

**SUBMISSION PAPER
COALITION FOR MIGRANTS' RIGHTS (CMR)
Hong Kong**

(Friday, 9 February 2007, Chamber of Legislative Council Building)

Distinguished Panel on Home Affairs members:

The Coalition for Migrants Rights (CMR) is an alliance of the major foreign domestic worker (FDW) grassroots organizations and trade unions in Hong Kong. We represent Filipino, Indonesian, Thai, Nepalese, Sri Lankan and Indian FDWs in Hong Kong. CMR, or its member unions - Indonesian Migrant Workers Union (IMWU) and Filipino Domestic Helpers General Union (FDHGU) - have submitted or attended meetings organized by the ILO, UNIFEM, as well the 36th Session of CEDAW in New York, 2006, in order to present the situation and positions of women migrants, particularly FDWs, in Hong Kong. IMWU has a standing partnership with UNIFEM to promote and empower women migrants in Asia.

CMR is also a member of the Migrant Forum in Asia (MFA), the biggest network in Asia of migrant organizations, unions, NGOs and advocates. Through MFA, we have also raised our issues and concerns with the UNHCR, GCIM, Special Rapporteur on Migrants' Rights, CEDAW Committee and the Migrant Workers Convention Committee.

We submit this report and position paper to the Panel on Home Affairs meeting with the hope that it will help uplift the status, combat discrimination, and further empower women migrant workers, especially FDWs.

Women migrants in Hong Kong

There are around 216,880 foreign domestic workers (FDWs)¹ in Hong Kong, over 95% of whom are women. The majority (57%) are from the Philippines, while 39% come from Indonesia, 2% from Thailand, and 2% from other Asian nations (Nepal, Sri Lanka, India).

FDWs contribute over HK\$13.7 billion annually to the Hong Kong economy - almost 1% of HK's GDP². Around 9.4% of the 2.307 million households in Hong Kong employ a FDW. This helps free tens of thousands of people, especially women, in Hong Kong from household work, child or elderly care, thus enabling them to pursue higher studies or join the labour force. Aside from housework, FDWs provide highly gender-oriented services, and help improve the quality of life of many families and women in Hong Kong. For instance, the 2001 baseline research by CMR and AMC revealed that:

- 1.6% of all FDWs do sick/disabled care work;
- 10% do elderly care work;
- 8.6% regularly tutor employer's children; and an additional 13.7% regularly help employers' children with homework;
- 36.3% do childcare work; at least half of these children are of pre-school age. Follow-up research by IMWU/KOTKIHO/AMC in 2004 revealed that 79% of Indonesian FDWs do child-care work.

¹ As of June 2004; data from the Hong Kong Immigration Department.

² Study by the Asian Migrant Centre (AMC), September 2004.

In spite of these significant and gender-oriented contributions, FDWs remain one of the groups in Hong Kong who are most vulnerable to abuse, contract violations, discrimination, denial/restrictions of basic rights, and erosion of wages/benefits – because they are women, foreigners, and domestic helpers.

The oppression and vulnerabilities of FDWs are not isolated cases; they are systemic, structural and policy-related; they are compounded by the convergence of gender, racial and class-related factors. Therefore, if we are to combat discrimination against FDWs and women migrants, we have to address the following systemic and structural problems in Hong Kong:

1. LOW WAGES; EROSION OF WAGES, BENEFITS & PROTECTION OF FDWS

FDWs in Hong Kong have a minimum allowable wage (MAW) and a standard employment contract that is the same for all FDW nationalities. Employers who violate the MAW or standard contract are liable to stiff penalties. The MAW was implemented in 1987 as one of the ways of protecting the FDWs in Hong Kong, who are among the lowest paid sectors of Hong Kong society.

Each year, the Hong Kong government reviews the MAW. From 1987, the MAW generally increased due to FDWs advocacy, reaching HK\$3,860 per month in 1998. Wage increases for FDWs have generally been minimal, way below the salary increase for other job occupations in HK. This has kept FDW wages among the lowest in HK.

Citing economic difficulties, the HK government imposed two wage cuts – HK\$190 in 1999 and HK\$ 400 in 2003, bringing down wages to HK\$3,270 since 2003 (and up to early 2005). In contrast, average monthly wages in Hong Kong in 2005 for cleaners was HK\$5,062 and HK\$6,166 for dishwashers³. The Hong Kong government implemented two wage hikes recently – HK\$50 in May 2005 and HK\$80 in May 2006 – bringing wages to the current HK\$3,400/month. This is still way below the average wage of similar occupations (Cleaners, dishwashers), and only a third of the HK\$10,382 average monthly wage in Hong Kong⁴. This is gross under-valuation of women migrants' work.

Various attempts have also been made since 1998 to erode the benefits and protection of FDWs in Hong Kong – e.g. removal of maternity protection for DWs (2000), other wage cuts (2001-2002), etc. Fortunately, strong campaigns of FDWs have defeated these attempts.

