

# CIVIL SOCIETY



## JOINT STATEMENT

WE, the undersigned **75** civil society organizations, trade unions and groups are shocked with the recent decision of the Malaysian cabinet on 30/1/2013 to allow employers of migrant workers to recover levy that they paid the government to employ foreign workers from migrant workers through wage deductions.

According to the law, workers in Malaysia were to receive minimum wages of RM900[USD291](for Peninsular Malaysia) and RM800[USD259] (for Sabah and Sarawak) as of 1/1/2013. Khalid Atan, the President of the Malaysian Trade Union Congress(MTUC) said, "...if workers were asked to pay the levy, the minimum wages policy would not benefit them at all, as whatever little increase in salary they enjoyed, would be wiped out with the levy payment..." [*Star*, 10/1/2013, MTUC: Don't give in to employers' demand on foreign workers levy]

Some employers have also been trying to avoid this obligation to pay minimum wages, which is basic wages not inclusive overtime, existing allowances and other benefits. Some do it by re-structuring worker remuneration by including all other allowances, incentives and benefits to make up the RM900, which is very wrong. Some employers are making employees to sign documents agreeing to these changes, whereby this is made easier when there are no worker unions. Workers generally have no avenue of complaint, or even choice in the matter especially when many now are employed based on short-term employment contract. A refusal by the worker means a non-renewal or no new employment contracts when their contracts expire.

To avoid paying workers minimum wages, the Malaysian government also allowed employers the right to apply for a delay in paying workers minimum wages, and vide Minimum Wages(Amendment) Order 2012 dated 28/12/2012, the government allowed more than 500 employers to delay paying workers minimum wages. What was blatantly wrong in this process was that the aggrieved workers and/or their unions were not given any right to be heard before the employer's application to deny them their entitlement to minimum wages was approved.

The Malaysian government, in the past, on the application of certain employers, allowed them to make wage deductions and/or wage advances, contrary to the general provisions in law with the

intention to allow employers to recover from migrant workers monies expended by employers to get migrant workers to Malaysia to work for them. This included sometimes not just a means to recover levy paid, but also all other costs incurred by employers to recruit and bring in migrant workers. Approvals were given by the government with no consultation or agreement of the worker or their unions. As of 1/4/2009, the Malaysian government stopped this practice, and made it clear that it is employers that have to pay the levy and they cannot recover the said sum from migrant workers.

Labour Director-General Datuk Ismail Abdul Rahim was reported saying that, "...The rationale behind getting employers to bear the levy was to discourage them from employing foreigners..." [Star, 16/4/2009, *Employers can deduct levy from wages, again*]. As such, this current move to make migrant workers pay the levy removes the very intention of levy, i.e. to discourage employers from employing foreign workers.

The reason for the new decision '... is to alleviate the hiring cost for employers, said Finance Minister II Datuk Seri Ahmad Husni Hanadzlah...' [Star, 30/1/2013, *Cabinet: Foreign workers to pay levy instead of employers with immediate effect*]

. If the Malaysian government now wants to reduce the financial burden of employers who hire migrant workers, then rightfully the government should reduce or remove the levy – not shift the burden to workers.

Migrant workers sacrifice a lot when they elect to come to Malaysia to work. They have to leave behind the spouses, children, family and friends for Malaysian law allows them to only come alone and work in Malaysia, and they also are barred from falling in love and getting married during their employment period which is usually for at least 5 years. They also end up incurring substantial debt when they come, for they have to pay, amongst others recruitment agents, most times these payments include both legal and 'illegal' payments. Whilst in Malaysia, they are bound to just one employer – having no right to change employers.

When they claim rights, even through existing legal avenues, they generally are terminated and their employment pass/permits are also cancelled depriving them the right to stay (or work) legally in Malaysia until their claims are resolved. The termination of these passes/permits is done by the Malaysian government irrespective of whether there are outstanding claims or pending cases concerning the said worker's rights.

This precarious reality of migrant workers makes them vulnerable to exploitation by some employers, knowing that it is most easy to violate worker rights and then get off scot free. Until laws and policies are amended to protect migrant's worker rights, naturally migrant workers become the preferred choice over local workers as they are certainly a more easily exploited class of workers.

We call on the Malaysian government to immediately rescind the decision made by the Malaysian cabinet on Wednesday(30/1/2013) to allow employers of migrant workers to recover the levy they pay the government by deduction of wages of migrant workers.

We take the position that all workers, including migrant workers, are entitled to receive minimum wages, whereby this is the basic wage and should not include allowances, benefits and other work incentives. Employers should not be permitted to remove pre-April 2012 worker entitlements and benefits, being the date the Minimum Wage Order 2012 came into force, from existing and subsequent employment contracts.

