife Hanging Over the Head Of Labour Movement

LLRC strongly disagrees with the introduction of the fourth schedule and the new subsection 15(1)(d) and amendment of the subsection 76C in the Trade Union (Amendment) Bill.

The proposed new fourth Schedule, says if a trade union is convicted of offences stated in the penal code, the Director General of Trade Unions can cancel the registration of the unions, or declare the affiliation of trade unions invalid.

Surprisingly, the proposed fourth schedule stipulates offences under various chapters of the Penal Code (Act 574) chapter VI (Offences against the state, S121-130A), Chapter VIA (Offences relating to Terrorism, S130B-S130T) and Chapter VIB (Organized crimes, S130U-S130ZC)

This new provision is seemingly suggesting that trade unions could commit offences such as waging war against the Yang di-Pertuan Agong (S121), carrying out activity

detrimental to parliamentary democracy (S124B), directing activities of terrorist groups (S130I) or assisting an organized criminal group (S130W).

It is totally insane to link trade unions to these criminal activities. The government should not, on the one hand, abolish the provisions relating to prohibition of participating in unlawful activities in the Trade Union Bill, on the other hand introducing the Fourth Schedule to prevent trade unions from joining unlawful activities.

Given that Penal Code applies to all persons, anyone who commits offence, whether a trade unionist or not, will be prosecuted accordingly. Therefore, it is unnecessary for the government to include the penal code provisions in the fourth schedule of the Trade Union Bill.

LLRC is of the view that the government should immediately drop the fourth schedule, the subsection 15(1)(d) and 76C, which is acting as a deterring factor to check trade union movement. The fourth schedule can permanently disable trade unions in Malaysia, it is undoubtedly a knife hanging over the head of the labour movement.

Stop Giving JHEKS More Powers to Control and Monitor Union Activities

Furthermore, the Bill is in contradiction by itself. On the one hand, it enormously reduces the Director-General's discretionary power and removes ambiguous wordings, on the other hand, many new provisions have been inserted to give the Director-General more power to control, examine and monitor trade union activities.

For instance, subsection 7(1) empowers the Director-General to require a union officer to produce documents or information in respect of the union. This new subsection may give unnecessary power to JHEKS to harass trade unions and prevent registration of new unions.

The role of the Director-General should remain as a registrar (the term was used several decades ago), who is only responsible for registering or deregistering trade unions in accordance with clear criteria stated in the Trade Union Act.

The section 12(1) should be amended to require the Director-General to respond to the application for registration of trade union within 30 calendar days. The absence of a deadline gives the Director-General discretionary power to delay the registration of trade unions.

We urge the MOHR to remove the wording "he is satisfied that" in section 12(3)(d) to remove the discretionary power of the Director-General in refusing to register a trade union.

In addition, we disagree with the insertion of the new sections 63A, 63B, 63C, 63D and 63E. These new sections give the Director-General extra power to appoint enforcement officers to enforce the Trade Union Act and related regulations. The existing JHEKS officers should be enough to carry out the routine works of the department.

The new sections empower the Director-General to summon any person to attend examinations from day to day until the investigation is completed. The enforcement officers are empowered to seize union documents.

We urge MOHR to drop these new sections, which will serve as an intimidating factor for trade unions. In the past, trade unions have been very cooperative with JHEKS on any issues concerning workers and union activities.

Labour law reform should democratize the process of trade union management and respect workers' autonomy to self-rule. Tightening the control and surveillance of trade unions is in contradiction with the main objective of the exercise and the international labour standards.

Support Removal of Imprisonment Term but Disagree with the increase of fine amount

Concerning the various sections on offences in the Trade Union (Amendment) Bill, we give our full support for the removal of imprisonment term in the subsection 18(8), 25A(2), 29(3), 49(3), 54(3), 56(5), 57(4), 61, 62(2), 71(4).

The existing Trade Union Act is too harsh because it imposes unnecessary threat of imprisonment for unionists.

However, we disagree with the proposal on increasing the fine amount. We recommend the MOHR to maintain the existing fine amount. Trade unions' financial resources should be fully utilized for the benefit of workers, high amount of the fine will affect unions' delivery of service to workers.

