



Asian Migrants' Coordinating Body (AMCB)

A founding member of the International Migrants Alliance (IMA) and with members from Indonesia, Nepal, the Philippines, Sri Lanka and Thailand

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Submission to the Hong Kong Legislative Council for the INCLUSION of Foreign Domestic Workers to the Statutory Minimum Wage Bill

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**To: MEMBERS OF THE LEGISLATIVE COUNCIL
Hong Kong SAR**

On July 8, 2009, the Executive Council of the Hong Kong SAR submitted to members of the Legislative Council its proposal for a legislation of the Statutory Minimum Wage.

However, the proposal of the ExCo is exclusionary of hundreds of thousands of live-in domestic workers – the overwhelming majority of which are foreign women.

Through this submission, we hope that the members of the LegCo will be more considerate of the rights of domestic workers, recognize that our exclusion from the SMW Bill is unjust and discriminatory, and move for our inclusion to the SMW Bill.

A. Our position for inclusion

1. It is our firm belief that a single legislated rate for minimum wage should be applied universally to all working people in Hong Kong.
 - a. This should be applied to all working people whether they are local or foreign and live in and live out for that matter. Essentially there should be no discrimination in applying the SMW to all working people.
 - b. There should not be a separate legislated minimum wage rate for different work categories, especially for FDWs. The SMW should be across the board as what the HK government originally envisioned.
 - c. Domestic work is work and its value should be remunerated as any other kind of work. The mere fact that FDWs are required to have employment contracts with their employers attests to this.

2. Currently, wage of foreign domestic workers (FDWs) who are the majority of live-in domestic workers is determined by the Minimum Allowable Wage (MAW) policy.
 - a. Under the MAW, the wage of FDWs is very vulnerable to instant adjustments. In fact when the time for the MAW review comes – and it is done every year – our wage becomes more insecure.
 - b. We believe that the process of MAW determination is non-accountable, non-transparent and arbitrary.
MAW is decided only by the Executive Council in a closed door review. Because it is administrative, the legality of the decision on the MAW cannot even be challenged. Thus, the government cannot even be compelled to justify its decision for the wage adjustments it will do to the MAW.

Government's 'basket of indicators' is also not clear in the process. It changes all the time and what is worse is that FDWs only get an idea of what criteria were used in the MAW review only AFTER the decision has been taken. That is, if they even bother to explain their decision.

FDWs are not even informed when it will be reviewed. All the time, FDWs have to approximate the period of its review and prepare submissions. While the government accepts submissions, it is not clear what they actually do with it.

- c. With the SMW, at a certain extent, there will be a level playing field in the determination of wage that we can also take part in. Unlike now where only the ExCo decides our wages in closed door meetings, the inclusion will give us and our advocates the chance to lobby the LegCo, attend public consultations and discussions in the legislative body and witness deliberations the same way that our employers can.
3. We too are workers. From our value in households to the general HK society, no one can, and should, deny the part FDWs have played and still are playing in Hong Kong. If FDWs are excluded from the SMW that is meant to be for ALL workers, it means that we are not considered as workers and such is an injustice to us.

Neither are FDWs a "social welfare" of the government to employers. We are not items with "ON SALE" tags. Our worth and dignity as workers and as human beings should be acknowledged and should not be cheapened just so others can "afford" us.