We call on the Panel on Home Affairs to support our call for the HK government to:

- a) Immediately restore FDW minimum wage to HK\$3,860 (1998 level).*
- b) Implement a minimum wage for local domestic workers.*
- c) Adopt the CEDAW, ILO, and UN core Human Rights conventions as minimum standards for FDW policies and treatment in Hong Kong*

2. WIDESPREAD UNDERPAYMENT AND EXCESSIVE AGENCY FEES

³ As of March 2005; data from HK Census and Statistics Dept
Available at

http://www.censtatd.gov.hk/hong_kong_statistics/statistical_table/index.jsp?charsetID=1&tableID=028

⁴ Ibid

Underpayment is one of the most widespread forms of abuse against FDWs in Hong Kong. The extent and degree of the violation differ by nationality. For example, according to the baseline study conducted by IMWU and AMC in 2005 almost half of all Indonesian FDWs (40,390) are underpaid, receiving only an average of HK\$1,500-2,000 per month.

In many cases, especially among Indonesians, the severe underpayment is linked to the excessive fees charged by recruitment agencies. HK laws allow only 10% fees (HK\$327) to be charged by recruiters; however, agencies, on average, charge HK\$9,799 per contract; some even charging more than HK\$20,000⁵. Many FDWs are underpaid or not paid for several months while paying off the excessive fees. This is similar to a debt-bondage situation for tens of thousands of women migrants in Hong Kong.

The sustained campaign and education by CMR, Indonesian Migrant Workers Union (IMWU), and the Hong Kong Coalition of Indonesian Migrant Workers Organizations (KOTKIHO) for more than 6 years have helped reduce the underpayment incidence: from over 90% in 1999, down to 46% by 2001, and 42% in 2004⁶. The fees charged by recruiters have also been dramatically reduced: from an average HK\$21,000 in 1999, down to HK\$16,000 in 2004. Thus, the problem remains serious. The severe abuse and debt bondage of women FDWs in HK continue.

We call on the Panel on Home Affairs to support our call for the HK government to:

- a. Stamp out underpayment of FDWs, and overcharging by recruitment agencies;*
- b. Take Strong action against guilty employers, and agencies, e.g. blacklisting, revoking licenses of agencies, or banning employers from hiring FDWs; impose stiff penalties on guilty employers or agencies;*
- c. Improve cooperation among the HK and sending governments, FDW unions/organizations and NGOs to crackdown on the problem; create a joint task force among FDWs unions, NGO and government agencies to crack down on the problem.*
- d. Recognize FDW unions as legal representatives who can file complaints on behalf of their FDW union members;*
- e. Use the employers' levy to speedily compensate underpaid FDWs.*

3. WIDESPREAD ABUSES; OPPRESSIVE WORKING & LIVING CONDITIONS

Despite some protective measures in HK - including the standard FDW employment contract and minimum wage - FDWs suffer rampant rights and contract violations. Aside from low wages, wage cuts, underpayment and excessive agency fees, FDW also suffer from denial of rest days, non-regulation of work hours, sexual and physical abuses, etc⁷. According to the 2001 baseline research by AMC and CMR: 27% of FDWs are verbally and physically abused; 22% are not given their weekly days off; and 2% suffer from sexual abuse. Many FDW also suffer from substandard living conditions. FDWs, on average, work more than 16 hours per day. These problems are generally worse among Indonesian, Nepalese, Sri Lanka and Indian FDWs.

⁵ AMC, KOTKIHO, IMWU Baseline research , *Systematic Extortion of Indonesian Migrant Workers in Hong Kong*, June 2004

⁶ AMC, CMR Baseline research 2001, AMC, KOTKIHO and IMWU Baseline research 2004.

⁷ KOTKIHO Shelter Case Data Base from 2002-2006.

It is the duty of the government to combat such abuses, ensure decent work and pay, and humane, fair and equal treatment of FDWs. These are embodied in international human rights standards and many of HK's international obligations.

The FDWs are more vulnerable to these abuses because they don't have job security, employers can arbitrarily terminate them. If the FDW does find the strength to complain against these abuses, government policies (New Condition of Stay, 2-week rule, and other restrictive HK Immigration policies) prevent her from working (and thus sustaining herself) for the duration of the case. Thus, many FDWs are forced to suffer in silence, or accept substandard arbitrated settlements where they are given only a small fraction of their legitimate claims.

Many employers also falsely accuse FDWs of "stealing" in order to drive them out; terminate them before they reach 6 years' service to prevent them from claiming long service payment. Some terminate FDWs in unholy hours, or during holiday, leaving FDWs literally in the street. This opens FDWs to greater abuse, violence and vulnerability.

All these unfair policies and arbitrary powers of employers leave FDWs with weak bargaining power, degrading the status and dignity of women. CMR deplores these abuses and systematic vulnerabilities imposed on FDWs and women migrants. The HK government should be made responsible in eliminating these unfair policies and practices.

