Submission by the Asian Migrant Centre

For consideration by the Legislative Council Panel on Manpower at the special meeting of 21 February 2014 on policies relating to foreign domestic workers and regulation of employment agencies

1. The Asian Migrant Centre (AMC) welcomes this opportunity to address the Legislative Council's Panel on Manpower regarding the assortment of policies that currently apply to foreign domestic workers in Hong Kong. The following submissions reiterate some of our longstanding concerns with the territory's domestic worker regime, as well as some comments on issues going forward. Most notably, the problems that new foreign domestic workers from countries that have not traditionally sent workers to Hong Kong are likely to encounter.

Workers not "Helpers"

2. Firstly, we strongly urge the government to cease using the term "foreign domestic helpers" to describe this significant section of our city's workforce. The 300,000 or so foreign domestic workers currently in Hong Kong contribute enormously to the city's economic prosperity and social fabric. In addition to freeing up Hong Kong women to participate in the local labour market, foreign domestic workers shoulder a significant proportion of childrearing and elderly care responsibilities, which would otherwise fall on Hong Kong women and publicly-funded services. A study carried out by AMC in the mid 2000s estimated that foreign domestic workers contribute at least HK$ 13.8 billion annually to the local economy – almost one percent of the territory's GDP.[1]

[1] *See* Asian Migrant Centre, Asian Migrant Yearbook 2005, p. 132.

3. As such, AMC calls on the administration to adopt the internationally accepted term "foreign domestic workers",[2] and requests that they stop referring to this significant section of the labour market by the derogatory euphemism, "domestic helpers". This is not just a matter of political correctness. The language the government uses matters. The term "helpers" implies that they carry out their duties on a voluntary basis, which does not reflect the fact that just like other workers they undertake paid work under a formal contract of employment. It also implies that their work is not proper work and that they may legitimately be excluded from domestic labour legislation such as the Minimum Wage Ordinance and other statutory labour protections.

The "live in" requirement

4. Secondly, the "live in" requirement currently imposed on foreign domestic workers under their standard contract of employment has significant negative implications on their quality of life. Most obviously, it places them in the invidious position of having to be on call around-the-clock, constantly subject to the whims and needs of their employers. One migrant domestic worker interviewed in AMC's 2007 collaborative study into the underpayment of Indonesian domestic workers put it like this:

> "My employer gave me so many tasks that it was impossible to do them all in one day. It was impossible to escape the verbal abuse. I finally ran away one night because I knew that it was impossible to ever do the job".[3]

5. Over half of the 2,097 Indonesian domestic workers interviewed in our study reported that they worked 13 to 16 hours each day.[4] Aside from the obvious health and safety issues that arise from excessive overwork and too little rest, the domestic worker quoted above also makes clear that the compulsory live-in arrangement put her in constant harm's way of her abusive employer. The recent attention generated

---

[2] Article 1(b) of the ILO Domestic Workers Convention, 2011 (No. 189), defines a domestic worker as "any person engaged in domestic work within an employment relationship".

[3] Asian Migrant Centre, Indonesian Migrant Workers Union & the Hong Kong Coalition of Indonesian Migrant Workers Organization, 2006 Survey: Underpayment of Indonesian Domestic Workers in Hong Kong, August 2007, p. 2, report accessible at http://www.asian-migrants.org/index.php?option=com_docman&task=doc_download&gid=43&Itemid=48.

[4] *Ibid*., p. 18.

by the appalling harm inflicted on Erwiana Sulistyaningsih has led to increased discussion on the abuse of Hong Kong's domestic workers. Like other forms of domestic violence, it is difficult to accurately gauge how prevalent such abuse is. The private nature of the workplace coupled with the fact that many foreign domestic workers feel hesitant in bringing such matters to the attention of the authorities for fear of losing their job and jeopardising their right to stay in Hong Kong mean that abuse cases are likely to be grossly underreported. It is certainly a systematic problem that foreign domestic workers are left with limited options when they experience abuse and they face numerous legal and administrative hurdles in seeking appropriate protection and access to justice.

6. The mandatory live-in requirement also deprives foreign domestic workers of their right to enjoy a private and family life. AMC has come across several cases whereby both the husband and a wife of legally married couples are working as foreign domestic workers in Hong Kong and yet are prevented from living together as they are forced to reside with their respective employers. A policy that prevents lawfully married couples from living together is both an absurdity and an outright violation of their right to a private and family life.

