

# LABOUR MIGRATION AND MIGRATORY EXPERIENCES IN ASIA



International Organization for Migration (IOM)

**NAMS**   
Network for Asian Migration Studies





**LABOUR  
MIGRATION  
AND  
MIGRATORY  
EXPERIENCES  
IN ASIA**

A Post-Symposium Report

Edited by Yuk Wah Chan and Gloria Ko

This report is published as a result of the 2014 Symposium Labour Migration and Migratory Experiences in Asia, co-organised by the Department of Asian and International Studies of City University of Hong Kong, International Organization for Migration, and Network for Asian Migration Studies.

Publisher: International Organization for Migration

17 Route des Morillons  
1211 Geneva 19  
Switzerland  
Tel: +41 22 717 91 11  
Fax: +41 22 798 61 50  
E-mail: [hq@iom.int](mailto:hq@iom.int)  
Internet: [www.iom.int](http://www.iom.int)

This report first published 2015

© 2015 International Organization for Migration (IOM)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior written permission of the publisher.

The opinions expressed in the report are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM). The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

Cover page and layout designed by Popsy Hui ([popsyhui@gmail.com](mailto:popsyhui@gmail.com)).

# CONTENT

## FOREWORD

**Foreword** 3  
*Gloria Ko*

## INTRODUCTION

**Mapping the Faultlines of the Governance of International Labour Migration** 8  
*Yuk Wah Chan*

## GOVERNMENT EXPERIENCE

**The Labour Policy of Hong Kong and Bangladesh :**  
**The Missing Links in Supporting Bangladeshi Domestic Helpers in Hong Kong** 38  
*Mirana Mahrukh*

## POSITION PAPER

**Position Paper on Indonesian Migrant Domestic Workers in Hong Kong** 48  
*Amnesty International*

**Promote human rights and justice for migrants in Asia-Pacific** 55  
*Asia Pacific Mission for Migrants*

**Present Position of Labour Migration in Asia** 59  
*Christian Action Domestic Helpers and Migrant Workers Programme*

**What Migrant Domestic Workers Face** 63  
*Hong Kong Federation of Asian Domestic Workers Unions*

**Modern-day Slavery in a Modern-day City** 67  
*Mission for Migrant Workers*

**Position Paper of PathFinders** 71  
*Kay McArdle*

## APPENDIX

**Symposium on Labour Migration and Migratory Experiences in Asia** 78

# FOREWORD

## Foreword

Gloria Ko<sup>1</sup>

The 2014 ‘Symposium on Labour Migration and Migratory Experiences in Asia’<sup>2</sup> brought together policymakers, civil society and academics to exchange views through constructive discussions on the diverse forms of cross-border migration and migration regulations, and devise recommendations thereon.

Migration is a constant but dynamic phenomenon. United Nations statistics show a current level of 232 million international migrants and 740 internal migrants, respectively. This represents the highest number of people on the move in recorded history and comes with challenges in terms of diversity.

Most migration is circular, with seasonal labour migration forming an important sector of the migration system. At present, some 105 million persons are working in a country other than their country of birth.<sup>3</sup> In European Union countries, 35 per cent of all residence permits were issued to migrants from South-Eastern Europe, Eastern Europe and Central Asia (SEEECA) and search for work is likely to remain a key reason for migration in SEEECA countries in years to come.<sup>4</sup>

Immigrants from developing countries have contributed to an estimated 40 percent labour force growth in advanced economies in the past three decades, while developing economies are potentially facing a shortage of

---

1 Gloria Ko is Head of Office of the International Organization for Migration (IOM) in Hong Kong, China

2 The symposium was co-organised by the International Organization for Migration, the Department of Asian and International Studies of the City University of Hong Kong, and the Network for Asian Migration Studies. The programme of the symposium is attached as an appendix to the report.

3 *Labour Migration and Human Development*, IOM, 2015.

