

MICHAEL SOMMER  
PRESIDENT  
PRÉSIDENT  
PRÄSIDENT  
PRESIDENTE

SHARAN BURROW  
GENERAL SECRETARY  
SECÉTAIRE GÉNÉRALE  
GENERALSEKRETÄRIN  
SECRETARIA GENERAL

Mr Juan Somavia  
Director-General  
International Labour Office  
Route des Morillons, 4  
CH – 1211 Geneva  
Switzerland

By fax – 41 22 799 67 71 and email

HTUR/JS

1 September 2010

## **ITUC Observations to the ILO Committee of Experts on the Application of Conventions and Recommendations of Convention 97: Migration for Employment Convention (Revised), 1949**

Dear Director-General,

As per previous practice, I have the honour of sending you observations concerning compliance by **The People's Republic of China, Special Administration Region of Hong Kong** with the C97 Migration for Employment Convention (Revised), 1949, notified in 1997.

### **1. Background**

Hong Kong remains a more favourable place to work for migrant workers than many other Asian countries. Hong Kong has relatively comprehensive legislation concerning working conditions, pay and health and safety. It also includes migrant workers and migrant domestic workers (hereafter referred to as MDWs) in its labour legislation. However, many longstanding concerns remain concerning the employment and treatment of migrant workers, the lack of adequate safeguards against overwork and underpayment and the enshrined discrimination regarding residency.

In addition, migrant workers from the Mainland also face considerable discrimination. Other minority workers such as Nepali nationals face targeted discrimination and restrictions. The most serious issue however, is the repeated instances of migrant workers found to be working under employment conditions that amount to bonded or forced labour, most notably Indonesian MDWs.

After decades of discussion, the Hong Kong SAR government has recently introduced anti-race discrimination laws and has also finally introduced minimum-wage legislation after many years of a union led campaign for such a bill. However both these new laws contain serious and fundamental flaws.

Hong Kong SAR government has recently introduced discriminatory legislation for certain categories of migrants and has also excluded migrant domestic workers from wage related legislation. Both these developments are contrary to ILO Convention 97 and represent a step backwards for migrant rights.

Other discriminatory practices persist, such as the absence of legislation regarding maximum working hours and the persistent refusal by the Hong Kong SAR government to implement the recommendations of the ILO Committee on Freedom of Association (CFA) regarding the introduction of legislation for the objective recognition of trade unions for the purpose of collective bargaining thereby weakening the efficacy of migrant unions.

## **2. Foreign Domestic Workers**

There are estimated to be approximately 270,000 MDWs in Hong Kong accounting for an estimated 6 percent of the labour force. More than one in three households with young children hires at least one MDW. In Hong Kong, the proportion of households hiring at least one foreign domestic worker (MDW) increased from less than 2% in 1986 to close to 8% in 2006.<sup>1</sup> The majority of MDWs are from Indonesia and the Philippines, with others coming from Sri Lanka, Thailand, Nepal and other south Asian states. According to the Hong Kong Immigration Department, the number of Indonesian MDWs is 130,974, which corresponds to 49 percent of the total MDWs.

Conservative estimates put MDW's contribution to Hong Kong's GDP at approximately 1 per cent. This excludes the indirect benefit to the Hong Kong economy of the freeing up of both adult members of a household, allowing them to enter the workforce and reducing the need for government-subsidised childcare. There is very little subsidised preschool and crèche care in Hong Kong. Family members or MDWs do the majority of childcare and care for the elderly and disabled.

## **3. Low wages under discriminatory 'minimum allowable wage'**

Despite some protective measures— including a standardised employment contract and a minimum wage – MDWs remain vulnerable to extensive violations of their rights and their contracts. Concerns include the underpayment of wages, denial of rest days, non-regulation of work hours, sexual and physical abuse and excessive agency fees. In addition, while other expatriate workers are entitled to residency in Hong Kong after seven consecutive years of working and have the right to bring in dependents while working in Hong Kong, this right is specifically denied to MDWs who are given two weeks at the end of their employment contract to find another contract or to leave, regardless of the number of years of residency.

