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Submission on digital technology, social protection and human rights, in response to the call by the United Nations Special Rapporteur on extreme poverty and human rights

Impact of digital technology on social protection and human rights amongst migrant workers in Singapore

16 April 2019

Dear Mr Alston,

1.01 Transient Workers Count Too (TWC2), a civil society organisation in Singapore, is pleased to submit this paper touching on the impact of digitisation on migrant workers here, based on our work with this low-wage and vulnerable community.

1.02 There are in Singapore over 970,000 migrant workers in what is known as the Work Permit category (a term we use interchangeably with 'low-wage') often deployed to industry sectors such as construction, landscaping, manufacturing, marine and chemical process manufacturing, sanitation, retail and hospitality, as well as care-giving. They make up a quarter of Singapore's total labour force. Seen from the perspective of their low income, social exclusion mainly on the basis of language and class, legal restrictions as to which sectors they are permitted to work in, and precarity of immigration status, migrant workers constitute perhaps the most vulnerable community of any sizeable number in our country.

1.03 It should be noted early on in this paper that Singapore does not have any social welfare programme for foreigners, even those with work passes. Therefore, the question of how digitisation has impacted welfare programmes (in its narrow sense) is moot. What social protection exists in Singapore takes the form of statutory obligations imposed on employers to provide housing, medical care, etc, subject to limits, for Work Permit holders under their employment. Each employer runs its own system, and we have not come across any fully digitised private system that impacts any large group of low-wage migrant workers.

1.04 Nonetheless, the State has several digitised processes that affect migrant workers, relating to their immigration status, contracts and access to remedy when a labour dispute arises. Drawing from our experience in these areas, we discuss six examples in this paper where the adoption of digital

technology by the State has impaired the rights and protection of migrant workers in Singapore. The six examples are described in ascending order, from those with mild effect to potentially very serious.

1.05 In this report, the male pronoun includes persons of all genders.

1.06 Before proceeding to the six examples, however, a brief explanation about Singapore's migrant labour model may be helpful in understanding the processes that have been digitised.

Management of low-wage labour migration into Singapore

2.01 Singapore has a highly developed system for managing and regulating the entry and stay of migrant workers in the Work Permit category. They enter through regular channels and are issued with credit card-sized Work Permits, which also serve as their personal identification document. Work Permits are tied to employers, of a maximum duration of two years, but are renewable. Unless a waiver is granted by the Ministry of Manpower, the migrant worker has to be repatriated at the employer's expense when the employment has ceased.

2.02 Besides being of limited duration, a Work Permit can be cancelled at any time by the employer or the Ministry of Manpower at will – a feature that greatly increases the bargaining power of employers over employees.

2.03 The management of labour migration is largely based on the Employment of Foreign Manpower Act, which confers on Work Permit holders, together with those in higher skill categories, a limited number of rights, along with restrictions. Work Permit holders, with the exception of those in domestic work, are also covered by the Employment Act and the Work Injury Compensation Act, in the same way as citizen employees are. The Employment Act creates rights related to, inter alia, salary and terms of employment, while the Work Injury Compensation Act provides for recourse in the event of a workplace injury.

2.04 Other legislation that are relevant to migrant workers include the Immigration Act, the Employment Agencies Act and the Employment Claims Act. However, in the discussion to follow, the focus will mainly be on the practical and foreseeable impact of digitised processes on migrant workers' human rights rather than the specific rights created by the above-mentioned legislation; to deal with the many specific rights created by legislation – which themselves can be flawed – would entail far too much detail.

Example I: Risk of unknowingly slipping into overstay status

3.01 The Work Permit card contains enough personal details such as name, date of birth and photograph to be used as an identification document. But unlike a citizen's ID card, Work Permits have expiry dates. From around 2017 these have not been printed on the card. Now there is no way to glean from a visual inspection of the Work Permit whether it is valid or expired.

3.02 Instead, the validity status of a Work Permit is stored online at the Ministry of Manpower. To enable access to this information, there is a QR code on the reverse of the Work Permit, and a mobile phone app is available which can read the QR code and extract additional information about its validity, expiry date, etc. This digitisation process was obviously designed to eliminate the plastic waste that used to result from new cards having to be printed and issued upon each annual or biennial renewal of Work Permits. It was also meant to give anyone real-time information as to the validity of the card. Previously, if the employer cancelled the Work Permit prematurely – a process that is a simple online transaction between employer and the Ministry of Manpower, with no involvement of the employee – the printed expiry date on the card would not reflect the actual status and would thus be misleading.

3.03 Transient Workers Count Too has seen many cases in which employers surreptitiously cancelled the Work Permits of their employees without informing them. The most plausible reason for doing this would be to avoid paying the monthly foreign worker levy – a tax whose amount is equivalent to 25% to over 100% of the worker's salary – to the Ministry of Manpower. If the worker is none the wiser about the cancellation, he will continue to stay on the job. However, he will have slipped into overstayer status from an immigration perspective.

3.04 Whilst migrant workers have increasingly downloaded the app that reads the QR code and should be able to check for themselves the validity of their Work Permits, in practice this is neither a habit nor a pressing concern unless there is some suspicion that the employer has cancelled their Work Permits. TWC2 has seen cases where workers didn't know they had overstayed for a month – everything seemed normal at the workplace all this while – until they were randomly checked by the police. The State takes the view that overstaying by up to a week is excusable, but these workers who overstayed for a month had to pay a fine as penalty.

3.05 Not all the workers so affected had a dataplan or smartphone. Across the migrant worker population, these are often considered luxuries – with costs disproportionate to the low wages they earn, which in turn is partly due to the fact that Singapore does not have minimum wage legislation. Yet the burden put on them to know their up-to date status or else be criminalised can only be discharged by having a smartphone and either a dataplan or easy access to wifi. Some worker dormitories have wifi, others don't.

3.06 In short, the problem stems from

- (a) Digitising online the cancellation process of Work Permits; a process that does not even require the agreement or participation – where ‘participation’ means the right and requirement to log in and participate in the online transaction – of the employee;
- (b) Removing the validity status and expiry date from visibility on the Work Permit, and requiring smartphone use to retrieve that information – an economic burden on the low-wage worker.