4 *Migration Facts and Trends: South-Eastern Europe, Eastern Europe and Central Asia*, IOM, forthcoming.

nearly 45 million medium skilled workers.<sup>5</sup> Labour migration's economic contributions are reflected in the remittances being sent to developing countries; these are expected to reach \$435 billion in 2014, an increase of 5 percent over 2013.<sup>6</sup> Every year, migrant entrepreneurs employ an average of 2.4 percent of the total employed population in OECD (Organisation for Economic Co-operation and Development) countries.<sup>7</sup>

To effectively address the migration needs of different societies, a platform from which relevant stakeholders can share and discuss the issues would be valuable. The International Organization for Migration often strives to provide such platforms.

The other form of migration – to escape war and persecution and to seek a better life – involves growing numbers of people from the Middle East, Africa and South Asia, and oftentimes such migrants turn to smugglers or traffickers. IOM's figures show that migration tragedies in the Mediterranean, since the beginning of 2015 alone, have cost 3,092 lives (as of 9 October 2015).

To effectively fight smuggling and trafficking, to facilitate putting in place legal and safe avenues of help for migrants, and to prevent migrants from turning to international criminal organisations, IOM proposes that a migrant response and resource mechanism be created. Such a mechanism will provide a comprehensive range of services to identify persons in need of help, counselling, referral and assistance, including voluntary return for economic migrants, among other solutions.

Addressing international migration issues requires international cooperation. IOM's Regional Consultation Process on Migration promotes exchange between states and dialogue forums across the regions. It offers a platform for restricted information-sharing and a discussion forum for

---

<sup>5</sup> *The World at Work: Jobs, Pay, and Skills for 3.5 Billion People*, McKinsey Global Institute, 2012. See '[http://www.mckinsey.com/insights/employment\\_and\\_growth/the\\_world\\_at\\_work](http://www.mckinsey.com/insights/employment_and_growth/the_world_at_work)' for more details.

<sup>6</sup> World Bank, "Migration and Development 23". 6 October 2014. Available from <http://sitere-sources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief23.pdf>.

<sup>7</sup> OECD (2011). *International Migration Outlook 2011*. See '[http://www.oecd.org/els/mig/Part%20II\\_Entrepreneurs\\_engl.pdf](http://www.oecd.org/els/mig/Part%20II_Entrepreneurs_engl.pdf)' for more details.

states with an interest in promoting cooperation in the field of migration. At present, there are around 14 active migration processes, with two in planning, worldwide.

In this region, there is the Colombo Process formed by labour sending states to address the well-being of labour workers. The Bali Process is a regional cooperation addressing the transnational crimes of human trafficking and smuggling.

The 2014 symposium offers yet another platform for communication and sharing, aiming to improve the migration mechanism that benefits societies and migrants. This report contains continued discussions, and position papers from participant organisations on good practices and challenges for good labour migration governance.

# INTRODUCTION





## Mapping the Faultlines of the Governance of International Labour Migration

Yuk Wah Chan<sup>1</sup>

### Introduction

Labour migration inevitably concerns intergovernmental collaboration in policymaking and cross-border governance. More than that, it entails contradicting and overlapping regimes of governance – different border control systems, immigration regulations, visa scrutiny, different categories of labour contracts (such as those for domestic workers), different labour protection schemes, varied regulations on labour recruitment agencies, human rights frameworks, and international human rights laws.

Many who are concerned with the well-being of migrant workers, especially low-skilled and semi-skilled workers, have been earnestly pressing for greater attention to be paid to country-based policies promulgated and implemented by both sending and receiving countries, which have a direct impact on the plight of these workers. Increasing angst and attention has been directed towards the slackened monitoring of these governments of placement agencies, an active actor in the field of international labour recruitment. It is quite clear that both sending and receiving countries have been managing migrant workers through their regulation of this private sector. It is equally clear that an investigation of these employment agencies is long overdue. While an increasing number of national laws, policy decrees and regulations, as well as batches of international laws regulating labour migration, have been introduced to provide protection to labour migrants, abusive and exploitative situations still appear to go unchecked.

In this introduction, we delineate the overlapping regulatory regimes of international labour migration governance. We firstly thread out the various

---

<sup>1</sup> Yuk Wah Chan is an Associate Professor at the Department of Asian and International Studies of the City University of Hong Kong.

streams of powers interwoven within the governance of labour migrants and their main regulatory tools. While in general such efforts add weight to the issue of the welfare of migrants and act to enhance their rights, setbacks are also introduced as a result of overlapping systems and the diluting effects of uncoordinated efforts from different parties. We therefore interrogate the matches and mismatches of regimes of governance of labour migration. We make suggestions to combat the faultlines and traps that are so characteristic of international labour migration governance, and discuss short- and long-term measures aimed at introducing effective remedies to various urgent matters concerning the well-being of migrant workers.