MDWs, unlike other sectors of the working population and other migrants, are entitled to a minimum allowable wage (MAW), set administratively by the government, currently HKD3,580 per month. A separate sum can be given to cover food costs. All MDWs must

---

<sup>1</sup> Domestic Helpers and Native Labor Supply in Hong Kong; Patricia Cortes, Jessica Y. Pan: University of Chicago, Booth School of Business, November 2009. Accessed on 18 August 2010 from <http://faculty.chicagobooth.edu/patricia.cortes/documents/hongkong.pdf>

reside in the employer's home. No MDW employed in recent years is allowed to rent or stay in any place other than the employer's main residence.

Although MDWs are already among the lowest paid in Hong Kong, the government and employers have specifically attacked their wages and benefits since the Handover through wage freezes and cuts. The first wage cut of around 5% was imposed by the government in 1999, which brought the wage to HKD3,670 per month. A second cut in February 2003 during the SARS epidemic further reduced it by HKD400 (11%). This cut was the result of a "levy" or tax imposed on employers of HKD400. A similar amount was deducted directly from the workers' wages, essentially discriminating MDWs with regards to taxes, since no such levy was imposed on national domestic workers.

The ILO Tripartite Committee, established by the Governing Body in response to a complaint (under article 24 of the ILO Constitution) by the Trade Union Congress of the Philippines (TUCP) in March 2003, noted that at the time, MDWs, earning a minimum wage of HKD3,270, were the lowest paid workers under the labour importation scheme.<sup>2</sup>

They continue to earn extremely low wages. In seven years, they received a wage increase of 18 Euro (HKD180), an average annual increase of 25 cent. In June 2007, they received an increase of approximately 8 Euro, the equivalent of HKD80. They received a further increase in July 2008 of HKD100, bringing the current monthly minimum wage to HKD3580 (approximately 358 Euro)

In its response to the ILO Tripartite Committee in 2003, the Hong Kong SAR government stated that *"the main reasons for employing foreign domestic helpers were generally lower wages for foreign domestic helpers when compared to those of local domestic helpers, their overnight stay with the employers and their commitment to the employment contract"*.

Following this statement no survey has been made as to whether local or national workers are receiving higher wages than those paid to MDWs for the same work, as recommended by the Committee. It is important that such a survey is conducted as wage inequality is contrary to the Convention's goal of equal remuneration for migrant workers and nationals.

#### **4. Levy or Tax? Complaint by the Trade Union Congress of the Philippines**

In February 2003, a monthly Employees Retraining Levy of HKD400 was imposed on employers of foreign domestic helpers. This levy was designed to go towards a retraining scheme for local workers. The government denied that the levy was effectively a tax on MDWs, but in April 2003, they cut the minimum wage of MDWs by HKD400, almost 11 per cent of the then minimum wage of HKD3,670.

---

2

1. In communications dated 5 March and 18 March 2003 the Trade Union Congress of the Philippines (TUCP) submitted to the International Labour Office, under article 24 of the ILO Constitution, a representation alleging that the Government of China has failed to observe the provisions of the Migration for Employment Convention (Revised), 1949 (No. 97), in the Hong Kong Special Administrative Region (SAR). <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

The ILO Committee assessing the 2003 TUCP complaint concluded that the levy on all employers of imported workers, irrespective of the amount of the workers' salaries, and a reduction of the same amount in actual wages was not equitable and urged a “*review of the above-described levy and minimum wage policies taking into account principles of equity and proportionality*”.

## **5. Exclusion from the Statutory Wage Bill**

In July 2010, the Hong Kong SAR government introduced new legislation on a minimum wage. The government had previously attempted to avoid legislation by calling on employers to sign up to a voluntary code. This code will come into force in 2011 but will not cover MDWs on the alleged grounds that it is difficult to calculate their work hours, given the round-the-clock nature of their jobs and their residency at their employer's home.

The inclusion of local domestic helpers in the new minimum wage bill paid and the exclusion of foreign domestic workers presents a very clear case in contravention of ILO Convention 97, article 6. Trade unions, including the ITUC affiliate, the Hong Kong Confederation of Trade Unions (HKCTU) and the Hong Kong Domestic Workers General Union have all argued that the law should protect all workers, regardless of race and job type and that the exclusion of MDWs amounts to discrimination against women and foreign workers.

The fact that MDWs have been excluded from this new Minimum Wage Bill, but are included in existing labour legislation, represents a step backwards for Hong Kong's compliance with ILO Conventions and basic principles on the rights of migrant workers.