Example II: Electronic payment needed for work injury incident report

4.01 The administrative process for workplace injury compensation, as set out under the Work Injury Compensation Act, requires the employer to make a report to the Workplace Safety and Health department of the Ministry of Manpower if the injured employee is given more than three days of medical leave by his doctor or is hospitalised for more than 24 hours¹. The report includes a description of the circumstances of the accident.

4.02 Employers have been known to submit false or misleading information in the reports in order to minimise their responsibility, even though the legislation intends a no-fault process. By trying to cast the injury, for example, as one that occurred outside the workplace, the employer may hope to be released from the obligation to pay for extended periods of medical leave, hospital treatment and permanent disability compensation. By law, employers must insure themselves against such risks, and thus there shouldn't be this reluctance to do right by the employee, but there are employers nonetheless who would rather submit false or misleading information than act ethically.

4.03 The report also requires the employer to declare the injured employee's average monthly earnings for the past twelve months. This figure is needed in the computation of medical leave wages and permanent disability compensation. Either through genuine error or intentionally, employers may enter an incorrect figure.

4.04 Clearly, the injured employee has an interest in what was written by the employer in the incident report. Yet, the Ministry of Manpower does not have a policy of automatically providing the employee with a copy of the report that has been submitted.

4.05 There is an option (through email request to the Ministry of Manpower) for the injured worker to obtain a copy of the report. In reply to the request, the ministry will ask for electronic payment (via

1. The reporting threshold is likely to be made stricter this year or next under proposals to amend the legislation, now under consideration.

a credit card) of five Singapore Dollars (S\$5), which is equivalent to US\$3.70 or 3.27€, before the report is sent through.

4.06 However, it is extremely unlikely that low-wage migrant workers would have a credit card. Singapore's financial regulator sets a high bar before banks and financial institutions can issue credit cards to customers. In fact, not all migrant workers even have bank accounts, and to open one, they generally need a letter of support or sponsorship of the employer to do so.

4.07 To obtain a copy of the incident report filed by the employer, migrant workers thus have to rely on a civil society organisation like TWC2 to handle the transaction for them. Whilst our assistance mitigates this particular problem for the worker, the fact remains that without the aid of a civil society organisation or someone else helping in a private capacity, there is a structural problem – the inability of the injured worker to obtain a copy of the employer's incident report, and the chance to contest it, if that should be necessary, in order to ensure that his medical leave wages and disability compensation are not compromised.

4.08 In short, the problem stems from

- (a) Digitising online the submission process of accident reports by employers; a process that does not even require the agreement or participation – where 'participation' means the right and requirement to log in and participate in the online transaction – of the employee.
- (b) No system in place to permit employees to log into the same system to view and export the submitted report which concerns him.
- (c) The ad hoc system (via email request) to obtain a copy requires an online payment of a fee, and the payment must be made electronically despite the fact that low-wage migrant workers do not have credit cards or other such payment options.

Example III: Contract substitution by abusing the 'IPA' system²

5.01 Among Singaporeans and high-salaried expatriates, formal written employment contracts are the norm. Our low-wage migrant workers however come from source countries where daily-rated informal work with wages based on verbal promises is commonplace. Singapore employers and their recruiters have thus adopted the custom of source countries to dispense with written employment contracts for the low-wage migrant workers they bring in. The migrant workers for their part have so little bargaining power they do not ask for them.

2. 'IPA' stands for 'In-Principle Approval for a Work Permit', as explained in para 5.05.

5.02 Without employment documentation, it was difficult to tell, at airport immigration, whether someone entering Singapore had a legitimate job waiting for him. He could have been scammed and Singapore might be burdened with growing numbers of unemployed foreigners loitering around. This was especially as the high placement fees that low-wage migrant workers paid (and still pay) proved a huge temptation to employers (real and bogus) and recruiters. The profit lies in promising a job and taking a cut of the recruitment fess, not so much in putting the worker to work. Fake job scams just wouldn't go away.

5.03 In 2011, the Ministry of Manpower introduced an online system to address this problem. It was a vast improvement, but over the years since, employers and recruiters have discovered weaknesses in the system and begun to exploit them.

5.04 The system is like this: An employer has to apply in advance for a Work Permit before the migrant worker enters Singapore. Considerable information is required by the online application form, including name of prospective employee, passport number, name of employer, and salary details. Notably, no participation by the prospective employee is required in this online process even though he is a key stakeholder.

5.05 Unless the Ministry of Manpower rejects the application, the ministry will notify the employer quite quickly that an In-Principle Approval for a Work Permit (IPA) has been issued. The IPA is a PDF document sent by the ministry to the employer. It is accompanied with a request for the employer to print it out and send it to the worker waiting in the home country. The ministry does not print the IPA; in fact, TWC2 later learned that the software does not permit the ministry to print any copy of it. It is entirely online.

5.06 As in the online application, the IPA so generated contains personal identifiers and salary details.

5.07 The employer sends either the paper copy of the IPA (which he would have printed) or the PDF file to the worker. In the latter case, the worker must then print it out before he boards the plane.

5.08 On arrival at Singapore's international airport, the worker has to present the IPA in lieu of a tourist visa. That way, immigration officials will know that the person has a legitimate job and a Work Permit reserved for him. At a stroke, this system solved the problems described above in paragraph 5.02. It became impossible for someone to enter Singapore for work unless a legitimate job and work pass was waiting for him.

5.09 Over the years however, migrant workers have come to rely on the salary details included in the IPA as proof of their promised salary. In the absence of written employment contracts, this document is all they have.

5.10 At first employers resisted the applicability of the stated salaries on the IPA. Some argued – and successfully in several cases documented by TWC2 – that the salary stated on the IPA was ‘for application purposes’ only, and was a figure chosen to assure a better chance of approval by the ministry.

5.11 However, in late 2017, a case went before the High Court which ruled that absent other written evidence, the salary stated on the IPA should be the applicable salary in the event of salary disputes.

