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## **Memorandum for the Hon'ble Labour Minister, Shri Oscar Fernandes**

### **Immediately Amend the Unorganised Workers' Social Security Act, 2008**

The Unorganised Workers' Social Security Act, 2008 was finally passed by the Parliament on 17 December 2008 after it went through several drafts since 2004, each draft being more limited in its scope and applicability than the previous one. While we congratulate the UPA for having finally, in the run up to the elections, found it expedient to pass this legislation that has been in the making for the past fifteen years, we would like to bring to your immediate notice gross and fundamental shortfalls in the legislation.

#### **Social Security is a Citizenship Right of Working People**

The legislation in its current form has completely eliminated the initial principle that was set out by the National Commission on Enterprises in the Unorganised Sector (NCEUS) in its Report - 'Comprehensive Legislation for Protection of Unorganised Workers' - of viewing social security as a citizenship right of every working person. In eliminating the provision of a *National Minimum Social Security Benefit* and in implementing the Act through various schemes the legislation has not only diluted the original draft but also excluded a large section of the unorganised working people who technically are above the poverty line but are employed in the informal sector under extremely precarious conditions of work from the purview of this Act.

#### **Social Security as a Justiciable Right and not just an Enabling Scheme**

The Right to a *National Minimum Social Security Benefit* is a citizenship right as provision of this benefit is only a return for the contribution that every worker makes to the national product. The share of the informal sector in Gross Domestic Product is estimated to be around 63%. About 47% of the value added in the non-agricultural sector and 35% of the total value added in the urban economy come from the informal sector activities, which are much higher in agriculture and also in construction and trade. It is therefore the responsibility of the State to provide for these workers in times of unemployment, illness, disability, death and old age. It is the primary responsibility of the Government to develop appropriate systems for providing protection and assistance to its workforce and their families. The Act should make the government accountable through the process of justiciability of this legal claim.

Social security legislation that covers the poorest section of the workforce must be universal in its reach and coverage and must provide for such benefits that are caused by inability to access gainful employment. By implication, a universal social security benefit must be aimed at all citizens and not just workers. Core benefits as defined as the minimum provision of benefits must by their very nature be non-contributory. It is critical to provide *National Minimum Social Security Benefit* and define the basis of it in terms of, in relation to and in quantitative proportion with the statutory minimum wage. The *National Minimum Social Security Benefit* cannot be in any way linked to either the contribution of workers or be subject to the availability of funds. In the event of funds raised through employers' contributions, taxes and levies falling short, a special tax to finance the *National Minimum Social Security Benefit* across the board starting from the lowest band of income tax payment

which should be made mandatory and subject to no rebates, reliefs and concessions and not just an arbitrary monetary amount.

### **Disjunction between Right and Scheme**

The legislation gives space for self declaration of workers as ‘unorganised workers’ that determines their eligibility under the Act thereby establishing the notion of Universality of applicability but in implementing the Act through targeted schemes, it takes away the right of many unorganised workers to the minimum benefits that these schemes provide. All the general schemes under the Act are targeted towards BPL families whereas BPL lists across the country have been a contentious issue that is yet to be resolved. It has also been an issue of contention between the governments at the Centre and the States. Also, most workers employed in the informal sector in urban centres fall in the category of APL although they are almost invariably employed with no security of tenure, no access to benefits and neither are most of them paid the statutory minimum wage. Many of them are self-employed or home-based workers with not even an identifiable employer. The applicability of the legislation cannot be restricted to BPL workers.

### **Minimum Entitlement: Health and Old Age assistance**

The benefits specified under the Act fail to holistically address the two most crucial needs of workers with insecure employment – one, of health and two, of old age sustenance. Therefore it is most essential to have a comprehensive health insurance that includes hospitalisation, injury, maternal care and all benefits should also include dependents and should not have an age limit. If we take the government scheme that has been initiated in the state of Tamil Nadu as the basis for this insurance, the premium for a standard family of 5 would be Rs. 450 annually. The working population in the informal sector is 401.9 million. Therefore the expense that would be incurred by the government for providing this health insurance to every worker in the informal sector with not more than 4 dependents would amount to Rs. 180 billion approximately.