Four main reasons are given for this exclusion; the distinctive working pattern of live-in domestic workers; 2) their enjoyment of benefits in-kind; 3) the possible socio-economic ramifications; and 4) the fundamental erosion of the Hong Kong MDW policy. These reasons are not sufficient to exclude live-in domestic workers from a statutory minimum wage (SMW) and are implicitly discriminatory.<sup>3</sup>

These arguments imply that MDWs are expected to be available “Round-the-clock” and to provide “service-on-demand”. These assumptions cannot be used as excuses for failing to quantify the hours of work of domestic workers and imply that they work more hours than they should. It is not acceptable to employ a migrant worker to work “round the clock” and be available 24 x 7, and such exploitation cannot be a justification for the non-payment of an adequate wage.

To ensure decent work for domestic workers, the government should legislate on the number of hours a domestic worker should work and on a limit for standby hours, in accordance with the International Labour Recommendation No. 116 (1962) and Convention No. 47 (1935) on working hours, in a bid to ensure that workers have a decent work-life balance.

---

<sup>3</sup> NGOs dealing with Domestic Workers have expressed similar views: Legislative Council Brief Minimum Wage Bill, June 2009, Labour and Welfare Bureau, File Ref.: LD  
SMW 1-55/1/4(C) [http://www.legco.gov.hk/yr08-09/english/bills/brief/b24\\_brf.pdf](http://www.legco.gov.hk/yr08-09/english/bills/brief/b24_brf.pdf)  
and International Domestic Workers Network (IDWN) LC Paper No. CB(2)2571/08-09(48)  
at <http://www.legco.gov.hk/yr08-09/english/bc/bc61/papers/bc611007cb2-2571-48-e.pdf>

A statutory minimum wage should be applicable to all workers regardless of their residency status. The current minimum wage for MDWs is not the same as the minimum wage established by the Wage Bill. The Wage Bill does provide a wage fixing mechanism, which includes consultation with representative organisations of workers and employers, but this process is not open to MDWs.

## **6. Underpayment of wages**

In 2003, The Hong Kong Government was asked to provide information concerning instances of underpayment of wages. In anticipation of the availability of this information, below is a short survey of statistics and information from independent research studies into the underpayment of MDW wages. While some employers do pay higher wages than the current rate, the majority do not. Studies have shown underpayment to be a common complaint for all MDWs, with Indonesian and Sri Lankan workers being the most affected.

### **a. Indonesian DWs**

1. In late 2006, the Asian Migrant Centre (AMC) in collaboration with The Hong Kong Coalition of Indonesian Migrants Workers Organization (KOTKIHO) interviewed 2,097 Indonesian migrant domestic workers in Hong Kong about their working and living conditions. They found that:

94% of workers signed a receipt for their wages each month. Of those that signed, 26% did not receive the amount stated on the receipt. The difference between the actual wage received and that stated on the receipt ranged from HKD80 to HKD2,370 per month.

The AMC states that *“Since 26% of all workers did not receive the wages stated in their receipt, and the average amount not paid is HKD1,390 per month, we can assume that approximately HKD 36,000,000 is stolen from DWs each month in this manner by their employers”*. And in effect the government is sanctioning such irregularity with their loose monitoring and ineffective implementation of the Hong Kong laws and policies related to migrants’ wages and conditions”.<sup>4</sup>

22% were underpaid. Of those workers that were not underpaid, 60% were paid the minimum wage. Only 19% of Indonesian DWs in Hong Kong received were paid in excess of the minimum wage.

A 2005 survey found that 42% of Indonesian migrant domestic workers were underpaid in 2005. A 1999 survey found that 90% of MDWs were underpaid. The findings therefore show some improvement over the years, however, underpayment of workers remains a persistent and pervasive problem.

### **b. Nepali DW**

---

<sup>4</sup> Updated Survey on Indonesian DWs 17 August 2007 - Around USD48 million Stolen from Indonesian workers by Hong Kong Employers Each Year!. Accessed on 18 August 2010 from [http://www.asian-migrants.org/index.php?option=com\\_content&task=view&id=126&Itemid=1](http://www.asian-migrants.org/index.php?option=com_content&task=view&id=126&Itemid=1)