5.12 Unethical employers and recruiters – and it should be emphasised that they’re only a small minority – quickly developed new modus operandi, each one exploiting one or more features of the online IPA system. These include:

(i) Edit the IPA after issuance

5.12.01 Since the IPA is issued electronically to the employer, not to the prospective employee, there is opportunity to alter the salary figure with editing software before sending the altered document to the prospective employee. The employer might, for example, have stated \$500 in its application to the ministry, but then alter the IPA (sent as a PDF document to the employer) to show \$800 per month. On seeing it, the prospective employee would be misled to think that he has been promised \$800 as his monthly salary when the official records would show \$500.

(ii) Go online to change the salary later

5.12.02 The system allows the employer to change the stated salary at any time after the migrant worker has arrived in Singapore and been issued a Work Permit. This feature enables the ministry to track current salary trends for statistical purposes, but because the IPA has become a tool for determining promised salary at the commencement of employment, allowing the salary figure in the computer system to be amended at any time, undermines its utility in this regard. This appears to be compounded by TWC2’s suspicion drawn from our casework that the system does not store historical data; any new salary entered overwrites the older figure. It remains only a suspicion on our part because the ministry has not explained why they are unable to retrieve the original salary declared in the IPA application. More recently, this problem was dealt with through the announcement of a new policy by the ministry, saying that employers are not allowed to pay less than the original salary stated on the IPA. The fact that the ministry felt moved to announce a new policy, which on the face of it is quite contrary to the usual laissez faire stance of the government with respect to setting of wages between employers and employees, suggests that arbitrary changing of salaries was indeed a serious problem meriting an exception.

(iii) Bait and switch

5.12.03 A third way to misrepresent a salary to the prospective employee was – we use the past tense because this problem seems to have disappeared recently – to exploit a feature of the online application system that was intended to give employers some flexibility: the ability to cancel or withdraw an application even after it has been approved by the Ministry of Manpower. This feature would be needed if a serious mistake was made in the application form or if the prospective employee subsequently changed his mind about working in Singapore.

5.12.04 The trick went like this: An application for a prospective employee would be made by the employer or his agent in the morning of a working day, with a stated monthly salary of, say, \$1,600. Possibly within an hour – Singapore prides itself on fast turn-around times for businesses – the employer would get a message from the ministry that it had been approved. The In-Principle Approval (IPA) would be transmitted alongside, with the request that this document should be printed and mailed, or forwarded electronically, to the prospective employee in the source country.

5.12.05 Once that was done, the employer would go online again to withdraw the application. Therefore, the document sent earlier in the day to the prospective employee would be an invalid IPA.

5.12.06 Sometime in the afternoon, the employer would go online once more to file a new application for the same prospective employee; the only difference being a lower monthly salary, say, \$700, declared this time. The ministry's approval would come quickly, except that now the employer would not print out the IPA, nor forward it to the prospective employee. Both IPAs carry the same date – there is no time stamp – and except for the salary, are indistinguishable.

5.12.07 The prospective employee would then arrive in Singapore believing that his salary would be \$1,600 a month as he had only received the first version of the IPA. Within a month, he would discover that he was being paid much less, and worse still, should he file a salary claim at the ministry, he would be shocked to discover that the official records show a salary of only \$700. Since the High Court has ruled that the salary stated in the IPA is the governing salary, and since the \$1,600 IPA had been cancelled and therefore cannot be referred to, he could be stymied in his claim.

5.13 All these ways of exploiting the ministry's digitised process lead to misrepresentation and contract substitution, two indicators of trafficking in persons.

5.14 In short, the problem stems from:

- (a) Although the digitised process was intended to serve a specific objective (immigration control), labour practice, reinforced by case law, expected it to serve a different purpose.
- (b) Digitising the Work Permit approval process with too quick turn-around times, flexibility to alter salary information and other design features which, while initially well-intentioned, proved open to abuse.
- (c) No participation of the prospective worker in the application process – where ‘participation’ means the right and requirement to log in and participate in the online transaction.
- (d) The digitisation did not reach the ‘last mile’ – i.e. all the way to the worker in the home country – relying instead on the employer or his recruiting agent to forward the IPA to the worker. The ministry thus lost control of this last step, creating an opportunity for abuse.
- (e) No notification by the ministry to the worker that the IPA he was given by his employer had been cancelled and replaced.
- (f) No way for the ministry to ascertain that any change in the salary information submitted by the employer, at any time during the Work Permit period, was with the employee’s free consent, despite the law (Employment of Foreign Manpower Act) requiring so.

5.15 That having been said, the bait and switch described in (iii) above seems to have disappeared from late 2018. TWC2 does not know what fixes were made by the ministry to its software as, generally speaking, the ministry is unresponsive to detailed questions.

Example IV: Risk of not getting an IPA³ for a transfer job

6.01 Our third example of vulnerability stems from using a digitised process designed for one set of circumstances, and applying it, ‘cut-and-paste’, to another. As a result, the process makes a poor fit with the new circumstances and vulnerabilities emerge.

6.02 As described above in Example II (paras 5.05 and 5.08), the printed IPA must be presented by the migrant worker on arrival at Singapore’s international airport. This demand would compel the employer to send the IPA (even if it’s a falsely altered one) to the prospective employee before he boards the plane, thus giving the employee an opportunity to see what was declared to the ministry

3. ‘IPA’ stands for ‘In-Principle Approval for a Work Permit’, as explained in para 5.05.

as his salary before he takes up the job. It should be emphasised that despite our enumeration of the possible scams above, the great majority of employers would not engage in unethical behaviour, and the IPAs that workers see are genuine IPAs.

6.03 In the last 3 or 4 years, there has been a partial liberalisation of the old rule that migrant workers must be repatriated upon cessation of the job. More and more workers are given the right to seek a new job in Singapore without first having to go home. We call these ‘transfer jobs’.