7. It should be also noted that given the extremely cramped living conditions in Hong Kong, many employers currently do not provide appropriate personal space for their domestic workers. AMC frequently comes across cases where domestic workers are forced to sleep on the kitchen floor or inappropriately share rooms with members of their employer's family. As a consequence, the mandatory live-in arrangement adds physiological pressure to the employer-employee relationship, which in our experience increases the risk of abuse. We therefore call on the administration to amend the current live-in requirement to allow domestic workers and their employers to reach agreement as to whether or not they should reside in the employer's household.[5]

[5] As per Article 9 of the ILO Domestic Worker's Convention.

Abolish the "2-week rule"

8. For nearly two decades, AMC and other NGOs in Hong Kong have repeatedly called for the scrapping of the 2-week rule due to the severe negative implications it has on the welfare of foreign domestic workers. Most regrettably, the policy makes it extremely difficult for foreign domestic workers to leave their employment even when they experience contract violations, abuse and various other kinds of rights violations.

9. The pernicious implications of the 2-week rule are most obviously reflected in the manner in which it undermines the statutory protection currently afforded to them under the Employment Ordinance. For example, where a domestic worker has their contract terminated unfairly or they are forced to resign due to an abusive situation, they have just two weeks to seek the relevant legal advice and lodge a claim at the labour tribunal before being required to leave Hong Kong. In a great many cases these hurdles prove insurmountable, with the effect that the employment rights of domestic workers become largely illusory.

Other policies that leave foreign domestic workers vulnerable to abuse

10. In addition to the live-in requirement and 2-week rule discussed above, there are numerous other policies that greatly affect the work and lives of foreign domestic workers in Hong Kong. Among these is their arbitrary exclusion from the statutory minimum wage, which leaving domestic workers' significantly out of pocket when compared to the hourly rate that applies to workers in other low paid sectors. Given the current lack of regulations capping the working hours of foreign domestic workers in Hong Kong, combined with their exclusion from the statutory minimum wage, it is likely that the majority of domestic workers will continue to work extremely long hours, and be habitually deprived of time for sufficient rest and leisure.

11. Furthermore, unlike other foreign workers or so called "expats" who are granted an immigration visa that allows them to be relatively mobile in the labour market, the

"foreign domestic helper visa" is vastly inferior. Not only are foreign domestic workers prohibited from seeking employment in sectors other than domestic work, but they are not entitled to permanent residency in Hong Kong after working in the territory for seven years. Nor are they allowed to bring their dependent family members to Hong Kong. All of these restrictions combined with the live-in requirement, 2 week rule and exclusion from the minimum wage creates a public perception that foreign domestic workers may legitimately be treated as an underclass, an attitude that inevitably breads discrimination, racism and exploitation. It is high time for the Hong Kong administration to recognise the valuable economic and social contribution of foreign domestic workers, recognise them as formal workers under the standard work permit system, and consider granting equal treatment to all foreign workers.

New sending countries

12. Since May 2013, Bangladesh has started to send its workers as foreign domestic workers to Hong Kong. In recent weeks, Myanmar/Burma is also reportedly preparing to send its workers to Hong Kong. As the varying experiences of foreign domestic workers from different countries of origin suggests, the support mechanisms provided by countries of origin, e.g. relevant policies towards nationals migrating abroad, pre-departure training, services provided by labour attaché, etc greatly affect foreign domestic workers' capacity to exercise their rights once in Hong Kong. The Asian Migrant Centre and our partner organisation the Mekong Migration Network, a subregional network of civil society organisations in Thailand, Myanmar/Burma, Cambodia, Lao PDR, Vietnam and Yunnan province of China, have been working on issues of migration in these countries for over 10 years. Since Myanmar/Burma's recent transition from military rule, we have engaged in regular meetings with the authorities of Myanmar/Burma over their policies regarding their nationals migrating abroad. While it is noteworthy that the new civilian government have taken a number of positive steps in terms of labour legislation and regulations for its migrant workers, we must realise that the country's laws and policies are underdeveloped and the government has limited capacity to regulate migration, let

alone provide effective support for its nationals working abroad. The system to regulate recruitment agencies is similarly limited.

13. We recommend that the relevant Hong Kong authorities closely monitor the practices of recruitment agencies hiring domestic workers from Myanmar/Burma, as well as ensure that domestic workers from Myanmar/Burma are afforded with relevant information concerning their rights and the protections available under Hong Kong law. Moreover, that they be provided this information in a language they can understand (e.g. Burmese, Shan, etc). Any expansion in the number of sending countries must not lead to worsening of labour standards experienced by foreign domestic workers in Hong Kong.

Asian Migrant Centre
12 February 2012