

**Federation of Asian Domestic Workers' Unions in HK (Organising Committee)
Coalition for Migrants' Rights (CMR)
Asian Migrant Centre (AMC)**

**OPEN LETTER TO THE LEGISLATIVE COUNCIL & PANEL ON MANPOWER
ON THE PROPOSED MINIMUM WAGE LAW IN HONG KONG**

16 April 2009, Hong Kong

***Legislate One Minimum Wage Law for ALL Workers in Hong Kong!
Ensure that ALL (Local & Foreign) Domestic Workers Are Protected by
HK's Minimum Wage Law!
Equal Treatment & Decent Work for ALL Domestic Workers!***

To: The Chairperson
Panel on Manpower, Legislative Council
Hong Kong SAR

Sir/Madam:

We welcome the commitment of the HK SAR Government to legislate a Statutory Minimum Wage (SMW) Law for workers in Hong Kong.

We support and reiterate the position that the central aim of the SMW Law is to “address the problem of working poverty” by providing minimum protection for the income of the most vulnerable and needy sections of the working population – who otherwise have no security of income and will suffer from unfairly low wages despite the very long working hours and multifarious tasks that they do.

Cleaners and domestic workers -- both local and foreign – are prime examples of these highly vulnerable and low-paid sections of the HK working population. In the case of domestic workers, they are also predominantly (over 95%) composed of women. As the Manpower Panel and the employers' groups themselves have admitted, domestic workers do multifarious tasks, and are essential for households in HK needing child care and elderly care in addition to the standard housework. More than 36% of FDWs in HK do child care (pre-school age); 14% help children with their school work; another 10% do elderly care; 2% take care of the sick. [AMC & CMR Baseline Research, 2001] The Manpower Panel noted that DWs help increase the labour participation rate of women in HK. Like all other workers in HK, DWs are productive members of HK society; FDWs in particular, contribute at least 1% of HK's GDP. [AMC study, 2004].

Despite these, employers have always sought to minimise the wages, benefits and protection of domestic workers. Instead of properly recognising and valuing the important role and contributions of DW in HK, current policies and practice unfairly restrict the rights, diminish the value, and discriminate against DW, particularly foreign domestic workers. The idea of excluding DW from the coverage of the proposed SMW Law is another glaring example of such exclusionary and discriminatory attitude.

These kinds of disadvantageous and discriminatory treatment of DWs as women and as workers undermine the basic principle of promoting women's rights and gender justice, to which HK has committed (e.g. through UN conventions like CEDAW and ICESCR). These

kinds of treatment are not consistent with HK's commitments under the core ILO labour rights conventions and the "Decent Work" principles.

We reiterate the position that it is the basic function of government to provide basic social safety nets and supportive policies for the vulnerable sections of the working population. Among such basic safety nets are minimum wage, social security, and occupational safety and health protection. These are more important now amidst the global economic crisis, and the increasingly globalised and cut-throat world of work in the future.

Therefore, we strongly oppose the idea of excluding domestic workers – specifically foreign DW – from the SMW Law. We oppose this as another example of institutional exclusion and discrimination of FDWs in HK:

1. The idea of excluding the very same vulnerable workers from the protection of the SMW Law negates the very purpose of enacting a SMW Law.

The more than 248,000 FDWs (as of Jan 2008) constitute almost 7% of the HK labour force. Why would a minimum wage law deny protection for the 7% of the most vulnerable, mostly-women workers in HK?

2. FDWs are not accorded special (privileged) treatment in HK; in fact, they are widely abused and exploited, not only physically but including through wage violations.

There is widespread underpayment of FDWs (over 40% of Indonesians and Nepalese); denial of statutory holidays (23% of all FDWs; over 66% of Indonesians), denial of weekly days off (20% of all FDWs; over 60% of Indonesians). Many are not given proper food/living space and are subjected to verbal/physical abuses (24%). Charging of excessive fees by recruitment agencies is a widespread problem. [AMC Baseline research, 2001 and 2004.]

While the other abuses can be addressed through other laws and channels, wage-related problems can be alleviated through a stronger SMW Law protecting all HK workers in general, including DWs in particular.

The premise that DWs are given more favourable treatment because of "unique circumstance" is not accurate. Foreign workers employed in other (non-DW) job categories are afforded their own similar or better incentives. Obviously, these incentives (passage not only for the worker but also for family, better health insurance, mandatory provident fund, bonuses and commissions, food subsidy, housing allowance, etc.) are proportionately better as the professional category goes higher. Many of these benefits are not even available to FDWs. The point is, the current minimum wage of MDWs are kept low by the government because it already accounts for these 'quantitative benefits' received by the FDWs. Conversely, other (non-DW) foreign workers in HK, who are not provided housing or food subsidy by their employers, receive higher salaries.

Therefore, these 'special benefits' should not be used as argument to deny coverage of FDWs under the SMW Law. In fact, a comprehensive SMW Law is needed to lay down the basic principles and parameters in quantifying and considering these factors in the setting of the minimum wage levels – a mechanism that is not in the current MAW policy.

The same principle is true for working hours. While it is true that it is hard to make a uniform rule on working hours for DW, essential principles/parameters that is applicable to all workers (including DWs) can or need to be defined by the law as a minimum reference – for example, a minimum monthly wage for FDWs contingent on a prescribed maximum working hours per day. Obviously, it is beyond humanitarian principles to make anyone work more than 16 hours per day (assuming a person needs 8 hours of sleep) – the current average length of a work day for FDWs in HK.

3. The existing MAW policy for FDWs is essential, but not sufficient, to protect DWs. If FDWs are excluded from a new comprehensive SMW Law, the existing MAW will not be sufficient to protect FDWs.