6.04 The process for the new employer to apply for a Work Permit for a prospective transfer employee is the same as described in Example III (paras 5.04 and 5.05). It is an online system with no participation by the prospective employee. The prospective employee has no log-in rights and cannot see what information is being sent to the ministry about him even though he is a key stakeholder in the process. Equally, when the Ministry of Manpower approves the application, an IPA is sent electronically to the employer with the request to forward it to the prospective employee. The prospective employee does not hear directly from the ministry.

6.05 Whereas for a prospective employee waiting in the home country, it is necessary for the employer to send him the IPA so that he can get through immigration at the airport, the prospective transfer employee is already in Singapore; he does not need to go through immigration. TWC2 has seen instances where workers report that they never saw an IPA before commencing their transfer jobs. This means they never saw what salary had been declared by the employer to the ministry. We have one case where the worker was verbally promised one salary only to discover months later, when he filed a salary claim, that the figure declared to the ministry was half what was promised to him.

6.06 As in Example III, the digitised system as designed and applied in the situation of transfer workers create vulnerabilities for misrepresentation and contract substitution.

6.07 In short, the problem stems from:

- (a) Applying a digital process meant for a particular set of circumstances (workers from home countries) to different circumstances (workers already in Singapore) without thinking through the needs of the different circumstances.
- (b) No participation of the prospective worker in the application process.
- (c) The digitisation did not reach the ‘last mile’ – i.e. all the way to the worker – relying instead on the employer or his recruiting agent to forward the IPA to the worker, with no oversight that this is actually done.

Example V: Barriers to registering a settlement agreement with the courts

7.01 This example and the one that follows relate to the resolution process for labour disputes, primarily salary claims. The Singapore government by law and administrative practice has created a two-phase process, in use for about two years. In the first phase, mediation is set up, with a mediator from a quasi-governmental body, the Tripartite Alliance for Dispute Management.

- (i) If parties can arrive at a settlement, a settlement agreement will be signed. The agreement is a paper document signed by hand. Quite often, the contents of the agreement have the employer undertaking to pay owed salaries to the employee at a later date.
- (ii) If no settlement is reached through mediation, the claimant (almost always the employee) can then file his claim at the Employment Claims Tribunal (ECT). The latter is part of the courts system, but one difference is that parties must represent themselves; no lawyers allowed.

7.02 This example under discussion springs from sub-paragraph (i) above, i.e. where a settlement agreement has been reached. We discuss the difficulty claimants have in registering their settlement agreements with the courts. This latter step is important to protect their rights to whatever settlements were reached. Registration enables enforcement to go forward should the other party default on his side of the agreement.

7.03 Up until 2018, registration could be done manually by presenting the necessary documents at the courts. In early 2019, the court system required that it should be done electronically. This created a number of hurdles for migrant worker claimants who have no familiarity with online transactions and low fluency in English – the online interfaces are only in English.

7.04 Low-wage migrant workers typically have little familiarity with computers and associated hardware. They access the internet through their smart phones, using features and services such as messaging, watching video movies and setting up face-to-face video links with family back home. Very few know how to email or perform online transactions.

7.05 With the requirement that registration of settlement agreements should be done online, the first hurdle they face is over the question of how they identify themselves electronically as being who they are. In manual processes, they have Work Permits or other state-issued passes that serve as photo-IDs.

7.06 For more than a decade, Singapore has had a system known as 'SingPass' which is essentially a username and password, with two-factor authentication, that identifies each citizen and permanent resident. It is used for all sorts of electronic interactions with government bodies.

7.07 Migrant workers have little interaction with government bodies; what interaction there is, is often indirect through the employer. See, for example, the discussion about IPAs above. Thus, migrant workers do not have SingPasses issued to them, and the government has not demonstrated interest in extending this facility to them.

7.08 Once the court system required online registration of settlement agreements, an electronic identity had to be created for each claimant. A complex series of steps was mandated beginning with a need to nominate an email address and the passing back-and-forth of codes. Few migrant workers that TWC2 works with have email addresses – these have never been necessary in their lives. But just to get the settlement agreement filed, they have to go through the process of opening one, learning to navigate it, and using it to get a CJTS-Pass which is the courts’ equivalent of the SingPass. There is a real danger when an email address is opened for only one purpose that it will be so rarely used that the person might forget the password and thus be locked out.

7.09 The above is only the first part. After creating their electronic identities, they still have to file their settlement agreements. This requires an online form to be filled and documents to be scanned.

7.10 The online form is difficult for anyone not comfortable with the English language, and it takes a migrant worker 15 – 30 minutes to complete it, even with a TWC2 volunteer close by and assisting him.

7.11 Another difficulty comes from the need to scan and upload the paper-based settlement agreement and other related documents. Scanning documents requires hardware that migrant workers would not have nor know how to operate even if they were offered the use of one. On seeing the difficulties migrant workers faced, officials at the courthouse have begun to assist. Even so, this is still worrying, as the digitised process has created a degree of dependency by a large class of users on the goodwill and assistance of others, without which they may not be able to access their rights. Moreover, knowing how to attach documents to forms also requires familiarity with digital conventions – something that manual labourers cannot be expected to have.

7.12 The unfamiliar mechanics and difficulties of the digitised process have therefore created risks to migrant workers that, absent voluntary assistance by others, they may not be able to successfully navigate the system, thereby compromising their right to justice. Further down in this paper, in paragraph 9.05.01 (g), we discuss the importance of having institutionalised help systems set up and funded by the State, as opposed to relying on ad hoc ‘fight the fire’ responses by civil society and individuals, including government officials acting in their personal capacity when confronted with the urgency of the problem.

7.13 One final note: the difficulties described above are faced by not only low-wage migrant workers, but also low-wage citizens with low digital literacy. The process and its demands apply to them too.

7.14 In short, the problem stems from:

- (a) Designing a digitised system with no consideration for the likely users' digital literacy, English literacy, and familiarity and access to needed hardware.
- (b) No consultation with stakeholders before designing and implementing the system.
- (c) No parallel paper-based system for the disadvantaged.
- (d) And, from what TWC2 can see, no measurement of impact on the community the process is meant to serve.