We call on the Malaysian government to end all forms of discrimination against workers, with regard to, amongst others, their nationality, gender, duration of their employment contracts.

*Charles Hector*

*Pranom Somwong*

*Syed Shahir Syed Mohamud*

***For and on behalf the 75  groups listed:***

ALIRAN

Angkatan Rakyat Muda Parti Rakyat Malaysia (ARM-PRM)

Asian Migrant Centre (AMC), Hong Kong

Asian Migrants Coordinating Body (AMCB) Hong Kong

Asia Monitor Resource Centre, Hong Kong

Asia Pacific Forum on Women, Law And Development (APWLD)

Asia Pacific Mission For Migrants (APMM ), Hong Kong

Association of Indonesian Migrant Worker in Hong Kong (ATKI-HK)

Bangladeshi Ovibashi Mohila Sramik Association (BOMSA)

Burma Campaign Malaysia

BWI (Building and Wood Worker's International)

CAW (Committee for Asian Women)

Centre for Human Rights and Development-Sri Lanka

Center for Orang Asli Concerns (COAC), Malaysia

CEREAL - Centro de Reflexión y Acción Laboral – Guadalajara, Mexico

Clean Clothes Campaign( CCC )

Community Action Network (CAN), Malaysia

Community Development Services, Sri Lanka

COVA (Confederation of Voluntary Associations), India

**Electronic Industry Employees Union Western Region (EIEUWR), Malaysia**

Far East Overseas Nepalese Association (FEONA), Hong Kong

Filipino Migrant Workers Union (FMWU)

GoodElectronics Network

Human Rights Ambassador for Salem-News.com

IMA Research Foundation, Bangladesh



International Domestic Workers Network

**Kesatuan Pekerja-Pekerja Polyplastics Asia Pacific Sdn Bhd.**

**Kesatuan Pekerja-Pekerja MHS Aviation Berhad**

**Kesatuan Sekerja Industri Elektronik Wilayah Selatan (EIEUSR), Malaysia**

LSCW (Legal Support for Children and Women), Cambodia

MADPET (Malaysians Against Death Penalty and Torture)

Malaysia Youth & Students Democratic Movement (DEMA)

MAP Foundation, Thailand

Migrant Domestic Workers Trust, India

Migrant Forum, India

Migrant Health Association in Korea

MIGRANTE International

Mindanao Migrants Center for Empowering Actions, Inc. (MMCEAI)

Mission For Migrant Workers - Hong Kong

**MTUC (Malaysian Trade Union Congress)**

Myanmar Ethnic Rohingyas Human Rights Organization Malaysia (MERHROM)

National Domestic Workers Movement, India

**National Union of Transport Equipment & Allied Industries Workers (NUTEAIW)**

Network of Action for Migrants in Malaysia (NAMM)

NLD-LA (National League for Democracy-Liberated Areas), Malaysia

**NUBE (National Union of Banking Employees), Malaysia**

OKUP (Ovibashi Karmi Unnayan Program) in Bangladesh

Parti Rakyat Malaysia(PRM)

**Paper & Paper Products Manufacturing Employees' Union Of Malaysia (PPMEU)**

Persatuan Sahabat Wanita, Selangor

Persatuan Kesedaran Komuniti Selangor (EMPOWER)

Persatuan Masyarakat Selangor & Wilayah Persekutuan (PERMAS)

PILAR (United Indonesians in Hong Kong against Overcharging) , Hong Kong

Pusat KOMAS (KOMAS)

Saya Anak Bangsa Malaysia {SABM}

SUARAM, Malaysia

Tamilnadu Domestic Workers Union, India

Tamilnadu Domestic Workers Welfare Trust, India

Tenaganita, Malaysia

Transient Workers Count Too (TWC2), Singapore

United for Foreign Domestic Workers' Rights (UFDWR )

WAC, Philippines

WARBE Development Foundation-Bangladesh

Women Workers Lead

WH4C – Workers Hub For Change

Yayasan LINTAS NUSA - Batam – Indonesia

Solidaritas Perempuan (SP) / Women's Solidarity for Human Rights, Indonesia

SEWA (Self Employed Women's Association), India

**Electronic Industry Employees Union Eastern Region(EIEUER), Malaysia[KSIEWTSM]**

MakeITFair

Nepal Labour Journalists' Association

Migrant Care, Indonesia

CIMS (Centre for Indian Migrant's Studies)

United Filipinos in Hong Kong (UNIFIL-MIGRANTE-HK)

Kav LaOved – Protecting Workers' Rights