B. How we can be included in the SMW

1. Since the start of the discourses on SMW, officials of the Labour Department and the Labour Advisory Board have promoted the misleading information that it is impossible to compute the wage of FDWs. Additionally, the hysteria that wage of FDWs will increase to HK\$12,000 or more if included in the SMW has also been raised.
 - a. It is contrary to the practice of the HK ExCo to say that it is impossible to compute our wage. The MAW itself is a computation of the wage of FDWs and the ExCo has been using the MAW for decades to set the wage of FDWs. This means the government agencies have the means and opportunity to determine wage levels for live-in domestic workers.
 - b. Like any policy, the LegCo will deliberate on any proposed changes to the SMW. It will call for submissions and hear the take of the affected sectors – FDWs, employers and even the government – before taking any decision. Wages can then increase, decrease or even be frozen. There is no telling what the actual economic and political developments will take place in HK in the future that will impact on the SMW.
2. Foreign Domestic Workers in Hong Kong can be included in the SMW by adopting the following proposals of our alliance:
 - a. Let the FDWs be paid monthly wages based on SMW hourly rates at 10 hours compensated work hours. This is the monthly minimum wage for FDWs under SMW.
 - b. Deduct from the monthly wages a percentage of the Average Per Capita share of the FDW to the household expenditures.
 - c. The Take Home Pay is the net result after deductions to monthly wages
3. This concrete proposal is based on certain reasonable assumptions:
 - a. That domestic work is broadly defined as time spent in "taking care of the household" and that this constitutes services from manning the house to cleaning, cooking and baby-sitting.

- b. That this range of services constitutes productive work.
- c. That the value of live-in domestic work is measured by the hours of work.
- d. That Live-In domestic work has added value for work – the uncompensated hours of work brought about by the reality of being 24 hours on call.
- e. That these hours of work are usually between 12-16 hours and 24 hours on call precisely because FDWs are bound under mandatory live-in requirements.
- f. That the SMW can be reasonably calculated for 10 hours compensated work a day if this is premised that we have to serve our employers from breakfast up to supper.
- g. That being live-in, the FDW is sharing part of her wages to the over-all household consumption (housing, food, electricity, gas, water)
- h. That being foreign, the employer incurs additional expenses for hiring (employment compensation, medical insurance, airfare)
- i. Being foreign workers, the sacrifices that we make from being separated from our families cannot be measured nor remunerated.

4. The definition and operationalization of this calculation in table form are as follows:

	Monthly Minimum Wage	Living Cost Deduction	Take Home Pay
How to Calculate	$\frac{(\text{SMW} \times 10 \text{ hours} \times 365 \text{ days})}{12 \text{ months}}$	84.94% of Average Monthly Per Capita Expenditure in HK	Monthly Minimum Wage minus Deductions
Explanation in Calculating included items	SMW will be the legislated minimum hourly rate of wages Hours of work = 10 hours	Ave. Monthly per Capita Expenditure (APCE) according to Census and Statistics Bureau is HK\$6,108 However, we should only calculate 84.94% of the APCE because the living cost share of the FDW in the household includes only food, housing, electricity, gas, water and some miscellaneous expenses***	Total Deductions include Living Costs and Additional Costs
Reasons	1. Monthly calculation is because the FDW is live-in. 2. The hours of work is a reasonable compromise because surely the FDW does not only work 8 hours a day but even according to the LAB is working between 12-16 hours a day. Let's just assume the services compensated are those between preparing breakfast until after supper services.	1. The FDW acknowledges that she has to give a share to the household expenses precisely because she is live-in. 2. The computation for the Average Per Capita Household Expenditure is taken from the Census and Statistics Bureau	

Reference Data:

***According to the latest Census and Statistics Bureau data (2006):

			in HK\$
Average Monthly Household Expenditure			18,884
Average Monthly Per Capita Expenditure			6,108

Expenditure Weights (latest data)		Total
Item	%	%
Food	26.94	
Housing	29.17	
Electricity, Gas and Water	3.59	
Transport	9.09	
Miscellaneous	16.15	
		84.94
Alcoholic drinks	0.87	
Clothing and footwear	3.91	
Durable goods	5.5	
Miscellaneous goods	4.78	
		15.06
TOTAL		100%

Items and Percentage of Living Cost Share of FDW in a Household

Using this proposed formula, and taking in the proposal of the Minimum Wage Alliance, the actual monthly minimum wages and take home pay for FDWs will be:

Per Hour SMW	Monthly Wage	Living Cost Deduction	Take Home Pay
(in HK\$)	(computed as SMW x 10 hrs X 365 days/12 months)	(computed as 84.94% of average monthly per capita expenditure)	(Monthly wage - Living cost)
33	10,038	5,188	4,849

- There is also the fear that local employers will refuse to hire FDWs anymore if are included. We do not think so. Again, this fear is based on the assumption that inclusion will automatically mean wage increase.