Example VI: Barriers to filing a claim with the Employment Claims Tribunal

8.01 As mentioned above (para 7.01(ii)), if mediation is unsuccessful, the labour dispute can be escalated to the Employment Claims Tribunal (ECT). It is for the claimant to file the claim once he has been issued a Claim Referral Certificate by the mediator. The case must be filed within 28 days of the Certificate's date.

8.02 There are fees to be paid for filing. It is 30 Singapore Dollars (S\$30) per claim value of up to S\$10,000 and S\$60 for claim value up to S\$20,000⁴. S\$30 is currently equivalent to about US\$22 or 20€. This may not at first sight appear to be much money, but for a low-wage migrant worker who has anyway not been paid his salary for months, it may be money he does not have.

8.03 There is a process for applying for a fee waiver, but a decision about a waiver may take two weeks to obtain, thus wasting 14 days of the 28-day period in which he must file. In practice though, it is much quicker.

8.04 Another step he has to take before he can file is to acquire an electronic identity. The difficulties were discussed above in paragraphs 7.05 to 7.08 of Example V.

8.05 The online filing process itself is extremely difficult. The major difficulties include:

- (i) It is entirely in English, and many questions are largely incomprehensible for the average low-wage migrant worker.
- (ii) It requires the applicant to split his claim into parts to align with the relevant clauses of the Employment Act, other statutes, or the contract. Salary can have several components,

4. The maximum claim jurisdiction of ECT is S\$20,000 unless the claim was submitted on the worker's behalf by a trade union – which for migrant workers, is extremely unlikely to be the case.

such as basic wage, overtime pay, holiday pay, fixed allowances, and each component must be detailed separately. To make things worse, the questions on the form do not rely on these commonly-used terms, but merely asks the claimant to input an amount against the clause number of the legislation.

- (iii) The applicant is then asked to provide mathematical calculations to justify the claimed amounts against each clause. The calculations must dovetail precisely with the evidence and the subtotals stated on the manually-computed Claim Referral Certificate. Unfortunately, the applicant is often not familiar with how the mediator calculated the figures stated on the Claim Referral Certificate or, due to various rounding errors or human errors⁵, the numbers just do not add up. This section is impossible for migrant workers to complete without assistance.
- (iv) The State does not provide anywhere near the level of assistance needed for migrant workers to navigate the online filing process. Though staff and volunteers at the courts do assist when available, the high need for assistance experienced by workers is a strong indicator that there has been neglect of this problem during system design. Should assistance not be forthcoming, e.g. due to time and capacity limitations of the staff and volunteers at the courthouse, those (citizens and foreigners) who have low digital literacy and by association, low economic standing, will face discriminatory effect.
- (v) As mentioned in Example V (para 7.11), scanning and uploading documents are things that manual labourers would never have done before. It also requires hardware that low-wage workers cannot be expected to have.
- (vi) Not only are the acts of scanning and uploading unfamiliar territory for the claimants, if they tried to do it themselves with little help at hand, they risk making a mess of a document with many pages. They are also faced with technical obstacles from the design of the system itself. For example, the system imposes a maximum file size of 5 MB, but some files are larger than that, so the claimant will have to reorganise his papers and split the files. Having no experience in scanning anything, this is not something migrant workers would know how to work around. Whilst, as mentioned in the foregoing, some help is available, there still remains the issue of dependency on help for a large class of users.
- (vii) The form springs surprises in the way it asks for supporting documents that the migrant worker might not have anticipated or be informed about by the mediator at the time when the Claim Referral Certificate was issued to him. For example, he would need to upload a

5. TWC2 has observed that mediators' calculations sometimes contain errors, such as utilising an incorrect multiplying figure, e.g. a 6-day rather than a 5.5-day week, or that overtime is the excess hours over 48 hours a week (wrong) rather than 44 hours per week (correct) in line with the Employment Act. The typical low-wage worker would not know that the totals on his Claim Referral Certificate were erroneous.

copy of the ‘ACRA⁶ certificate’ – a public document giving the identity and basic information of the employer. Just about every low-wage migrant worker would have no clue what this document is or where to get it, unless he has assistance from someone (such as a TWC2 volunteer) familiar with the process. These surprise demands require the worker to suspend the process so that he can run over to the Ministry of Manpower to ask for the appropriate documents. That said, officials at the ministry (including the mediation offices) are gradually adjusting their practices to better serve the workers; TWC2 has noticed that ACRA certificates are now routinely given to workers alongside their Claim Referral Certificates. However, it still remains a very ad hoc approach to the difficulties presented by the online form.

(viii) On average, claimants spend half a working day at the courts, inclusive of physical trips to the Ministry of Manpower to get additional documents, before they get to the end of the application form. This is with the assistance of TWC2 volunteers⁷. We have no idea how long those without our assistance take; we reckon they might not be able to complete the form at all. If they did, it might contain errors that could jeopardise their claims at subsequent court hearings.

8.06 In TWC2’s opinion, completing this form would be a herculean task even for well-educated Singaporeans. To expect low-wage migrant workers with no more than rusty middle-school mathematics and halting English to do so is completely beyond reality.

8.07 Here is a note of a conversation a TWC2 volunteer had with a 44-year-old migrant worker about a week after his claim was filed:

8.07.01 *[TWC2 volunteer] asked client MZ (not his real name) whether he had been keeping abreast of the developments of his salary claim filed at the Employment Claims Tribunal (ECT). MZ appeared perplexed at the question.*

8.07.02 *[TWC2 volunteer] asked if he knew how to log in to the ECT portal to see updates of his case. MZ gave a blank look.*

8.07.03 *Hoping to trigger MZ’s memory, [TWC2 volunteer] described the method of logging in, one in which a code (in the two-factor authentication protocol) would be sent to MZ’s email address, which code then must be entered to complete the log-in process at the ECT portal. MZ still looked perplexed and it also became clear that MZ did not recognise the word*

6. ‘ACRA’ stands for the Accounting and Corporate Regulatory Authority of Singapore, the public registrar of commercial entities.

7. TWC2 volunteers are not remunerated for their work, neither does TWC2 as an organisation get any subvention from the State for contributing assistance.

