

Submission to the Legislative Council

“Race Discrimination Bill”

(Legislative Chamber, 3 March 2007)

Joint Submission

- 1) The Coalition For Migrants Rights**
- 2) Indonesian Migrant Workers Union**
- 3) Far East Overseas Nepalese Association**
- 4) Filipinos Domestic Helper General Union**
- 5) Alliance of Progressive Labor, Hong Kong**
- 6) The Hong Kong Coalition Of Indonesian Migrants
Workers Organization**

Introduction

“Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the right recognized in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

-Article 2, International Covenant on Civil and Political Rights

On behalf of the Coalition for Migrants Rights (CMR), I would like to express our views on the Race Discrimination Bill (RDB) gazetted on 1 December 2006.

The CMR welcomes the long awaited legislation, however let us from the outset express our regret that the government is initiating a bill only on racial discrimination rather than a general anti discrimination bill. Discrimination does not happen only on grounds of race, colour, descent or national or ethnic origin of the person, but also on many other grounds such as language, religion, political or other opinion, property, birth or other status”.

This is especially important in view of the Hong Kong government is also a state party to the International Covenant of Civil and Political Rights (ICESCR) and the International Covenant on Economic, Social and Cultural Rights (ICCPR) and thus, has the obligation to legislate laws prohibiting all forms of discrimination. Article 26 of the ICCPR and Article 2 of the ICESCR state that the rights under both covenants should be realized without discrimination of any kind as to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

While bearing in mind of our position for a broader scope of discriminations to be legislated as all rights are inter-related, indivisible and inter-dependence, we are very disturbed that the government in this bill that only focuses on race discrimination, already from the outset is determined not to include the Immigration Ordinance for amendments to bring it in line with the bill, especially with regards to the discriminatory immigration policies stems from the Immigration Ordinance such as family reunions and the New Conditions of Stay (NCS).

Racism, discrimination and xenophobia against migrant workers in Hong Kong are imposed both by long-standing legislation and policies and by Hong Kong society in general. This is true of migrant workers in many sectors in general, but in particularly the lowest paid group – the foreign domestic workers (FDWs).

1) Immigration Ordinance and Policy must be subjected to amendments to be in line with the Bill

Although the definition of racial discrimination in the Race Discrimination Bill section 8 is inline with article 1 of the International Convention on Elimination of All Forms of Racial Discrimination (CERD), of which the Hong Kong government is also a state party, we however find that some provisions in the bill are in contradiction with the definition of race discrimination of the bill itself, especially when it comes to treatment of foreign domestic workers.

First of all, the bill explicitly stated that the immigration legislation would be excluded from the impact of this bill in part 6 under the title of "Matters Not Affected by Parts 3, 4 and 5. Although this provision is in relation to those without the right to enter and remain in Hong Kong, we are concerned that this will open the door for race discrimination against undocumented foreign domestic workers.

Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides the protection of the rights of the foreign domestic workers regardless of their status,

"States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status."

Secondly, under part 9 on "Consequential and Related Amendments", the bill has listed an array of laws to be amended to bring them in line with the bill, regrettably except the Immigration Ordinance, one of the main sources of discriminations against foreign domestic workers.

There are a number of discriminatory provisions in the immigration policies against the FDWs by the Immigration Department with the widespread powers from the Immigration Ordinance. FDWs have been singled out by policies such as the "New Conditions of Stay" (NCS), wage freezes, wage cuts and levies. The NCS policy renders FDWs especially vulnerable to xenophobic, racist, discriminatory and exploitative treatment. The NCS prohibits FDWs from changing to any other type of profession. They are neither able to obtain residency rights, nor to be joined by their spouses and families. FDWs are not allowed to change employers unless there are special circumstances or the FDW can provide sufficient proof of her or his abuse. If terminated, FDWs' are required to leave Hong Kong within 2-weeks time, or less, depending on the remaining time of their visa. By contrast, employers of

FDWs are allowed to fire their worker without having to provide any justification.

Although FDWs are allowed to form unions in Hong Kong, and several such unions do exist, however, no visas are issued to domestic workers for their union work. This hampers proper mobilization and the functioning of the collective. While local workers' unions are allowed to hire full-time staff from their members, this is not the case for migrants' unions.