## The overlapping regimes of international labour migration governance

### The receiving countries

Both receiving and sending countries of migrant workers are in the position of framing the governance of international labour migration. One prominent regulation feature of receiving countries is the type of visas or entry permits that these countries provide for migrant workers (immigration control), which dictate the rights and benefits that workers enjoy, and the terms and conditions of their stay (which also cover conditions under which they are not allowed to stay in the destination countries). This regulatory system of international workers differs from country to country.

Within a particular destination country, different categories of international migrant workers are subject to different treatments. Professionals or high-skilled workers are usually governed by a more inclusive system – i.e. they enjoy rights which are similar to those of the local citizens, and some will be eligible for full citizenship or full residency rights (including voting rights and candidateship for political positions) upon staying in the destination country for a certain period of time. For example, in Hong Kong, China (hereinafter HK), where appropriate, skilled migrant workers, such as university professors, translators, English teachers and IT professionals, who enter HK for work because of their particular skills, are eligible to apply for the right of abode (or permanent residence) upon remaining in HK for seven consecutive years. Contrary to this, low-skilled workers, such as construction site workers (who enter HK through the Supplementary Labour Scheme) and domestic workers, have no such right.

The entry of foreign domestic workers (FDWs) to HK is specifically governed by the FDW contract system (HKID, 2015). All FDWs must be in receipt of a proven employment contract prior to entering HK. Thus, their legal status depend entirely on valid work contracts with employers, which in turn define their legal right to stay in HK. Those who have no employment contract must leave HK within two weeks (the so-called two week rule). FDWs are also defined by their work contract which requires them to stay in the house of their employers (the live-in rule) (HKLD, 2015a: 4).

The salary level of FWDs is not protected by the HK Minimum Wage Law; instead, their wages are adjusted from time to time by the government, which decides on a minimum wage after considering various circumstances. Employers are supposed to pay not less than such a wage level to their domestic workers, otherwise they will be acting unlawfully. Yet, in reality, workers' groups have found that many FDWs are paid at levels below the wage required by law. For many, a large proportion of the salary is removed to pay the employment agency (EA) placement fee. For the purpose of comparison, the wage level of FDWs is much lower than that of local household cleaners in HK, who usually work on part time shifts at an hourly rate. The hourly rate in 2015 was around HKD70. FDWs are paid a monthly minimum wage of HKD4,210 since 1 October 2015 (HKLD, 2015b). Yet, FDWs typically work 12 to 16 hours a day, and six days a week (Wee and Sim, 2005); thus, their hourly rate is only around HKD10.7 to HKD14.<sup>2</sup> Moreover, regardless of the number of years they have worked in HK, FDWs are not entitled to apply for permanent citizenship.

Most regulatory systems of FDWs, and other low-skilled workers, in Asian receiving countries are exclusive systems. To provide a general comparison, Canada, for example, is less exclusive. Caregivers in Canada have the right to apply for permanent residence upon finishing a full two

---

<sup>2</sup> The first statutory minimum wage (SMW) in HK came in to force in May 2011. Starting from 1 May 2015, SMW rate is raised from \$30 per hour to \$32.5 per hour (<http://www.labour.gov.hk/eng/news/mwo.htm>). However, this law does not apply to FDWs. The minimum monthly wage of FDWs since 1 October 2015 is at HKD4,210; in addition to that, FDWs are entitled to receive from their employers daily food subsistence.

year contract (Pang, 2013; Government of Canada, 2015).<sup>3</sup> Asian countries, in general, do not subscribe to the belief that low-skilled migrant workers should enjoy rights equal to those of their own nationals, despite their great demand for low-skilled workers and the economic contribution made by FDWs.

