

Submission of the Asia Pacific Mission for Migrants (APMM) to the Legislative Council of Hong Kong

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ILO standards should be adopted by the HK government on MDWs

There is a popular notion in the international community that Hong Kong is relatively a haven for migrant domestic workers (MDWs) due to certain freedoms they enjoy, such as the right to organize and to protest. But this is illusory at best, as there remain highly restrictive policies that serve to offset the aforementioned freedoms.

Some of Hong Kong's policies vis-à-vis its MDWs are not up to par with the standards set under the ILO Domestic Workers' Convention (C189), which thus far has not yet been ratified by China. As a global benchmark for the protection of domestic workers rights, C189 and other pertinent ILO statutes should also be a point of reference for the HK government in its formulation of legislation and policies that apply to all MDWs under its jurisdiction.

The Asia Pacific Mission for Migrants (APMM, a regional migrant service institution based in Hong Kong, takes exception to the following existing policies and laws in the SAR that are contrary to the spirit and intent of provisions in the C189 and other ILO conventions, to wit:

1. The mandatory live-in policy of the HKID

This policy in Hong Kong has created conditions that are rife for the maltreatment of domestic workers, including overly long working hours, physical and mental abuse, rape and sexual harassment and violations of the domestic workers' cultural rights. A study by the Mission for Migrant Workers (MFMW) in 2013 shows just how the live-in requirement increases the vulnerability of FDWs to multiple forms of abuse, and this was submitted and presented to this Council last year. Erwiana's case has further highlighted this predicament by FDWs, especially those under first contract.

The C189 in its Article 9(a) provides that the matter of live-in or live-out working arrangement in the contract should be optional:

"Each Member shall take measures to ensure that domestic workers:

(a) are free to reach agreement with their employer or potential employer on whether to reside in the household;

2. Unregulated work-hours

Regulation of working hours is stipulated in the C189, specifically in Article 10(1):

"Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work."

MDWs in Hong Kong still work an average of 16 hours a day, or double that of local workers, and there is no provision for overtime pay. This has to be governed by a policy of shorter working hours for MDWs and

remuneration for overtime, based on the time-tested principle that peak labour productivity generally ranges around 8 hours.

3. The two-week rule for break-contracts

Obliging terminated MDWs to exit Hong Kong increases their vulnerability to debt-bondage, especially in the case of Indonesians who pay even higher fees than Filipinos and are bound by salary deduction arrangements imposed by placement agencies. It also tends to discourage MDWs from breaking contract with abusive employers, or reporting cases of maltreatment for fear of being terminated. Again, the recent case of Erwiana Salustyaningsih provides a dramatic example of this rule's deleterious effects on MDW protection.

Debt-bondage is also considered a form of slavery under ILO Convention No. 29, or concerning Forced or Compulsory Labour, which the HK government signed in July 1997. In the Convention's Article 2.1, slavery is defined as "...all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." In this sense, the two-week rule serves as an accessory policy to the "penalty" of debt-bondage, as it provides the condition for abused MDWs to suffer oppressive work-relations in silence.

The HK government should take to heart Article 4 of the said Convention:

- 1) The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.
- 2) Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.

4. Weak monitoring and prosecution of erring placement agencies

There are inadequate mechanisms and policy gaps for regulating placement agencies operating in Hong Kong. Employment agencies in Hong Kong collect excessive or illegal placement fees from MDWs, with no official receipts provided as proof of the transaction. The agencies force desperate job seekers into signing loan contracts with lending companies that require them to pay 4 to 7 months of their wages, and confiscate their passports, original contracts, or even the HK ID Card. There also instances where they harass both the MDW and her employer, with the consequence that employers sometimes decide to terminate the contract to avoid further harassment.

Despite the existence of Employment Ordinance (Cap 57) and the Employment Agency Regulations (Cap 57A) prohibiting a the collection of more than 10% of the MDW's first month's salary, overcharging is done through various *modus operandi* that circumvent the law. There is no effective mechanism or process in place to monitor the practices of employment agencies, ensure their adherence to existing laws, and prosecute offenders.

The Employment Agency Administration (EAA) that is tasked to investigate complaints commonly oblige FDWs to furnish receipts as evidence, which is impossible for them to do given the practice of placement agencies of not issuing receipts to cover up their misdeeds. On the other hand, EAA seems to assume a

passive role, compelling agencies to produce the evidence only if the complainant suggests a probability in her testimony. Numerous cases also fall beyond the six-month statutory barrier, making the complaints worthless.

Again, referencing ILO conventions should provide the HK government with proper guidance as regards regulation of placement agencies and their role in facilitating the disposition of MDWs. Article 15 of C189 is quite clear on this:

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

(a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;

(b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;

(c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;

(d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

APMM's Recommendations

1. Rescind the mandatory live-in policy and make the live-in/out working arrangement a matter between the MDW and the employer.
2. Enact legislation and attendant mechanisms to reduce the work-hours of MDWs in Hong Kong to a humane level, and in accordance with good practices in other MDW recipient entities.
3. Strengthen mechanisms to aggressively and proactively seek out erring placement agencies in Hong Kong, especially those practicing overcharging or illegal charging of employers and migrants.
4. Harmonize the temporary migrant laws of Hong Kong with the spirit and intent of the ILO Domestic Workers Convention (C189) and all other international labour statutes, and recommend to the national government of China to ratify and implement the C189.