In 2007, the Asian Migrant Centre in collaboration with the Far East Overseas Nepali Association (FEONA) conducted a study among Nepali Domestic Workers, which found that 61% of the respondents were receiving lower than the minimum allowable wage (MAW) of HKD3,480. In 2005, the MAW was HKD3320 and 49% of MDWs were underpaid. Workers reported receiving wages ranging from HKD1,200 up to HKD7,800, with one-third receiving 2,000 to 2,500 HKD. Interviews suggested that around 70% experience underpayment in their first contract.<sup>5</sup>

## **7. Working hours - overwork and lack of rest days**

One reason given for the exclusion of MDWs from the minimum wage bill is the “round the clock” nature of their work and the resulting difficulty in calculating a minimum hourly wage for MDWs. This excuse given by government spokespersons is tantamount to admitting that MDWs work far longer hours and if they were paid an hourly rate similar to that received by local domestic workers employed through government agencies, this would be financially unviable. While there is no legislation on maximum working hours for any Hong Kong worker and overwork and unpaid overtime have been proven to be normal practice, in many cases MDWs work an average of 12 -15 hours per day, with many working more.

According to the AMC study of Indonesian DWs, less than 1% of Indonesian migrant workers in Hong Kong work 8 hours or less per day. Over half work between 13 and 16 hours per day. The most common number of hours worked per day is 16 hours (23%), followed by 15 hours per day (15%) and then 18 hours per day for 15% of workers. This gives an average of 16 hours per day. Of the 2,032 responses, only 13 workers worked 8 hours or less per day.

In addition, despite government regulations providing for a period of not less than 24 hours every week as a rest day, only 44% of Indonesian DWs interviewed received their legally mandated 4 rest days per month. 14% of workers received no rest days at all and worked seven days a week, every week. 8% got one rest day, 32% had 2 rest days, 1% had 3 rest days and less than 1% got more than 4 rest days per month.

Even those DWs that regularly received rest days were sometimes still required to work on those days. When they had to work on rest days, 36% of workers were not compensated for this, contrary to the existing regulations. Only 31% of workers were always compensated when required to work on rest days. 9% were usually compensated, 6% were sometimes compensated and 1% was rarely compensated.

A study of Nepali DWs found that of those interviewed, 82 % were given one day-off per week, 10% only received 2-3 days per month and 8% could not take any time off at all. Only 7% were given the full 24-hour rest period. The majority were allowed between 10 and 13 hours of rest. If rest days were not provided, 30% were never compensated. Almost half of respondents were never given statutory holidays. The majority of Nepali

---

<sup>5</sup> New Research on Nepalis in Hong Kong - 18 December 2007. Visa ban on Nepali leads to abuse and discrimination. Accessed on 18 August 2010 from [http://www.asian-migrants.org/index.php?option=com\\_content&task=view&id=128&Itemid=1](http://www.asian-migrants.org/index.php?option=com_content&task=view&id=128&Itemid=1). 158 NDWs survey respondents and 30 focus group participants and key informant interviewees took part

DWs worked an average of 14 hours a day, with the majority (48%) working for 13-16 hours, 32% for 8-12 hours and 20% for 17-19 hours.<sup>6</sup>

### **8. Abuse and debt – treatment amounting to conditions of forced labour**

Research has confirmed systematic practices of forced labour and debt bondage affecting MDWs in Hong Kong, especially amongst Indonesian MDWs. Indonesian DWs, in particular, suffer from excessive placement fees that are deducted from their wages.

In interviews conducted by the Association of Indonesian Migrant Workers-Hong Kong (ATKIHK), Indonesian migrant domestic workers describe payments of up to HKD21,000 (US\$2,700) to recruitment agencies in work placement fees. Indonesian legislation, unlike other countries, stipulates that all would be Indonesian migrant workers must go through a recruitment agency and agencies must offer pre-departure training.

In practice, migrant workers report that Indonesian recruitment agencies state that the loan to cover training costs is a pre-requisite to gain employment overseas. Migrant workers are made to sign an agreement to repay the loan upon arrival in Hong Kong. Agencies often instruct employers to deduct repayments from employee's salaries and to transfer these repayments directly to third party finance companies.