Receiving regions such as HK, Singapore, Malaysia and Thailand exclude low-skilled migrant workers from full residence rights. However, some Western countries may show a regressive attitude towards providing protection for migrant workers. In April 2012, a change was made to UK law imposing greater restrictive conditions on the work visas of migrant domestic workers, which removed their right to change employers during their stay in the UK and the amount of time they are allowed to stay when changing employers (Gower, 2015). This right was supposed to protect migrant domestic workers from abusive employers. Despite the fact that the pre-change visa arrangement had been widely recognised by the international community as good practice in labour governance, the British government decided to alter the arrangement. The British parliament argued that the 2012 changes were necessary to bring the visas ‘in line with its strategy of prioritizing entry for the “brightest and best” skilled migrants and restricting eligibility for permanent residence’ (Gower, 2015: 1). Moreover, it claimed that many migrant domestic workers changed employer for reasons unrelated to abuse or discrimination.

Among the exclusive models of the Asian regulatory systems, some are more restrictive and exclusive than others. Singapore, for example, is a typical example of a highly exclusive model for low-skilled migrants. As expounded by Tan (2010: 116118):

The openness to immigration, for demographic, economic and political imperatives, co-exists with an extensive surveillance system meant to ensure, inter alia, that transient foreign workers comply with the conditions of their work permits and do not become permanent residents or citizens.....The fear of migrants as potential burdens to

---

<sup>3</sup> Despite this, the Canadian government since 2012 has tried to put more measures limiting the inclusion of temporary workers, in order to protect the work opportunities of Canadian citizens. In April 2015, Canada set the stage for the deportation of possibly over sixty thousands foreign workers in Canada (Padilla, 2015; Doblados, 2015).

and parasitic of Singapore society, is therefore managed through a rigorous gate-keeping function whereby the granting of “citizen” or “permanent resident” status is a means of determining who gets to enjoy government subsidies and grants.

While it is quite open to the recruitment of talented and high-skilled workers, migrant domestic workers in Singapore are excluded from the general protection of the Employment Act (Singapore Ministry of Manpower, 2015). Neither is there an alternative scheme that guarantees them a minimum wage, maximum work hours or weekly day-off (UNIFEM et al., 2011). Low-skilled migrant workers, including FDWs, are governed by a different set of laws – the Employment of Foreign Workers Act and the Employment Agencies Act – which provide general descriptions of the conditions that the law requires employers and employees to comply with (Human Rights Watch, 2004).

In addition, the Singapore government imposes a marriage restriction policy on FDWs. It is a policy that ‘can be understood as an attempt by the state at institutional control over citizenship grants, in tandem with its policy objectives and concerns in the areas of population, talent attraction and the all-important economic objectives’ (Tan, 2010: 118). It is also generating ‘a hierarchy of international marriages characterised by their relative potential contributions (especially economic) to Singapore, their ease of social integration, and by their perceived demand on the public welfare and social system’ (Tan, 2010: 118).

Thus, not only will marriage with Singaporean nationals not elevate low-skilled migrant workers into a better position, it will immediately alter their status into that of an illegal. After marriage, their status will become that of marriage migrant and they will not be entitled to a work permit (which defines the legal status of migrant workers). Tan argues that the reason for such a restrictive policy is that the Singapore government is ‘aware of the potential of international marriages becoming an arena of contention over rights, privileges, and access to employment, government services and assistance’ (2010: 118). In order to reduce the possibility of debate and contestation concerning the long-term residence of FDWs in Singapore, absolute control over marriage with locals is implemented and ‘marriages

involving Singapore residents and FDWs are considered problematic and not to be encouraged' (Tan, 2010: 118).

### The sending countries

Not all sending countries have developed a coherent regulatory system with reference to labour migration; yet others have developed quite sophisticated regulating mechanisms. Countries such as the Philippines and Indonesia – two countries that send millions of workers abroad each year – have gradually consolidated their regulations on overseas employment through a number of administrative units and measures. With over 40 years of experience facilitating and regulating labour outflows, the Philippines has drawn most attention in terms of its provision of a framework for the monitoring of labour migration. The Philippine government also considers that it has provided a model for other sending countries, in terms of taking the initiative in creating a system for managing large-scale temporary migrations (Opiniano, 2004).