'email'. He had no idea what [TWC2 volunteer] was referring to even after the word was spelt out on a piece of paper (we spelt it out in case he pronounced the word differently).

8.07.04 [TWC2 volunteer] asked to look at MZ's mobile phone hoping to locate the icon for YahooMail or Gmail or something similar. None was found.

8.07.05 Still hoping to trigger MZ's memory of the filing of his claim just a week earlier, [TWC2 volunteer] asked him to describe step by step what he did in front of the computers when he was at the courthouse that day. MZ answered that he didn't touch the computers at all. 'TWC2 madam help me; she do the computer,' he said in his broken English. 'She open case for me.' Indeed, TWC2's internal records are consistent with this statement; our records show that two other volunteers accompanied him to the courthouse that day.

8.07.06 Feeling a bit frustrated by this volunteer's persistent line of questioning, MZ finally said, 'I don't know computer. If I know computer, why I come to Singapore work construction?'

8.08 As illustrated by the above conversation, even when a claim has been successfully lodged, workers' difficulties are not over. The courts system communicates with parties only through email or through a digital portal (with log-in). Migrant workers are thus required to use unfamiliar channels to stay abreast of their case management conferences, hearing dates or other developments. Additional evidence that is required must be scanned and submitted electronically, as would responses to the opposing parties' evidence and submissions. As mentioned earlier, scanning documents requires appropriate hardware and familiarity with the protocols of attaching and submitting documents.

8.09 Here is where a closer look at another real case has illustrative value. It shows how difficult it is to ensure that disadvantaged non-English-speaking persons truly understand what goes on within a digitised system, and how they can be tripped up later by the court system because of this lack of understanding. It is more than just learning to manipulate the cursor or the scanner; they do not have a mental map of what is happening within the system.

8.09.01 TWC2 helped a Bangladeshi client HN (not his real name) to file his salary claim at the ECT, following which we spent a few hours at our office to explain the next steps to him and to prepare him for them. We had the help of a Bengali interpreter throughout.

8.09.02 Subsequently, we helped him prepare a 5-page statement with supporting documents, explaining the background to his salary claim. We then helped him upload the statement to the digital portal for ECT cases. All looked to be going fine.

8.09.03 The following day, at a face-to-face Case Management Conference, the court Registrar asked HN whether he 'had any new documents.' HN answered 'no', probably because he didn't have papers in hand – he didn't need to, they had been uploaded.

8.09.04 *His case then proceeded without mention of the 5-page statement, and he might therefore be adversely affected by this omission.*

8.09.05 *What this instance demonstrates is that even with an interpreter able to speak the client's vernacular explaining steps to him, a migrant worker like HN might not understand technical concepts such as 'uploading', or have any mental image of the cloud from which other parties in the case could look up relevant submissions.*

8.09.06 *There may be many more nuances and technical terms that are hard for people like HN to grasp simply because they do not use computer systems regularly and have never encountered digitised systems before. These gaps are so invisible, they are hard to anticipate when designing and implementing digitised systems.*

8.10 Whether by coincidence or not, ever since the implementation of the online filing system, the number of Claim Referral Certificates issued by the ministry's appointed mediators has fallen drastically. There is reason to suspect that officials there realise that migrant workers would be seriously disadvantaged should they be put into this process, yet it does not mean that there are any other effective ways to ensure that their claims are adjudicated and recovered.

8.11 The above having been said, the digitised system has some improvements over the former process. Now, documents and submissions by all parties are accessible through the ECT portal once the claimant logs in, where previously it was a much more haphazard matter of getting physical copies. It may however take a while before claimants see the value of logging in regularly and understand how to do so, so this potential improvement may take time to be realised.

8.12 Singapore's digitised ECT system has the look and feel of one that is designed by lawyers for lawyers but imposed upon low-wage workers in tribunals where legal representation is not allowed. It is bad enough that the migrant worker has to pursue his case via a foreign language, and find himself litigating in person in court, he now has also to navigate an alien technology for the procedural parts of the process. TWC2 is of the view that this development very seriously curtails migrant workers' right to access justice.

8.13 A caveat needs to be introduced at this point in the discussion. The foregoing should not be taken to mean that TWC2 is against digitisation of court processes; we accept that this is ineluctable and will in the long run yield benefits. Nor should the foregoing be taken to mean that the mechanics of online filing are the only major hurdles to access justice. In fact, claimants face huge evidentiary hurdles as well, though this issue is outside the scope of this submission. In time, the difficulties arising from the mechanics may either be resolved through system fixes or, years on, because migrant workers have acquired the necessary skills, or new cohorts arriving as migrant workers come with greater digital literacy. But that's for the future. For the here and now, migrant workers are impeded (along with other impediments) in their access to justice by the way this digitised process has been designed and rolled out.

8.14 One final note: the difficulties described above are faced by not only low-wage migrant workers, but also low-wage citizens with low digital literacy. The process and its unreasonable demands apply to them too.

8.15 In short, the problem stems from:

- (a) Designing a digitised system with no consideration for the likely users' digital literacy, English literacy, and familiarity and access to needed hardware.
- (b) No consultation with stakeholders before designing and implementing the system.
- (c) No systemic redesign of the manual processes at the mediation stage that lead up and feed into the ECT stage, thus leaving serious gaps.
- (d) No parallel paper-based system for the disadvantaged.
- (e) Insufficient human help provided when it has become apparent that intended users are having difficulty using the digitised system as designed.
- (f) And, from what TWC2 can see, no measurement of impact on the community the process is meant to serve.

Additional questions in the Call for Submissions

9.01 Below, we respond to the additional questions contained in the Call for Submissions. The questions themselves are in blue italics.

Q1. There appears to be relatively little attention paid to the impact of digital technologies on national social protection systems. It would therefore be most helpful if written submissions could focus on specific case studies involving the introduction of digital technologies in national social protection systems, and address some of the following elements:

What were the stated objective(s) cited by politicians and government when introducing those technologies, and how did these reflect the broader political context;

9.01.01 In all these examples we have cited, there were no publicly stated objectives. They were all implemented with little announcement and very short lead-times.