According to research in 2007, the majority of migrant workers interviewed, 59%, paid HKD21,000 in agency fees. The second most common amount paid was HKD9,000 by 10% of workers, followed by HKD10,000 paid by 7% of workers. Workers reported having to pay agency fees for a period of between zero and eight months. The majority of Indonesian domestic workers, 62%, paid their placement fees through 7 months of salary deductions. The next most common salary deduction period was 5 months for 20% of workers. 8% of workers paid their agency fees over 4 months. 5.9 months was the average number of months required to pay the agency fees by salary deductions.<sup>7</sup>

In another 2007 study of Nepali DWs, it was found that, in common with many other Asian MDWs, many put themselves into debt before leaving for Hong Kong, resorted to selling properties and borrowing heavily to pay the HKD 5,000 to 18,000 to the agencies. Some spent 8-10 months repaying their debts through salary deduction schemes.

The Hong Kong SAR has made it illegal to deduct over a certain proportion from a MDW's wage. According to the Hong Kong Labour Ordinance, an employer is only allowed to deduct a maximum of 25% of a migrant worker's monthly wage. The government has also banned employers from repaying debts to a third party on behalf of migrant domestic workers. However, there have been calls for better enforcement of this legislation as many Indonesian DWs have their wages cut excessively in order to repay the training fees.

---

<sup>6</sup> New Research on Nepalis in Hong Kong . 18 December 2007: Visa ban on Nepali leads to abuse and discrimination

<sup>7</sup> Updated Survey on Indonesian DWs 17 August 2007 - Around USD48 million Stolen from Indonesian workers by Hong Kong Employers Each Year!. Accessed on 18 August 2010 from [http://www.asian-migrants.org/index.php?option=com\\_content&task=view&id=126&Itemid=1](http://www.asian-migrants.org/index.php?option=com_content&task=view&id=126&Itemid=1)

In addition, excessive placement fees and long debt repayment periods compel migrant workers to remain with their employers as long as possible in order to repay their debt and to start earning a full salary, regardless of their actual working conditions. This increases the potential for abuse by employers.

Placement fees and other factors such as the ban on visas for Nepali workers described in detail later in this comment exposes migrant workers to become victims of trafficking and abuse amounting to forced labour. However, the Hong Kong SAR government does not have any effective mechanisms to identify, eliminate and assist victims of trafficking.

Instead MDWs that encounter exploitation have difficulties in leaving their employer. Due to present immigration regulations, they lose the right to work and are liable to prosecution for breaches of conditions of stay regardless if such situation is brought about by deception, coercion or fraud done by private actors (e.g. human traffickers, recruitment agents, employment agencies, errant employers, finance companies).

The HKSARG needs to urgently develop a mechanism to identify and eliminate all forms of trafficking.

### **8. Other Abusive practices including directives on accommodation**

The withholding of identification documents is a common problem for MDWs in Hong Kong (most notably for Indonesians and South Asians). Currently there is no law banning this practice. Some instances have also been recorded where employers open bank accounts for MDWs but retain the bank card making it impossible for the MDW to oversee or prove cases of underpayment or non payment. The Hong Kong SAR government again does little to pro-actively monitor and halt this abuse.

In addition, the government stipulation that all MDWs must reside in the employer's home leaves many MDWs vulnerable to abuse and curtails freedom of movement and accommodation. The government should recognise that when live-in domestic workers are obliged to stay in employers' households 24x7, there are more opportunities for the abuse of these vulnerable workers.

### **9. Migrant workers from the Chinese Mainland - Exclusion from new discrimination ordinance**

The recent Race Discrimination Bill issued in 2008, contains numerous flaws and exclusions leading some critical voices to state that it is in fact, a bill legalising discrimination.

The Bill would exempt the government itself from civil litigation if it practices racial discrimination. The government's response when asked why it was not prepared to include race discrimination by the government and public authorities, was that it would leave the government open to an influx of litigation and affect its policy -making ability.

As the Hong Kong Bar association succinctly pointed out – these excuses “highlight precisely the genuine need for these provisions”.<sup>8</sup>

In addition, clauses within the bill exclude certain acts carried out on the grounds of a person’s immigration status (not being a permanent resident), length of residency or nationality, citizenship or residency status of another country or place. This effectively allows for and legalises instances of discrimination against migrant workers and other groups in Hong Kong.

In addition migrant workers and immigrants from the Mainland are not classified as a minority and are therefore not protected by the bill. Racial discrimination is seen as applying to non-Chinese and thus excludes workers from Mainland China. However, migrants from the Mainland also risk suffering discrimination, and the ITUC believes they should be covered by the law.