The Philippine government manages labour migration through the POEA, which comprises two administrative arms: the Department of Foreign Affairs and the Department of Labour and Employment. Two legislative tools essential for regulating overseas employment are the Migrant Workers and Overseas Filipinos Act of 1995, the Labour Code (Presidential Decree No. 442), and the Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers (Agunias, 2008; also see Opiniano, 2004).

One important role for this administration is regulating employment agencies (EAs) that handle placements of overseas workers. Close to 95 per cent of overseas Filipino workers are recruited through private agencies (Agunias, 2008). The Philippine authority has ensured that all agencies are licensed, have a strong financial background and exercise sound management. The license for placement agencies is issued for four year terms and is renewable. EAs are also responsible for testing potential overseas workers to see whether they have acquired the necessary skills required for their work, in addition to performing medical examinations of the workers before they travel abroad (Agunias, 2008).

In general, these agencies are allowed to charge the hired migrant workers in two regards: (a) a placement fee for the provision of recruitment and placement services, of not more than one month's salary of the worker, and (b) documentation costs arising from the necessary administrative work. Since 2006, in order to provide special protection to Filipino domestic workers, the Philippine government has banned EAs from charging migrant domestic workers any placement fee, except for the charges of other services and documentation fees (Ng, 2014).

Similar to the Philippines, the Indonesian government also protects overseas workers by regulating placement agencies. The 'Ministry of Manpower and Transmigration' (MMT) is the main government unit responsible for this. It has worked with a number of policy decrees, and with the main legislation – Placement and Protection of the Indonesian Migrant Workers Law (Law No. 39/2004) (ILO, 2004, ILO, 2012a; Ng, 2014). The law requires that all private EAs have operating permits issued by the MMT; such permit is valid for five years and is subject to renewal. Again, EAs are required to demonstrate a strong financial background, and robust work plans and management systems.

Indonesia requires overseas workers to pay a placement fee that includes charges for training, documentation services and a medical examination. The MMT has issued a fee cap for placement charges, which varies according to the destination, the fee ranges of different EAs, and the nature of the overseas work. According to the special policy decree, Components and Placement Fee of Domestic Workers Candidates with Hong Kong as the Destination Country, issued by the MMT in May 2012, the maximum charges that EAs can place on Indonesian domestic workers who work in HK is HKD13,436 (Ng, 2014: 12).

Whether these laws are followed by practitioners in the field is a question that requires ongoing research and investigation. One known fact is that 'illegal charges' by EAs have been reported by a number of surveys and research (Amnesty International, 2014, 2013; Caritas, 2009; Chan, 2006). This topic will be elaborated upon further below. Before going into detail, what should be seen as an improvement in the regulatory

regime of international labour migration is the fact that governments have attempted to coordinate this work, and thus to provide more protection to low-skilled overseas workers (Hosen, 2005; Hugo and Young, 2008). In particular, sending countries, such as the above, have made efforts to monitor one important sector in the field of labour migration – placement or recruitment agencies. To date, a large portion of international labour migration governance is implemented through the regulation of this private sector. Some consider this a kind of public-private partnership. While the state issues a number of policies and rules for these private companies to follow, in return, the companies earn a chance to enter the market (usually through licensing) and provide services for profits. We will turn to this issue in the following section.

### The market

As explained above, placement agencies form an integral part of the governance of international labour migration. This private sector plays an important role in effecting migrant workers' welfare and rights. An increasing number of sending countries have tried to regulate this private sector by issuing regulations. On the other hand, to make such regulations 'effective', many such companies with a track record of providing overseas placement services for migrant workers (collecting potential workers and sending them to the employment providing countries) have become 'collaborators' of the sending states, thus acting as operation arms of the official mechanism governing migrants. By procuring these agencies' services, the sending governments are able to outreach to the vast job-seeking populations within its own country, and send them to fill overseas positions. Labour migration is, ultimately, an effective way of drawing much needed revenue from abroad through remittances.

This manner of employing the services of the private sector is considered to be much more effective and efficient than allowing the public sector to perform such tasks. It is also believed that, through market competition, the price level of such services should gradually reduce. In other words, sending states have relied on the market to regulate the price of the services, and to return profits to the owners of the EAs.