Were any international organizations involved in the domestic debate about the introduction of digital technologies in the national social protection system;

9.01.02 TWC2 does not recall any domestic debate in recent years about the impact of digital technology on social protection systems.

Was there a specific legal basis for the introduction of these digital technologies in the social protection system;

9.01.03 None of the examples described above were mandated by law.

Whether any analysis was undertaken by the government, legislative branch or other state institutions of the implications of the introduction of these technologies in the social protection system from the perspective of existing legal frameworks;

9.01.04 We do not know the answer to this.

The extent to which governments relied on the private sector for the design, building and operation of these technologies in the social protection system;

9.01.05 The respective governmental bodies would have relied on the private sector to design and build the systems; they may even be involved in maintaining them. But operating the system on a day-to-day basis would largely be government officials.

The costs involved in the design, building and operation of these technologies in the social protection system;

9.01.06 We do not have answers to this question.

The expected and actual cost-savings realized through the use of these digital technologies in the social protection system;

9.01.07 We don't know.

Q2. Without repeating information provided above, what lessons can be learned from the ways in which digital technologies have been introduced in other parts of government, such as policing, the court system, immigration, border control, and intelligence?

9.02.01 Digitisation can be grouped in two broad ways.

- (a) The first would be when the digitised process is meant to be used by a defined set of users, e.g. staff in a government department, or staff in a hospital. By having identifiable users of limited number, necessary training or conversion programmes can be developed to smoothen the transition. Jargon used within the department or corporation can continue to be used in the digitised system with no loss of comprehension.
- (b) The second type would be when the digitised process is intended to be used by ordinary people, or non-experts. In such cases, social awareness is of paramount importance with extra focus on those expected to be least ready for the technology (see more at 9.05.01(a) below). Language and jargon in the interfaces must be tested with ordinary people. Moreover, care must be taken to avoid the creation of new discrimination arising from the differential ease of access by different classes of users or, in Examples II, II and IV, making no provision for access by one party to the transaction altogether. In addition, assistance for the disadvantaged should be institutionalised (see more at 09.05.01(g) below), and not left to ad hoc responses by the frontline staff.
- (c) In our examples, the lack of consultation with stakeholders prior to conceptualising and designing each of the described systems is alarming, although it is consistent with the ‘we know best’ attitude of the Singapore government. Clearly, every one of our examples has disadvantaged the vulnerable migrant worker population; in the last two examples, very seriously so. We believe the design considerations for these systems had been completely indifferent to the impact on workers; instead they were meant to serve the government’s purposes of control, efficiency and manpower savings.

Q3. What human rights concerns might arise in connection with the introduction of digital technologies in social protection systems?

Debate on the impact of digital technologies on human rights generally focuses on a limited range of civil and political rights, such as privacy, data protection, and freedom of expression. In addition to identifying specific civil and political rights that might be implicated in the social protection context, how are economic and social rights (such as the right to social security and the right to an adequate standard of living) affected?

9.03.01 As mentioned in the Introduction (para 1.03), migrant workers in Singapore receive no social benefits from the State: no subsidies, no disbursements. Thus our examples would not be relevant to this angle. Instead, our examples speak of the impact of digitisation on workers' primary concern: getting paid what he had been promised for his work, which is related to his standard of living. Our examples highlight ways in which digitisation have put them at risk of exploitation and trafficking, and have jeopardised their access to justice.

In what ways, both positive and negative, might the use of these technologies affect the rights of women, children, persons with disabilities, indigenous peoples, minorities, LGBTI and other groups protected under international human rights law?

9.03.02 TWC2's experience being on migrant workers, male and female, we have no information about these other groups.

What impact has the introduction of digital technologies in social protection systems had on people living in poverty. How are their rights, such as to privacy and social security, affected and how are they impacted differently by comparison with people who are not poor? Is the prohibition on discrimination on the basis of property, birth or other status (see e.g. article 2 (2) of the ICESCR & ICCPR) relevant in this context?

9.03.03 As our examples show, a case can be made that discrimination against this class (migrant workers in Singapore) has been heightened either through failure to develop a digitised system that goes the last mile to the worker in order to protect his right to injury compensation and to a fair and transparent contract (Examples II, III and IV), or through developing an onerous system for registering and filing claims (Examples V and VI), with the very real risk that their access to justice is compromised. This vulnerable class is distinguishable from Singaporean citizens by:

- Nationality and immigration status;
- Linguistic and cultural differences;
- Relative poverty
 - lower salaries than citizens, even for the same job
 - doing the dirty, dangerous and demeaning work that pays poorly;
- Reduced access to dataplans and wifi due to lower income and nature of work;
- Generally lower education compared with average Singaporeans;

- Little familiarity with digitised transactions compared to middle-class persons.

Do unavoidable tradeoffs between rights arise in the context of the application of digital technologies in national social protection systems? For example, between the right to privacy and the right to receive social protection from the State?

9.03.04 In the examples we described, we do not see this as an issue.

What are the human rights implications of the involvement of private corporations in the development, use and operation of digital technologies in social protection systems and what can be said about these developments from the perspective of the field of Business and Human Rights?

9.03.05 Our examples are quite removed from this issue.

Is the existing corpus of international human rights law adequate to address the specific injustices that might arise in this context or are new rights, or new types of standards, required?

9.03.06 Migration for work being an increasingly important feature of the global economy, access to justice and the right to social protection should be expanded and elaborated to encompass a right to a transparent and fair employment contract, and States should be held accountable⁸ for ensuring systems are in place to safeguard every stage of work migration from exploitation and denial of remedies. Migrants need better security for the bargain that they make: that they'd be paid as promised for their labour and expertise. Particularly where social protection such as housing, healthcare and disability compensation is delivered not by the State, but mandated to be provided by the employer, then it is equally important that the employee should be able to effectively enforce these provisions. It may be pointed out that except for work injury compensation, this paper does not have examples relating to housing, healthcare or other social services, but this is because these services have not (yet) been extensively digitised in a manner that impacts the migrant worker.