Migrant Workers' Rights to Hold Union Office

LLRC is of the view that migrant workers in Malaysia should be allowed to hold union office as local workers, a principle adopted by ILO and implemented in many countries such as South Korea, Cambodia, Indonesia and Hong Kong.

We recommend MOHR to revert to its 2019 proposal on Section 28 that migrant workers should be allowed to hold union office, but reduce the requirement of year of service to one year.

However, there are some sectors where migrant workers constitute the majority of the workforce, for example plantation, construction and rubber glove manufacturing. While opening up for migrant workers to hold union office, the MOHR should also enact a new regulation to ensure both local and migrant workers have balanced representation in the union office.

Both local and migrant workers need time to build trust and work together in bringing better service and benefits for all workers.

Union Can Change its Name through A General Meeting

In many proposed amendments, the government has already allowed unions to make democratic decisions through a general meeting or delegates' conference. We support these amendments because it makes trade union administration easier.

However, in the section 31(1), we recommend the government to adopt the similar wordings as other sections :

"31(1) Subject to section 34, any registered trade union may, with the consent of more than one-half of its members, change its name. Such consent may be obtained by way of votes at a general meeting or delegates conference of the trade union, referendum or secret ballot."

Our Demands

Therefore, we wish to summarize our demands as follows :

1. We support the amendments relating to freedom of association to ensure its compliance with ILO standards;
2. The fourth schedule and all related subsections such as 15(1)(d) and 76C should be removed;
3. Provisions that give the Director-General additional power to control, examine and monitor unions, such as 7(1), 12(3)(d), 63A, 63B, 63C, 63D and 63E, should be removed;
4. The section 12(1) should be amended to require the Director-General to respond to the application for registration of trade union within 30 calendar days;
5. We support the removal of existing imprisonment terms but urge MOHR to maintain the fine amount, such as 18(8), 25A(2), 29(3), 49(3), 54(3), 56(5), 57(4), 61, 62(2), 71(4);
6. The section 28 should be amended to allow migrant workers to hold union office after they worked for one year. At the same time a regulation should be enacted to ensure balanced representation of local and migrant union leadership in sectors with a majority migrant workforce.
7. The section 31(1) should be amended so that unions can change their name through a general meeting or delegates conference.

Conclusion

LLRC urges the government to focus on improving workers' freedom of association in the Trade Union (Amendment) Bill 2022, which is of the paramount in strengthening workers' bargaining power with employers.

Without enlarged freedom and democratic space at the workplace, neither the labour movement nor the government can push for the achievement of 48 percent labour income share targeted by the Shared Prosperity Vision 2030.

The inclusion of the new fourth schedule shows the government is still seeing trade union management from a national security perspective, worrying the unions could be a threat to destabilize the country or national economy.

Such unnecessary anxiety should be addressed through more social dialogues between MOHR, Malaysian Employers Federations and trade unions. Industrial Harmony can surely be attained if all parties agree that labour is a vital stakeholder and entitled to a reasonable share of economic growth and prosperity.

Contact us

Address : (C/O) National Union of Transport Equipment & Allied Industries Workers' (NUTEAIW) No. 30A, Jalan Utas A, Seksyen 15, 40000 Shah Alam, Selangor Darul Ehsan.

Tel: 603-5519 2421

Fax: 603-5510 6863

Email : llrcmalaysia@gmail.com

Website : <http://www.tradeunion.org.my>

Facebook page : <http://www.fb.com/llrcmalaysia>

N. Gopal Kishnam & Irene Xavier

Co-Chairpersons

Labour Law Reform Coalition

Tel : 019-3174717 / 012-6494917

About us

Labour Law Reform Coalition is endorsed by 58 Trade Unions from various sectors and worker organisations. The group started in June 2018 to initiate discussion on labour law reform based on ILO's decent work framework. The coalition had submitted proposals of reforming Employment Act 1955, Trade Union Act 1959 and Industrial Relations Act 1967 in January and May 2019 respectively.

Gopalkishnam Nadesan is the General Secretary of National Union of Transport, Equipment and Allied Industry Workers (NUTEAIW), he is the former Secretary-General of Malaysian Trade Union Congress. Irene Xavier is a veteran social activist who founded Persatuan Sahabat Wanita Selangor, she has been fighting for the rights of women workers for decades.