PUBLIC-PRIVATE PARTNERSHIP (PPP) -  
REGULATING THROUGH THE PRIVATE SECTOR

It has become a worldwide trend for governments to work out their labour governance through multilevel partnerships with the private sector and other organisations. The booming literature on global labour governance (Dickinson, 2014; Meardi and Marginson, 2013; Mosley, 2011; Kneebone, 2010; ILO, 2010a; Kaur, 2007; Newman, 2001) has considered cross-sector partnerships an important dimension of labour governance both within a country and across borders. Palmer (2013) has examined such instances as the PPP case of the Indonesian government's regulation of EAs in HK. By implementing a policy that requires all recruiters in HK to register with the Consulate in HK, and to obtain a license before they provide job-matching services for Indonesians, the Indonesian government has extended its extraterritorial interventions into labour migration governance in HK. Palmer argues that this particular practice in the international labour market has blurred the boundaries that 'divide the state and market in the exploitation and control of international migrant labour' (2013: 1).

We thus have two scenarios. On the one hand, sending countries have been reliant on their counterparts in receiving countries to implement robust policies, in order to strike a balance in exerting good and stable control and regulation over matters regarding labour migrants. On the other hand, the governments of the sending countries are also able to extend their influence by imposing certain requirements on the private sector in their own and the receiving country, to increase its power in governing labour migration.

While sending countries have attempted to extend their regulatory powers into the destination countries by requiring a certain amount of licensing of service providers relating to their nationals, the situation may backfire as EAs are not subject to only one type of regulatory system.

All EAs in HK are first subject to the control and monitoring of HK legislation (Employment Agency Administration and Regulations), and then to the Indonesian Consulate's registration system. Nevertheless, the intriguing reality is that, while there are over 2,000 EAs in HK (1,000 of which are related in one way or the other to FDW businesses), only a little over 200 companies have registered with the Indonesian government (Shaffer, 2015). How does this happen?

### BIG BOATS AND SAMPANS – PROBLEMATIC OPERATIONS OF EAs

The answer to this question relates closely to the above-mentioned double system of regulations. In HK, all private companies which register under HK company laws and pay business registration fees accordingly are considered legal. EAs are regulated by the Employment Agencies Regulations. As long as companies are lawfully registered, they are allowed to run their own businesses. While the Indonesian Consulate requires all EAs providing services to Indonesian FDWs to register with the Consulate, it cannot control other EAs that have not so registered.

In order to do business with the Indonesian market, ‘unregistered’ companies (which do not have a license from the Indonesian Consulate) then set up business links with licensed ones. Within the sector, companies that are so connected to registered companies are known as ‘sampans’. They pay the licensed companies a certain commission for helping them to file applications to the Consulate for the placement of Indonesian FDWs in HK. This means that some of the licensed companies become ‘middle-men’ for the unregistered but legal companies. In other words, these registered companies have outsourced their work (of recruitment) to the sampans in order to economise business operations.

Although this phenomenon has long existed, it receives little attention and is rarely studied. This situation has also created an ambiguous picture in the regulation of the overseas placement job market for overseas domestic workers. Since the highly publicised abusive case of Erwinana Sulistyaningsih in early 2014, more attention was drawn to the roles and responsibilities of the EAs.<sup>4</sup>

The private sector itself has tried to adapt to this double system of regulation and turn around the Indonesian government’s strict requirements. Complaints from Indonesian workers have revealed that vested interests among Consulate officers may have led to a higher tolerance of substandard operations of EAs (Palmer, 2013). On the other hand, although the HK

---

<sup>4</sup> The EA which placed Erwinana into the home of her abusive employer, though a registered one, has been reported having unlawfully kept Erwinana’s identity documents and did not come to Erwinana’s assistance when she complained about the hardship in her work (HK Helpers Campaign, 2015; China Real Time, 2014).

government should be aware of the ongoing sampaning operation within the FDW recruitment field, it may feel disinclined to leave its comfort zone, as long as these sampans are legally registered and have a right to do business according to HK law.

