

Joint Submission to Panel on Constitutional Affairs on the “INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS” by

Mission For Migrant Workers (MFMW)

Hong Kong Confederation of Trade Unions (HKCTU)

Stop Trafficking Of People (STOP)

Asian Migrants Coordinating Body (AMCB)

This submission expressed our concerns and recommendations on Equality and Human Rights Issues in Hong Kong.

1. Establishment of Anti-Human Trafficking Legislation

Identification of Issue:

Although trafficking in persons to or from Hong Kong for commercial sexual exploitation is under section 129 of Hong Kong Crimes Ordinance, Cap. 200, the crime of human trafficking for the purpose of forced labour is not completely covered by the law.

Emerging Issue:

Due to the lack of an effective anti-human trafficking framework and measures in Hong Kong to address the problem of human trafficking for the purposes of forced labour, protection from the Hong Kong Government designated to victims of trafficking is missing. On top of that, lack of awareness and knowledge to the issue among the frontline law enforcement also makes it difficult for victim identification to take place. According to the Article 4 of Hong Kong Bills of Rights, no one shall be held in slavery; slavery and the slave- trade in all their forms shall be prohibited. However this is not strictly implemented or fully covered by any pieces of legislation.

Recommendations:

- 1). A comprehensive anti-human trafficking legislation is needed in Hong Kong to criminalize human-trafficking activities.
- 2). On top of that, we are calling on the Hong Kong Government to come up with a system to protect victims of human trafficking in and through Hong Kong to protect their physical, psychological and mental wellbeing.
- 3). Last but not least, training for frontline law enforcement to identify victims in this regard.

2. Discriminatory and Exploitative Policies on FDWs

Identification of Issue:

There are 360,000 workers holding a Foreign Domestic Workers (FDWs) visa in Hong Kong. With this visa, they are explicitly excluded in rights entitled in the Employment Ordinance and bound by several discriminatory immigration restrictions.

Emerging Issue:

1) The two weeks rule required FDWs to leave Hong Kong beyond termination of contract and it is not removed despite UN recommendations. The two-week rule discouraged workers to file complaints as it put pressure on them to leave. With the discriminatory immigration policies specify the condition of stay of FDWs, they are restricted to work upon termination or change jobs. This discouraged them from filing cases against exploitative employers or agencies as they cannot earn a living here in Hong Kong, having nowhere to stay and at the same time they should pay for the visa fee to extend their stay here.

2) Exclusion in employment protection

By identifying Migrant Domestic Workers as FDWs, they are excluded in rights entitled in Employment Ordinance including contract working hours and the legal minimum wage in Hong Kong. The calculations of wages are not taking references to the formulation of minimum wage and FDWs are explicitly excluded in contract working hours in the standard employment contract.

3) The mandatory live-in requirement forced FDWs to live-in in employers home and at the same time criminalized domestic workers who agreed their employers' arrangement to live out. The mandatory live-in arrangement makes many female FDWs vulnerable to various abuses and exploitation. Since there is no identification of suitable and unsuitable accommodation, workers are placed in unsuitable accommodation arrangement in the toilets, kitchens, even cupboards and other common areas in employer's home.

Recommendation:

- 1) Remove two-week rules on FDWs.
- 2) Include FDWs in the Minimum Wage Ordinance the discussion of standard working hours legislation and contract working hours in Employment Ordinance.
- 3) Establish a comprehensive monitoring and complaint mechanism to ensure FDWs are provided with suitable arrangement.
- 4) Make live-out an optional agreement between employment and workers in the standard employment contract.

3. Monitor Overcharging of Agencies

Identification of Issue:

One of the biggest issues of FDWs is the control of agency and illegal recruitment. Lots of the FDWs are trapped in debt bondage due to overcharging of agencies fees. Most of the FDWs are asked to borrow money to work in Hong Kong and are vulnerable to trafficking and forced labor. Under the policy of Hong Kong, agencies can only charge FDWs with 10% of the first month salary. However, agencies in sending countries are often given power to charge workers by their government. According to the document of the Indonesian Ministry Of Manpower and Transmigration in 2012, placement fee of domestic worker candidates with Hong Kong as the destination country are said to be HK\$13,436.

Emerging Issue:

Despite the fact that the Hong Kong government is taking positive measures to protect the rights of FDWs by proposing to amend the Employment Ordinance to impose tougher penalties on recruitment agents for overcharging the foreign domestic workers' placement fees, there is inadequate monitoring and prosecution of agents in both Hong Kong and the sending states, particularly the Philippines and Indonesia, to ensure their recruitment agents do not overcharge and exploit the domestic workers. In reality, majority of workers are paying over half of their salary each month, which constitute to an amount between \$13,000 and \$21,000 in total. With the collusion between agencies in the sending states and those in Hong Kong has resulted in agencies charging exorbitant placement fees with impunity.

Recommendation:

We are suggesting both government of the sending states, and Hong Kong as the destination of FDWs, should ensure that law enforcement authorities to effectively monitor, investigate and punish illegal activities of agencies. The Hong Kong Government should ensure different government departments can and will work together to tackle problems faced by foreign domestic workers, as they often involve many departments including Labour, Immigration, Welfare, Police and Hospital Authority.

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