

Mission for Migrant Workers Limited (MFMW Ltd.)

Submission to the LEGCO Panel on Constitutional Affairs on the Third Report of the Hong Kong Special Administrative Region under the United Nations Convention on the Elimination of All Forms of Discrimination against Women

21 July 2014

On the Immigration Department's Mandatory Live-In Policy

It is very noticeable that in the HKSAR's report, the mandatory live-in employment arrangement for foreign domestic workers (FDWs) is not considered as a major concern.

Even more unfortunate, the said policy was even used as a basis to justify the exclusion of FDWs from the Statutory Minimum Wage (11.62). Paragraph 11.64 is also worrisome for, while it clarified that there is no statutory standard working hours in Hong Kong, it said that FDWs and their employers could negotiate the working time arrangement. Given that there are now moves to create a statutory minimum working hours, this statement seems to be a future justification if FDWs are excluded in this possible new rule.

The mandatory live-in policy is a rule that gravely impacts the working and living condition of FDWs who are mostly women. The MFMW Ltd. conducted a survey among more than 3,000 foreign domestic workers composed of Indonesians, Filipinos, Thais, Nepalis and Sri Lankans in Hong Kong in April 2013 to determine the effects of the Hong Kong government's immigration policy.

The study found out that the Mandatory Live-in Policy increases female FDW's vulnerability to various types of abuse. Fifty-eight per cent (58%) or 1,719 of the respondents experience verbal abuse in the form of name-calling, insults, criticism of work, accusation, threats, or other types of verbal abuse; 18% (520) experience physical abuse in the form of poking, hair pulling, slapping, shaking, pinching, kicking, or other types of physical abuse such as throwing items on the FDWs; 6% (182) experience different types of sexual abuse ranging from sexual innuendos/slurs, touching or fondling of body parts to rape in the residence of their employers. Because of the policy, these abuses are done within the privacy of homes and remain largely unreported.

Cases of the likes of Kartika Puspitasari and Erwiana Sulistyaningsih that have shocked the world show how abuses can happen for a prolonged period. The mandatory live-in policy is a major factor that sets the stage for this condition to exist.

For many migrant domestic workers, to be forced in a live-in arrangement is to be forced to be on-call for 24 hours a day and to be forced to accept any sleeping arrangement the employer can provide. It also means being forced to surrender their privacy, health, security and safety.

The MFMW Ltd. strongly recommends the following actions to the HK government:

1. Repeal the mandatory live-in policy and make live out an option for foreign domestic workers;
2. Create mechanisms that will look into the living and working conditions of the migrant workers so that they are more grounded in the policies they implement;
3. Strictly implement the guidelines set on the Employment Contract's schedule of accommodations especially on the proviso on "suitable accommodations and reasonable privacy";
4. Provide further moral, financial and structural support to initiatives that promote understanding and harmony in Hong Kong, and the inclusion of all ethnic minorities in all aspects of the Hong Kong society; and
5. Create a more enabling environment for the effective participation of community organizations concerned with ethnic minority affairs on policy making, implementation and monitoring.

On the New Conditions of Stay or Two-Week Rule

The NCS is the overarching policy that puts the security of livelihood of FDWs always at risk. Due to the very limited time period to stay in Hong Kong that the NCS gives to those with prematurely terminated contract, many FDWs who experience abuses tend to keep quiet and just endure for fear of getting forced to leave Hong Kong without finding another employer.

In Paragraph 11.77 of the report, it revealed that there is no plan to vary or repeal the law despite the past comments of the CEDAW Committee for its review and even repeal. The report did not address concerns on the NCS raised by the Committee and various other groups.

We recommend that the Hong Kong government, at the very least, should initiate public consultations and fora on the NCS.

On Recruitment Agencies

By the third quarter of 2013, more than 65% of the cases of Filipino domestic workers handled by the MFMW Ltd. involved illegal collection of excessive placement fees from employment agencies in Hong Kong (from HK\$18,000 to 28,000) with no official receipts given to foreign domestic workers.

The modus operandi of recruitment agencies involves a lending or financing agency where FDWs are forced to sign a loan to cover the payment of their placement fee. In the Philippines, for instance, other employment agencies refer them to a bank that allows opening of checking/current accounts by departing FDWs. They are

then are forced by financing agencies/lending companies to sign blank cheques and the same companies take hold of the remaining checkbook.

In Hong Kong, despite a regulation to charge only 10% fee from the basic monthly salary of the migrant domestic worker, employment agencies charge an excessive amount. To ensure the full payment of the placement fee, the worker is forced to enter into a loan with a financing agency.

To make matters worse, the employment agency confiscates the migrant worker's passport and employment contract to ensure the payment of the loan. Cases of harassment, verbal abuse and even death threats were also reported in relation to the collection of loan payments by lending companies.

The HK government through the Labour Department and the Employment Agencies Administration has not been effective in curbing malpractices of agencies such as overcharging, forcing MDWs to take out loans, and confiscating documents of MDWs. These practices either force MDWs to endure abuses - due to debts owed - or choose silence for fear of retribution.

MFMW strongly maintains its recommendations to the Hong Kong government to:

1. Review the role and authority of the Employment Agency Administration (EAA) to give it more power to actively pursue cases against erring recruitment agencies.
2. To come up with procedures and mechanisms which would make EAA more accessible for FDWs victimized by these unscrupulous agencies.
3. Create mechanisms for the regular discourse between the EAA and FDW organizations and service providers as a means of feedback on problems and matters related to employment agencies.