The HK government, often boasting of its own high regard for the rule of law and a liberal commercial environment, may not be interested in querying its own ‘effective’ commercial system (based on legislative legitimacy) as long as companies have registered and are working according to legislative requirements (such as paying yearly registration fees). Moreover, the HK government may rationalise its detachment from such an issue for two reasons. Firstly, since it is the Indonesian government, not the HK government, which requires EA companies to be registered by the Consulate, it is thus the responsibility of the Indonesian Consulate to handle the problem. Moreover, collusive relationships between consular officers and HK employment companies may have deterred the HK Labour Department from interfering in matters relating to EAs for FWDs (Constable, 2009; Palmer, 2013: 1; also see Zweynert, 2015; Hosen, 2005).

#### THE BLACK BOX OF EMPLOYMENT AGENCIES

It is absolutely true that no regulation can be perfect. Despite the incessant emphasis in HK of the ‘rule of law’, malpractice, substandard services and illegal charges are nevertheless rampant within the field of foreign worker administration, especially regarding domestic workers. In HK, the law only permits the charging of a placement fee of not more than 10 per cent of a worker’s first month salary. However, overcharging is commonplace. Calls to end overcharging have long been voiced, but to no avail. Among Indonesian FDWs, a fee of around five to seven months’ salary is commonly charged for the first two year contract (Amnesty International, 2014). Many FDWs may not even realise that this is illegal, as many have been ‘tamed’ to listen to the words of the staff of the EAs and are discouraged from socializing with labour groups and advocates.

In reality, many are unable to speak out in prosecuting the lawbreakers (in terms of overcharging) as a result of timidity and fear of losing their job. The main purpose of these workers going overseas for work is to make money to send back home. Many endeavor to send every penny possible

back home, for as long as they are able. They witness the acceptance by their fellow FDWs of this kind of overcharging and, without real support in terms of instigating a prosecution, many become highly tolerant of the issue. Some of the worst cases involve FDWs being lured or coerced into making loan arrangements with finance agencies connected to the EAs. Such arrangements often trap FDWs within a spiral of debt immediately upon their arrival in the destination country for work. According to a survey by IMWU,<sup>5</sup> 34 per cent of Indonesian migrant domestic workers are asked to sign a loan agreement with the assistance of an EA (cited in Amnesty International, 2014: 6).

Studying the case of EAs in China recruiting workers to work in South Korea, Biao Xiang (2012) has found that, despite the plethora of laws and regulations launched by the state, EAs seem to be out of control with their abusive, unlawful and dishonest practices. Xiang has found that the ‘black box’ operation of the recruitment agencies has spread from city to town level, and from villages to very remote villages. Poor villagers, finding no other way to address their grievances, often direct their anger towards their village or local government. Many have been cheated out of their placement fees without ever gaining employment. Some travelled abroad but returned with no money (Xiang, 2013).

Xiang argues that the laws and regulations of international labour recruitment have been imposed by the Chinese government at different times for different specified purposes, and yet these laws remain ineffective in reducing unlawful practices. Not only are they not in place to protect the welfare of the migrants or potential migrant workers, the internal regulatory mechanism has become so complicated that the placement process has been made increasingly convoluted and the agencies ever more powerful.

A number of migrant groups and NGOs (non-governmental organisations) have also conducted research on the operation of EAs. Amnesty International (2013), for example, has traced the ‘employment’ experiences of Indonesian domestic workers back to Indonesia, to the time at which they begin to link up with EAs. Its research report reveals that, even before the migrant workers arrive at the placement countries, they are exploited

---

<sup>5</sup> IMWU stands for Indonesian Migrant Workers Union (Hong Kong)

by the agencies. During the ‘training period’ in Indonesia, the female trainees were forced to work for the staff of the training centers without payment; this was often disguised as part of the training. Some training centers also kept workers in custody and forbade them from leaving the center throughout the whole period of training. They confiscated personal documents of the workers and continued to control them through such coercive measures as keeping personal passports, signing unlawful debt agreements with the workers and filing verbal threats (Chan, 2015).

Frustrated by the notoriously unjustifiable practices of this private sector, and the ineffective monitoring of the governments, some advocates and social enterprises have attempted to combat these malpractices by offering high standard recruitment services of their own. The Fair Employment Agency (FEA), for example, is a social enterprise run by a lawyer-scholar and social entrepreneurs. It was opened in September 2014, and aims to provide a lawful and fair employment environment for FDWs in HK (Time out, 2015). One of the reasons for the launching of such a business is to combat the bad practices widely spread amongst EAs. As one of the FEA owners has commented, ‘Over the years, many placement agencies have continually shifted strategies to squeeze more profit from helpers, from charging placement fees, then training fees, then loans, with some using cross-border jurisdictional limits to evade liability’ (see Shaffer, 2015).