#### **10. Unequal rights to residency and the 'two week rule'**

All other foreign migrant workers and their dependants are eligible to apply for residency in Hong Kong after the requisite seven years of continuous employment. This does not apply to MDWs. This is particularly discriminatory to women, as professional expatriate migrant workers are predominately male and can apply for permanent residency. Asian women MDWs are denied the possibility of permanent residency and consequently are denied access to the services and rights available to other foreigners employed for over seven years. This includes the right to bring dependents and family members to Hong Kong. This is clearly of a discriminatory nature.

In 1987, the New Conditions of Stay policy was implemented. Commonly known as the 'two week rule', it states that upon termination of a contract by either the MDW or the employer, the MDW may only remain in Hong Kong for two weeks. After the two -week period has elapsed; and they have successfully found a new employer the MDW must return their country of origin to wait for a new working visa. Nepali MDWs are not allowed a new work visa if they have had to return to Nepal after the expiration of the two week period.

The “Two week' rule means that many MDWs are more prepared to accept abusive conditions, renew existing contracts or accept low wages offered in new contracts, provided they can be secured within the two week period. Abuses include violations of their labour rights as well as physical and sexual abuse.

The concluding comments of the *Committee on the Elimination of Discrimination against Women* (CEDAW) in 2006 stated that:

*“41. The Committee is concerned about the situation of female foreign domestic workers who may be subject to double discrimination on the basis of their sex and ethnic background. The Committee is also concerned about the “Two -Week Rule”, which requires foreign domestic workers to leave Hong Kong within two weeks after the*

---

<sup>8</sup> Hong Kong bar Association Further Submission of the HK Bar Association to the Bills Committee, 12 June 2008.

*expiration of their employment contract or premature termination, thus pushing foreign domestic workers to accept new employment which may have unfair or abusive terms and conditions in order to be able to stay in Hong Kong. It further raises concern at the reported abuse perpetrated by employment agencies against domestic workers, such as lower wages, fewer holidays and longer working hours than what is prescribed by law.*

*42. The Committee recommends that the Government of the Hong Kong Special Administrative Region ensure that female foreign domestic workers are not discriminated against by their employers or subject to abuse and violence. It urges the Hong Kong Special Administrative Region to repeal the "Two-Week Rule" and to implement a more flexible policy regarding foreign domestic workers. It also calls upon the State party to strengthen its control of employment agencies and to provide migrant workers with easily accessible avenues of redress against abuse by employers and permit them to stay in the country while seeking redress. The Committee further urges the State party to make migrant workers aware of their rights so that they have access to justice and can claim their rights." (Committee on the Elimination of Discrimination against Women's Thirty-sixth Session 7-25 August 2006)<sup>9</sup>*

## **11. Specific issues facing Nepali migrant workers**

The Hong Kong SAR government issued a ban in 2005 on the issuance of work visas for Nepali citizens. This has had a severe effect on existing Nepali migrant workers and the sizeable Nepali community already resident in Hong Kong. Like several other predominantly south Asian countries, all Nepali citizens need a visa to enter or pass through Hong Kong. The government stated that its visa ban was to stop the increasing number of Nepali illegal immigrants coming to Hong Kong. Many groups however state that the new laws are encouraging illegal immigration. According to a spokesperson for the Hong Kong Integrated Nepalese Society (HINS), illegal human trafficking increased after the restrictions on Nepali work visas were imposed.<sup>10</sup>

According to one report, Nepalis living and working in Hong Kong were only given three days notice of the visa suspension and other regulations. The immigration department stated that "*(The) public announcement (of the suspension) was made on 3 June 2005, i.e., before the changes were introduced,*" The new rules came into effect just three days later, on June 6.

Nepalis working in Hong Kong in 2005 were granted permission to stay as long as their contracts remained valid. Currently there are approximately 16,000 Nepali nationals in Hong Kong. In 2005 there were some 2,000 Nepali DWs but this number has fallen to approximately 700. The ban on new work visas has meant that many feel forced to stay in abusive contracts. While other nationalities can obtain a new contract with a new employer, for Nepali, the termination effectively results in a permanent ban from Hong Kong.