Furthermore, expatriate professionals are subject to far less restrictive immigration policies. Their spouses and families have the right to obtain residency after seven years of living in Hong Kong, change profession and employer, and renew their employment contracts with few restrictions. **These facts make it painfully clear that "low-status" migrant workers, unlike many other members of Hong Kong society, are discriminated in Hong Kong by virtue of their combined and intersecting social identities of national origin, race, gender and class. All these constitute racial discrimination under the definition of RDB.**

We wish to point out that these findings have also been supported by concluding comment of the Committee of the International Convention on Elimination of All Form Discrimination Against Women (CEDAW) during its 36th session last August 2006, which suggested

" 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".

In 2005, the Hong Kong government introduced a new policy and stopped giving visa anymore to migrant workers from Nepal solely. This is another form of discrimination perpetuated under the Immigration Ordinance based on ethnic origin or national.

Hence, it is of paramount importance to include the Immigration Ordinance for review and amendments in relation to the Race Discrimination Bill. Failing this, the bill will be condoning and legitimizing existing discriminations against the migrant workers, especially the foreign domestic workers.

2) Indirect Discrimination toward FDWs

There are other forms of indirect discrimination against the FDWs which are not reflected in the legislations or policies.

Terminated FDWs do not have adequate access to shelters or legal services. FDWs are not allowed to work while their cases are being processed. When FDWs report cases of underpayment or other labor rights violations, they are prosecuted for having violated the employment contract. The police and the labour tribunal can extend their visas so that they may follow up the prosecution of their cases, however, the Equal Opportunity Commission does not have this power. Most of the time, the FDWs are forced to return home without redress.

In 2003, the government announced the new twin policies of a reduction in FDWs' Minimum Wage from HK\$3,670 to HK\$3,270 (10% reduction) and the imposition of an equivalent amount of levy on employers of FDWs. The money generated from the levy is said to be directed to the training and retraining of the local workforce.

We are of the view that this levy is a form of discrimination based on class and race as it targets only foreign domestic workers in Hong Kong but not local domestic workers nor other foreign workers.

3) Discrimination Based on Language

The Race Discrimination Bill that only focuses on race discrimination will fail in stamping out other forms of discrimination such as those based on language and religion, which are closely related in forming an identity of a particular race.

Under Section 58(1) of the bill on exception for languages, it expressly states that "Nothing in section 20, 21, 26, 27, 28, 29, 35 or 36 renders unlawful the use of, or the failure to use, any language in any circumstances relevant for the purposes of the section".

We are concerned that by allowing discrimination based on language, this will hamper vastly on the realisation of all rights such as the right to health, education and access to all other basic facilities and services provided by the government as most of the foreign domestic workers and ethnic minorities do not speak local languages.

For example, many Nepalese ethnic minorities have been discriminated in employment due to their inability to speak a particular language, despite the fact that these jobs do not required fluent command of that language.

RECOMMENDATIONS

1. Adopt a holistic approach in prohibiting all forms of discrimination by expanding the scope of the bill to include discriminations based on language, religion, political or other opinion, property, birth or other status.
2. Include immigration legislations, in particularly the Immigration Ordinance and policies, for review and amendment in order to bring these legislations and policies consistent with the new anti racial discrimination legislation. Excluding them would make a mockery of the claim of protecting foreign workers in Hong Kong.
3. Grant the Equal Opportunity Commission with power to extend the visa of the foreign workers involved in a dispute. This would greatly improve the chances of foreign workers actually finding redress for the violations of their human rights and protect their dignity.
4. Review the Employment Ordinance, the Social Welfare Ordinance and the Immigration Ordinance in light of the rights violations experienced by new immigrants, ethnic minorities and migrant workers. The departments of Social Welfare, Employment and Immigration need to establish consultative bodies to help create more effective mechanism to follow up on rights violations.
5. Review, amend and, where necessary, abolish FDW-related policies and proposals, particularly the policy of New Conditions of Stay, Two-week Rule, and the proposals to tax and implement a quota on FDWs and the levy on FDWs' employers to bring them consistent with anti-discrimination.
6. Remove the discriminatory visa policy that denies the Nepalese the right to work in Hong Kong
7. Include prohibition of discrimination on the ground of language in the bill.
8. Provide more effective accessible, multi-lingual and racially/gender-sensitive channels for migrant workers, especially FDWs to be able to report immediately violations, including underpayment, to the Labour and Immigration Departments.
9. Uphold the right to union by further ensuring migrant workers working for migrants' associations and unions will be given working visa without discrimination.