Furthermore, employers should be made directly answerable for abuses, violence and violations of FDWs' employment contract and basic rights. In 2003, the HK government removed the exemption on FDW employers to pay a levy (in effect since 1980s) for hiring foreign workers. Thus, FDW employers now pay the HK\$9,600 levy for each contract. In line with the principles of employers' accountability for the basic welfare of their workers - such as providing insurance, health protection, workman's compensation, injury/accident protection - CMR advocates that FDW employers' levy should be used to compensate FDWs for underpayment and contract violations committed by the employers. Therefore, instead of the employers' levy being used only as a "retraining fund for local workers" an appropriate portion of the levy should be designated as "FDW compensation and protection fund".

We call on the Panel on Home Affairs to support our call for the HK government to:

- a. Prosecute and punish employers who abuse the FDWs; impose stiff penalties on guilty employers, including blacklisting, heavy fines, and criminal prosecution.*
- b. Recognize and encourage trade union representation on behalf of abuse victims, so that they are not afraid to come out, report violations, and stop the abuses;*
- c. Limit working hours;*
- d. Create tri-partite body (FDW unions, government, employers association) to monitor compliance and go after violators of standard contract;*
- e. Provide special work permits for those with cases to allow them to work/live while cases pending; and/or use the employers levy to provide living allowance for FDWs with pending cases.*
- f. Increase protection for FDWs against unjust/arbitrary termination; particularly, require 'just cause' criteria for employers to terminate FDWs; prohibit termination/driving out FDWs during unholy hours or holidays, unless arrangement with government or NGO shelter has been made.*

- g. *Designate the FDW employers' levy as a "FDW Compensation & Support Fund" to compensate FDWs for underpayment and financial claims arising from violations of FDW employment contract or Employment Ordinance.*

4. NO SOCIAL SECURITY OR RETIREMENT PROTECTION FOR FDWs

Hong Kong's Mandatory Provident Fund (MPF) provides social security for workers on retirement. Almost all employees in HK are covered by the MPF, including even part-time workers. The MPF however specifically excludes FDWs, and many local women (e.g. elderly, unemployed). This is a form of discrimination against FDWs and women in marginalized situations.

Retirement and social security is a matter of gender justice for FDWs - who are mostly women - after employment in Hong Kong. They have spent their prime productive years providing highly gender-oriented services to others. Upon return to their home countries, they are displaced and could not usually find employment. In such a situation, the women ex-migrant could end up in worse situation after they return home for good.

We call on the Panel on Home Affairs to support our call for the HK Government to:

- a. *Include FDWs in the coverage of the social security system in HK;*
- b. *Adopt a universal provident funds or social security system, as proposed by local women and labour groups.*

5. LACK OF INSTITUTIONAL CHANNELS FOR MIGRANT REPRESENTATION

Many of the problems of women and FDWs have been redressed, and policies improved, because FDW unions and organizations have stood up and asserted their rights. A principled working partnership among FDW groups, government agencies and employers will help further improve policies and the status of women and migrants.

We call on the Panel on Home Affairs to support our call for the HK government to:

- a. *Create a standing tri-partite body (FDW unions, employer representatives) to discuss and recommended policies and responses on FDW matters in HK. This idea was supported by the Permanent Secretary for Manpower during the dialogue with IMWU, AMC and migrants groups in 2005.*
- b. *Consult registered FDW trade unions when amending/changing terms and conditions in the standard FDW employment contract.*

6. DISCRIMINATORY POLICIES

The New condition of Stay (NCS) was enacted in 1987. The NCS denies FDWs the rights to change to other (non-FDW) job categories, right to obtain residency after seven years, right to be joined by families (family reunification) and also severely restrict the conditions upon which they can change employers. The "Two Week Rule", a special provision within the NCS, requires FDWs to leave Hong Kong within two weeks of the termination date of their contract. Although the UN Committee on Convention on the Elimination of Racial Discrimination (CERD), the UN Committee on the Convention for Economic and Social Rights (ESCR), and also recently the UN Committee on Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) have issued repeated efforts calling on

the Hong Kong government to modify or repeal the two week rule, this policy remains in place.

On the other hand, HK government introduced a new immigration policy in June 2006, which ban visa for Nepalese Workers. This policy is discriminatory as it applies only to Nepalese migrant workers.

We call on the Panel on Home Affairs to support our call for the HK government to:

- a. *Abolish the NCS, 2-Week Rule and other discriminatory polices against FDWs.*
- b. *Adopt the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the core rights conventions of the UN and ILO.*
- c. *Abolish visa ban for Nepalese Migrant Workers.*

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Members: Asian Domestic Workers Union (ADWU) / Indonesian Migrant Workers Union (IMWU) / Filipino Domestic Helpers General Union (FDHGU) / Thai Women Association (TWA) / Far East Overseas Nepalese Association (FEONA) / Indian Domestic Workers Association (IDWA) / The Hong Kong Coalition of Indonesian Migrant Workers Organization (KOTKIHO)