But even assuming that there will be a wage increase, the scenario of mass layoff of FDWs is unlikely.

According to the HK government itself, employers of FDWs earning more than HK\$20,000 a month is more than 70% of the total number of FDWs' employers.

If this is the case, will an increase of HK\$50 (the average wage increase for FDW wages in the past three years), or even HK\$100 a month really push employers to do away with FDWs? We think not because domestic work is a fulltime job and nobody will willingly give up his/her whole salary or half the family income in exchange for not paying a couple of hundred bucks more to his/her domestic worker.

A value of FDWs in the household is that it increases the economic capacity of the whole household. It allows other members of the family to work for additional income.

6. While we present this concrete proposal, we also reiterate our view that there are still outstanding issues that FDW face with regards to working conditions:
 - a. We accept 10 hours as a reasonable or ordinary computation of working hours for a live-in domestic worker with regards to computing the SMW. However, the reality of long working hours is still present and in fact, with the proposal, the FDW is already conceding some of the hours.
 - b. The mandatory live-in arrangement is making the process complex. However, we do not believe that this should be a reason for exclusion. More so, the live-in worker has to be assured that her work is valued similarly as any other worker. How can simple convenience or smoother process of legislating the SMW be the excuse for denying a big section of workers in HK for their right to receive minimum wage?
 - c. The current Minimum Allowable Wage scheme for FDWs is not a just scheme to determine wages.

C. Exclusion to the SMW constitutes a violation to ILO conventions

1. Our exclusion to the SMW proposal would be patently discriminatory and would contravene conventions of the International Labour Organization (ILO) regarding wage and other related matters.

According to ILO Convention No. 97 Migration for Employment Convention (Revised), 1949 which the Hong Kong government signed in January 22, 1951:

Article 6

6. (1) Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities- (remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age)

2. At the same time, the exclusion would mean that FDWs would still be governed by the Minimum Allowable Wage (MAW) policy which is under the arbitrary decision of the HK Executive Council and is reviewed yearly.

In such a review, the MAW can be lowered like the HK\$400 wage cut in 2003 and an earlier cut of HK\$190 in 1999. Currently, the FDH wage is not yet even at par with the 1998 salary which has been 11 years ago!

To cut the minimum wage is very unjust. The ILO Minimum Wage Fixing Convention in 1970 said that:

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include--

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

D. Conclusion

1. Our submission and albeit indirectly, the HK government's past experiences in fixing the MAW, have already indicated that the calculation for live in domestic work is possible and can be done.

What matters right now is that the Hong Kong government, as a world city, should be consistent to what it has agreed to under the ILO Convention and therefore should be willing to include live in foreign domestic workers in the SMW. The last thing it would want to happen is to tarnish this image like those countries in the Middle East or even Singapore and Malaysia that do not include FDWs even in the coverage of their labor laws.

2. The government also states that five percent of the population of Hong Kong is foreign passport holders, nearly half of whom are FDWs. The government also formed the Equal Opportunities Commission (EOC) whose mission is to eliminate sexual and racial discrimination among others and promote equal opportunities. It can be consistent by ensuring that live-in foreign domestic workers are included in the SMW.
3. Domestic workers are mostly foreigners and women. We basically manage the household. We deserve to receive the statutory minimum wage. We are workers. We deem our position as just and fair.

ASIAN MIGRANTS' COORDINATING BODY (AMCB)

Members:

Association of Sri Lankans in Hong Kong (ASL-HK)

Asosiasi Tenaga Kerja Indonesia di Hong Kong (ATKI-HK) (Association of Indonesian Migrant Workers)

Far-East Overseas Nepalese Association - Hong Kong (FEONA-HK)

Filipino Migrant Workers' Union (FMWU)

Friends of Thai - Hong Kong (FOT-HK)

Thai Regional Alliance (TRA-HK)

United Filipinos in Hong Kong (UNIFIL-MIGRANTE-HK)