The Indira Gandhi Old Age Pension Scheme covers only BPL individuals above the age of 65 years and provides Rs. 200 per month from the central government and an optional component of Rs. 200 from state governments. This is abysmally low and we believe that the computation of the pension must be clearly and unambiguously based on the principle [of 50% of last wages drawn] employed for Government employees’ pension. Therefore the pension must be linked to the statutory minimum wage. Standard pension calculation is at 50% of average emoluments drawn by a worker during the terminal year of employment. The formula is similar in the case of other employees in the formal sector. In fixing the pension for the informal sector as a lump sum to be arbitrarily decided upon by the Central and State governments, the legislation is in gross violation of the spirit of Article 14 of the Constitution. The difference can only be in the quantum of pension, and not in the principle for calculating the pension. We therefore demand that this legislation accepts the standard pension formula and applies it for all workers in the informal sector, with the proviso that the minimum pension payable to a worker in the informal sector in any state shall be as calculated based on the minimum agricultural wage in the state or the national floor level minimum wage or the wage as prescribed under the NREGA, whichever is higher. For the sake of calculation even if we are to take the national floor wage recommended by the Ministry of Labour of Rs.80 per day, the minimum monthly pension of a worker in the informal sector would therefore be  $\text{Rs. } 80 \times 30 \times 50\% = \text{Rs. } 1200$  per month. Now, persons

above the age of 60 in India constitute about 7.2% of the entire population, i.e., 1.02 billion which is equal to 76.6 million. 86.6% of the total workforce is engaged in the informal sector. Hence, we can approximately claim that about 66.1 million persons above the age of 60 will be eligible for this universal pension. Hence the total expenditure that the government would incur for the payment of this pension annually is about Rs. 952 billion.

Thus in total if we calculate the budgetary provision required to provide this National Minimum Social Security Benefit, it amounts to Rs. 1132 billion which is 2.7% of the GDP. In keeping with the principle of the National Minimum, workers should be completely exempt from contributing to this National Minimum Social Security Benefit. Further apart from contributions from Government and employers there must be provision for an additional special tax or levy that may be decided upon by legislature. Such a provision would be not just be in keeping with the notion of the National Minimum but, also in consonance with the egalitarian objectives of a progressive society.

The legislation should also be justiciable and violation of it by employers or any other agency responsible for its implementation made a criminal offence. It also provides no machinery for raising of disputes and dispute resolution. The burden of proof of violation should lie on the violator and not the beneficiary. Furthermore, the implementation should be time-bound and punitive action specified for non-delivery of benefits.

We view social security as a right of all citizens in a representative democracy. Workers therefore should be represented by their unions. The representation should be determined through the democratically verified strength of the membership of trade unions within the decision making bodies. Tripartite Boards should be formed at Local, District, State and Central levels. In extending the process of democratisation, the implementing agency for the delivery of benefits of the Act should be the local self government bodies in both rural and urban areas to ensure the participation of workers as citizens and adjudicated by the Labour Department and not the Revenue Department.

Social security is a necessary but insufficient provision for removing the insecurity of workers in the informal sector. In order to remove insecurities of workers in the informal sector concurrent and simultaneous legislation must be put in place to regulate employment and conditions of work in the informal sector, where in separate legislative protection be provided for agricultural workers and non-agricultural workers alongside legislation for universal social security.

**In view of the foregoing we call upon you to ensure that the Ministry of Labour and Employment:**

1. Define a National Minimum Social Security that is non-contributory and justiciable and is defined in terms of, in relation to and in quantitative proportion with the statutory minimum wage.
2. Set up Tripartite Boards at local, district, state and national levels for implementing the legislation
3. Clearly set out a dispute resolution machinery
4. Legislation for regulation of employment and conditions of work in the informal sector, with separate laws for agricultural workers and non-agricultural workers.