In fact, a specialised MAW only for FDWs (separate from the central SMW Law) will be a clear case of discrimination if it provides *less* favourable treatment for FDWs. If it provides the same or better protection, then why shouldn't it be incorporated in the comprehensive law?

The main weakness of the existing MAW policy is its being specialised and “stand-alone” – i.e. applicable only for FDWs. Over the years, in the absence of a comprehensive SMW Law for HK, the MAW provided minimum wage protection for FDWs. However, because it is a specialised law in and all by itself, it has many weaknesses, including: lack of implementing/monitoring mechanism (e.g. 40% of Indonesian and Nepalese FDWs continue to be underpaid); lack of transparency and accountable mechanism for decision-making (who decides on the rates, how, and on what bases?); and an overall lack of framework of basic labour rights protection in the context of all workers in HK. Adopting a universal SMW Law covering all workers in HK in general, including domestic workers in particular, will help resolve these essential problems.

The minimum wage protection of FDWs can only be enhanced if this is incorporated in the comprehensive SMW Law covering all workers in HK, because this comprehensive law will require stronger labour rights principles/framework, more clearly-defined decision-making mechanism, and the stronger monitoring, implementing and redress mechanisms for workers, including domestic workers, in HK.

4. The premise to exclude/deny SMW coverage for DW “because of practical difficulties in monitoring or implementing” the SMW Law is a false premise; these difficulties are in fact the very reasons why it is important to ensure that DWs are protected by the SMW Law:
 - a) A law is enacted because of the needs and principles (i.e. labour protection) that we want to uphold; these needs and principles could not be negated by ‘practical difficulties.’
 - b) The ‘practical difficulties’ (e.g. monitoring and compliance) are not unique to the case of FDWs, or of the minimum wage. There are many other provisions of the Labor Ordinance (that apply for FDWs and other workers in HK) that are not monitored – e.g. payment of wages, rest days, statutory holidays, etc. Yet, these have always been in the law – and no one is arguing to exclude them because of difficulty in implementing/monitoring. Indeed, their being part of the law creates a necessary condition for their being monitored/implemented – because workers have a legal right to complain and seek redress if these are violated.

- c) The ‘practical difficulties’ are not impossible to overcome. There are existing complaint and redress mechanisms that can be used and strengthened to help in the monitoring and adherence to the SMW Law as this applies to DWs; new mechanisms can also be adopted. The DWs have trade unions and support organisations that can represent and help them. Therefore, there are available and additional practical ways to address the ‘practical difficulties’ – which can precisely be done IF the DWs are included in the coverage of the SMW Law.
 - d) As the Manpower Panel itself noted, several countries (Australia, France, Canada) include DWs under their minimum wage laws. The ILO will also highlight the need for laws protecting DWs, when it tables in 2010 the proposed adoption of an ILO Convention on Domestic Workers. This new international treaty will help improve the legal standards in protecting DWs.
5. Excluding FDWs from another key government policy reinforces a systematic pattern of institutional exclusion and discrimination of FDWs under HK laws

Since the 1980s, the “New Conditions of Stay” (NCS) policy has discriminated and marginalised FDWs from many benefits that are available to other (professional) foreign workers in HK – e.g. residency, family reunification, job mobility, etc.

Three (3) major human rights committees of the United Nations (CEDAW, CERD, ICESCR) have investigated and concluded that the NCS is discriminatory and inconsistent with HK’s obligations under international laws.

The newly-enacted race discrimination ordinance is another example of a law which (ironically) denies essential protection for foreign DWs – e.g. discriminatory policies and practices (e.g. NCS) of the immigration and other government bodies could not be questioned.

Excluding FDWs from the proposed SMW Law clearly validates that, despite the avowed importance of FDWs in providing care services and allowing more HK women to be active in the labor force, HK is out to minimise, diminish, marginalise and reinforce the vulnerable situation of FDWs – so that they remain cheap and a “cost effective” option for employers in HK. This clearly runs against HK’s commitments under CEDAW, ICESCR, and ILO’s Decent Work principles.

Therefore, we call on the Panel on Manpower in particular, and the Legislative Council as a whole, to uphold and promote the principles of human rights, social justice and gender equality in formulating a new, universal SMW Law.

We call on the Legislative Council to legislate a just and effective SMW Law that:

1. Guarantees universal minimum wage coverage for all workers in HK, specifically the low-paid and vulnerable workers, both local and migrants. While adhering to universal, equal pay-for-equal work principles, the Law can provide for particular parameters to address specific characteristics of some work sectors, e.g. domestic workers.
2. Guarantees protection and inclusion of all DWs – local and migrants, live-in and live-out --under the SMW Law. The basic aim of the SMW Law should affirm HK government’s

commitment to the principles of decent work, human rights, gender equality, social justice, equal treatment/non-discrimination.

3. Provides for decent and just minimum wage levels for the workers, especially the lower-paid and vulnerable sectors, including local and foreign DWs. The new SMW Law should enhance, and in no case diminish, the current levels of wage and protection of DWs.
4. Upholds and promotes transparent, accountable and democratic principles in decision-making (in determining wage levels). Workers' representatives, including from the trade unions of DWs, should have institutional involvement in such decision-making process.
5. Strengthens the mechanisms for monitoring and compliance of the minimum wage law.
6. Ensures consultative and democratic process throughout the drafting and formulation of the new SMW Law.

Thank you very much.

Sincerely,

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Federation of Asian Domestic Workers' Unions in HK (FADWU)¹

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¹ FADWU Organising Committee: HK Domestic Workers General Union, Filipino Domestic Workers Union, Indonesian Migrant Workers Union, Union of Nepalese Domestic Workers, Thai Migrant Workers Union, Overseas Domestic Workers Union, Asian Domestic Workers Union.