---

<sup>9</sup> Submission to the Committee for the Elimination of All Forms of Racial Discrimination (CERD), By: *Asian Migrants Coordinating Body – Hong Kong (AMCB-HK)\* and Mission For Migrants Workers (MFMW Limited)*

<sup>10</sup> CHINA Daily A Himalayan-sized job hurdle, By Ma Ruizhi (HK Edition), updated: 2010-07-21 07:39

The Far East Overseas Nepali Association (FEONA) has reported that domestic workers have come to the organisation after receiving late payment, nonpayment or after being assaulted or sexually abused by employers. Domestic workers become afraid to leave abusive bosses because if they do not find another position and sign a contract within two weeks, they will be deported and unable to ever return to Hong Kong to work.

As a result, a situation has been created in which employers can use the visa situation to take advantage of the migrant. For example an interview in 2007 with a local migrants group, a Nepali migrant worker stated that *“My previous employer knew about the visa ban so he would always threaten to terminate me if I did not do my job well. I tried very hard to please them but to no avail. I was still terminated. I was so scared and worried because I had only 2 weeks to look for another employer. Eventually, I had to agree to \$ 1,600 salary, a much reduced amount compared to my previous salary of \$3,400, because I ran out of time to find a new job.”*<sup>11</sup>

Research carried out in 2007 discovered that 81% of Nepali Domestic Workers surveyed, identified the visa ban as their most pressing concern. The Asian Migrant Centre argues that *“the visa ban is discriminatory against the Nepalis. Moreover, the ban encourages further exploitation and abuse of them, mostly women, as they endure the abusive treatments of employers due to fear of termination and consequently having to leave Hong Kong without the hope of coming back for another job.”*

Employment agencies have also been found to take advantage of the visa ban by targeting MDWs who have been terminated and are looking for new positions (within the two weeks allocated to them before repatriation). Many Nepali DWs pay the agencies far in excess of the 10% commission prescribed by Hong Kong law. Interviews revealed payments ranging from HKD1,500 up to 10,000.

Nepalis who have obtained residency through previous working arrangements or birth also find that excessive bureaucracy and delays mean that applications for family visits or permanent residency can take several years. Some Nepali DWs have sought to marry local resident Nepalis once their contract has expired and they have been unable to find a new contract. Others have also reportedly claimed refugee status under the Office of the United Nations High Commissioner for Refugees.

Nepali migrant workers and Nepali residents are found to be several times more likely than other groups to be asked for identification papers, searched and body searched by police and other law enforcement officials.

## **12. Right to equal legal remedies and lack of support**

Although many trade union, NGO and academic studies have documented numerous instances of abuse and discrimination against migrant workers, the Hong Kong SAR government has been extremely slow in its response to such alleged abuses and is failing in its monitoring of conditions contrary to article 6 of the Convention.

---

<sup>11</sup> 18 December 2007. Visa ban on Nepali leads to abuse and discrimination

According to the 2006 Shadow report to CEDAW<sup>12</sup> prepared by Hong Kong migrant groups, the Hong Kong Labour Department receives approximately 2,000 complaints per year against employers, but only secures convictions in a very small percentage of cases – 33 in 2004 and 29 in 2003. In addition, the fact that cases may take many months or even years to process, coupled with fears of deportation mean that many migrants, especially MDWs are discouraged from complaining. Given that MDWs reside in their employer's residence and as such are extremely vulnerable to abuse, the government should establish a proper monitoring and inspection system. The particular vulnerabilities of MDWs are well documented (language, age, contract ties etc) and provide a further reason for proactive protection and access to redress.

MDWs that file complaints and prematurely terminate their contracts have to remain in Hong Kong without any formal means of supporting themselves and depend for the most part on charitable organisations. The Immigration Department prohibits terminated MDWs from taking employment. No social assistance is provided during this time and complainants have to pay for regular visa renewals. This forces many to prematurely abandon their complaints or accept smaller settlements.

### **13. Illegal Migrants**

#### **a. Focus on deportation and punishment of illegal migrant workers not employers**

Illegal workers, including Mainland Chinese and MDWs forced to work in premises outside of their employer's home or undertaking additional part time work, work in a range of areas. These include factories, restaurants, food production factories, shops, markets, reflexology centres, premises under renovation, cemeteries, refuse collection points, waste materials recycling factories, container depots and warehouses situated in the rural areas in the New Territories.