What are good examples of the use of international human rights law, the language of human rights and/or international human rights mechanisms to contest injustices that have arisen with the

8. Singapore is not a signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Singapore abstained in the vote taken in the General Assembly (19 December 2018) to endorse the Global Compact for Safe, Orderly and Regular Migration.

introduction of digital technologies in domestic social protection systems? Examples can range from litigation to public advocacy and from protests to parliamentary inquiries.

9.03.07 Unfortunately, we cannot think of any.

What is the relevance of debates such as Fairness, Accountability and Transparency in machine learning and the broader debate on ethics and new digital technologies for human rights? To what extent does a human rights perspective on digital technologies in social protection systems have added value compared to debates on ethical aspects of new technologies?

9.03.08 Our Examples II, III and IV hint at a need for a conscious expansion of the right of third parties (in this case, employees) to know what information is entered about them in online transactions in which they cannot participate because they do not have log-in rights. Our Examples V and VI hint at the need to interrogate digital systems from the perspective of how the complexity of use can disadvantage or even shut out vulnerable persons, especially when the system is supposed to deliver a fundamental State responsibility – in our case, justice.

Q4. What contextual circumstances affect the impact of digital technologies in specific social protection systems on human rights?

To what extent have post-9/11 security concerns and surveillance measures by governments affected the introduction and shape of digital technologies in social protection systems?

9.04.01 We have no information on this, but we doubt if the examples we described were primarily motivated by security concerns.

To what extent have debates about the respective roles of the public and private sector affected the introduction of digital technologies in social protection systems?

9.04.02 We do not recall there being any public debate on this issue in recent years in Singapore.

To what extent has the introduction of digital technologies in social protection systems contributed to the schemes to the surveillance, control, and exclusion of the poor?

9.04.03 Schemes for surveillance and control of Work Permit holders have long existed; the addition of digital technology has not much worsened the situation, at least not as a result of the digitised processes we described. Surveillance and control are largely carried out by police patrols and landlord checks. Example I simply made it marginally easier through the QR code to ascertain the immigration status of a subject person. On the other hand, if a migrant has the app himself, he now has the means to check whether his employer has surreptitiously cancelled his Work Permit, something he could not do on his own pre-digitisation. Exclusion of the poor and those without access to electronic payment systems is a very real problem, as we showed in Examples II, V and VI.

Has the introduction of digital technologies in social protection systems been treated as a matter for political and public debate, or has it been treated more as an internal, technocratic, matter for government bureaucracies?

9.04.05 The latter.

Have international organizations, such as the World Bank or the International Monetary Fund, influenced the introduction of digital technologies in government social protection systems in your country?

9.04.06 Not that we know of.

Which existing laws and regulations are most relevant in curbing the risks of introducing digital technologies in social protection systems? For example: data protection law, freedom of information law, intellectual property law, and procurement law.

9.04.07 Singapore does have these laws, except for freedom of information, but these are tangential to the issues we described.

Q5. Would you have specific recommendations about addressing both the human rights risks involved in the introduction of digital technologies in social protection systems as well as maximizing positive human rights outcomes?

9.05.01 These are our recommendations:

- (a) In the design of digital systems, careful consideration should be given to how the constituency with the lowest familiarity with digitisation and other handicaps such as

access to hardware, credit cards, language literacy or proprietary software⁹ would be disadvantaged. Positive steps in the system design should be made to anticipate and overcome these handicaps.

- (b) In a digitised process, all stakeholders should have equal access to the system. There should not be a situation where, for technical convenience, those stakeholders expected to have digital literacy are given access, but those too hard to accommodate, e.g. located in a different country without State-issued electronic identification, are excluded from the process by deliberate design.
- (c) All information stored on the system affecting any stakeholder should be easily accessible to the stakeholder so that he is not blindsided. Any change to the information, if changed by a third party, should likewise be notified to the stakeholder, and where his consent is required, there should be an easy and credible process to ascertain his agreement.
- (d) Where the digitised process is a part of a bigger process, and where other parts of the process remain manual, careful consideration should be given to needed changes to the manual processes so that they dovetail with the digitised part of the process.
- (e) Careful consideration should be given to costs imposed on users when processes are digitised. Costs can have discriminatory effect, e.g. for the middle-class, dataplans are affordable, but for those with low income, they may not be; the middle-class may have free access to office or home scanners, but the low-income may have to use an internet café to scan documents, at a cost.
- (f) Wherever possible, a transition period should also be designed, wherein an old-tech or manual system remains an option alongside a newly digitised system. This allows time for any disadvantaged community to adopt the technology and the acquire the skills for it. It is then also possible to observe the impact of the new system on disadvantaged communities – conclusions can be drawn if take-up rate is poor – and provides a buffer should there be unexpected glitches in the new system.
- (g) Recognising that any digitisation process will always have vulnerable communities struggling to keep up, an integral part of the design should be the setting up of institutionalised and comprehensive assistance, and this assistance, e.g. having enough people on hand to help claimants file salary claims at the ECT, including verifying their computations, should be the responsibility of and funded by the State. It should not be left to civil society or individuals – including government officials going out of their way and acting in their personal capacity – to offer help when faced with a crisis. Setting up easily

9. TWC2 has seen State-designed systems that require users interacting with them to have similar commercial proprietary software installed on their computers, or else the system would be inaccessible.

available and reliable help systems is essential to mitigate the possible discriminatory effect of digitisation.

- (h) Some digitised processes come with payment modules that require electronic payment with no cash option. Careful consideration should be given early at the design stage to whether there is any community without access to banking services and electronic payment options, and simple-to-use mitigation arrangements that do not unduly burden such communities have to be put in place to avoid exclusion of these communities.

Closing

10.01 Transient Workers Count Too thanks the Special Rapporteur for this opportunity to make this submission.

10.02 Should there be any questions or need for further elaboration, please contact Alex Au at alex.au@twc2.org.sg.

16 April 2019

A handwritten signature in black ink, appearing to read 'Alex Au', is written over a light blue horizontal line.

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