According to official figures, in 2008-2009, 6,196 illegal workers, including 3,791 sex workers, were arrested, representing an increase of 2.4 per cent on the 2007-2008 figure of 6,051. The majority of the illegal workers were prosecuted and fined or imprisoned before being repatriated. In 2005, an Anti-illegal Workers Combat Squad was established to "provide for a more speedy and robust combat force against illegal workers and their employers". Nevertheless, only 326 employers were prosecuted in 2008-2009 for employing illegal workers.<sup>13</sup>

#### **b. Migrant Sex Workers**

In Hong Kong unorganised prostitution is not illegal, but it is illegal for foreign travel document or passport holders to participate in any activity for monetary reward (including sex-work) and the police will normally prosecute these people engaged in such activities.

---

<sup>12</sup> [http://www.apmigrants.org/attachments/HK\\_MIGRANT\\_WORKER\\_CEDAW\\_SHADOW\\_REPORT\\_2006.doc.pdf](http://www.apmigrants.org/attachments/HK_MIGRANT_WORKER_CEDAW_SHADOW_REPORT_2006.doc.pdf)  
accessed on 28 August 2010. SUBMISSION FROM MIGRANT DOMESTIC WORKER ORGANIZATIONS  
HONG KONG CEDAW SHADOW REPORT 2006

<sup>13</sup> [http://www.immd.gov.hk/a\\_report\\_08-09/eng/ch4/index.htm](http://www.immd.gov.hk/a_report_08-09/eng/ch4/index.htm)

It is estimated that more than 50,000 migrant sex workers are based in Hong Kong. They come from different countries, such as South America, Thailand, The Philippines, Mongolia, Russia and the majority from Mainland China. Generally the majority of illegal sex workers are Mainland immigrants on tourist visas. Some enter Hong Kong with a clear intention to work in the sex industry whilst others are persuaded to do so by reports of enormous earnings.

Many migrant sex-workers experience violence from customers and criminals, but most of them are reluctant to report their cases to the police because the police prefer to target the illegal aspect of the sex worker. In addition, many sex workers, regardless of their residency status are subject to arbitrary arrest and searches. Most controversially, regulations are in place, which sanction the acceptance of free sexual favours from sex workers by police officers in the course of an investigation. In practice, this allows for extensive abuse.

Females holding Mainland tourist visas are frequently stopped and arrested without criminal evidence of any involvement in sex work. According to sex workers groups in Hong Kong, undercover police officers use “soliciting for an immoral purpose” as the charge for arresting migrant sex-workers. However, 80% of the girls arrested reported that it was the police who initiated and asked for sex. Over 90% of the migrant sex workers arrested stated that the police did not give any explanation or reason for their arrest. Over 90% of those detained were not allowed to make a phone call or contact a lawyer and were only allowed to call a lawyer when they had signed a statement of guilt and a Notice of Detention. Many migrant sex workers do not understand Cantonese nor can they read traditional Chinese characters but they are not supplied with an interpreter.<sup>14</sup> On 14 June 2005, over 80 Mainland migrant women were detained for over 12 hours in a tiny iron cage of 200 square meters in the car park of a police station on suspicion of selling sex illegally in Hong Kong.

### **13. Conclusions**

1. Foreign Domestic Workers are subject to government sanctioned discrimination in terms of remuneration, accommodation, residency (and related services and rights)
2. Foreign domestic workers are expressly discriminated against through their exclusion from the Minimum Wage Bill
3. Foreign domestic workers are expected by employers to provide 'round the clock' service and generally work an unacceptable number of hours per day. The Hong Kong SAR government is complicit in sanctioning this overwork.
4. In the Race Discrimination Bill, foreign domestic workers are expressly discriminated against through the inadequate definition of race discrimination and the exclusion of discrimination by government bodies and discrimination relating to language and residency status.

---

<sup>14</sup> Report co-submitted to the Office of the UN Special Rapporteur on the Human Rights of Migrants by Zi Teng and Migrant Support Network, [http://www.ziteng.org.hk/2010MAY02\\_01\\_e.php](http://www.ziteng.org.hk/2010MAY02_01_e.php)

5. Foreign Domestic workers are inadequately protected from unscrupulous employers and agencies by inadequate monitoring and protection mechanism. They are denied full access to adequate remedies due to a lack of support for complainants and excessive punitive measures taken against potential complainants.
6. Hong Kong authorities should revise current policies and police practice towards migrant sex workers and ensure adequate protection during criminal investigations.

Kindly forward this document and the appended photos to the Committee of Experts for examination during its forthcoming session.

Thank you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A. B.', written in a cursive style.

General Secretary