### The international regimes of labour governance

In recent decades, many NGOs, INGOs (international non-governmental organisations) and IOs (international organisations) (such as IOM [International Organization for Migration] and ILO [International Labour Organization]) have played an important role in the governance of migrants who go overseas for work (Taylor, 2002; Silverman, 2010; Phillips and Mieres, 2015). They are increasingly active in pressing for the protection of migrant workers’ rights and well-being. Their work has lent much momentum to the development of the ‘overlapping regimes’ in the governance of international labour migration. An important base from which to enhance the work of this right-oriented global sector has been the packages of international laws, conventions and agreements that sum up international efforts towards promoting rights and welfare. While workers crossing national boundaries to work in other regions have long existed

throughout history, the existence of international laws and international standards to safeguard their rights is relatively new in history.

Since the 1940s, a deluge of ‘overseas work’ related regulatory laws and conventions have been promulgated for the guaranteeing of certain levels of acceptable work conditions and worker treatment. The UN Human Rights Convention reinstates the basic human right to work in just and favorable conditions (such as fair wages and healthy working conditions). The state should: protect its people against unemployment; ensure equal pay for equal work; facilitate the formation of trade unions; ensure periods of rest and leisure, as well as a reasonable limitation on working hours; and ensure individuals are not subjected to forced labour.

Since its establishment in 1919, the ILO has been a core international organisation striving for the basic human rights and fair treatment of labour migrants. A number of early conventions have worked on the most basic rights of workers. Its 1949 convention, the Right to Organise and Collective Bargaining Convention (No. 98), stated its stance for supporting workers’ political rights. Other international conventions to protect workers include (ILO, 2015):

- ❑ Forced Labour Convention, 1930 (No. 29)
- ❑ Equal Remuneration Convention, 1951 (No. 100)
- ❑ Abolition of Forced Labour Convention, 1957 (No. 105)
- ❑ Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- ❑ Minimum Age Convention, 1973 (No. 138)
- ❑ Worst Forms of Child Labour Convention, 1999 (No. 182)

The ILO also promulgated a number of international conventions focused on workers who cross national boundaries: the ILO Migration for Employment Convention (No. 97) (1949); the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 (1979); the International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); and the Convention Concerning Decent Work for Domestic Workers (2011) (ILO, 2010b, 2012b). However, to date only 22 countries have ratified the Domestic Workers Convention, of which most

are countries from the developing South. Among these countries from the South, only one is from Asia – the Philippines.

The ILO has paid particular attention to the protection of local and international domestic workers, and home-care workers. The domestic work convention has provided basic requirements for a decent working environment; not only does such a field of work involve millions of workers around the world, this particular job market also often recruits children. According to the ILO's global and regional estimates, around 52.6 million women and men above the age of 15 are working as domestic workers, of which 83 per cent are female. This figure amounts to 3.6 per cent of the wage employment in the world (ILO, 2013: 1).

International conventions crafted by UN organisations, as listed above, are important for drawing international attention to global issues concerning human welfare, and for providing viable channels for international intervention into country based conditions that violate basic human rights. However these conventions do not always guarantee the rights of migrant workers. One main criticism of such a 'soft' regime of governance is the non-binding nature of these international laws, which all too often relies on the goodwill of individual sovereign states to incorporate the standards of these laws into the domestic law regimes of their respective legislature systems. Thus, this lack of an enforcement mechanism has become one of the most commonly cited weaknesses of international law regime (Pittman, 2015: 17).

As argued by Pittman (2015), international soft law is theoretically far reaching as its intended audience is governments. However, this also leads us to the exact problem it has encountered most – most governments tend to resist restrictions on their sovereignty. Soft international laws tend to have no enforcement mechanism (Pittman, 2015: 28). The question of whether or not to monitor closely the conditions of work for imported workers depends on the goodwill and initiative of individual governments. As Goldsmith and Posner (2005: 225) have pointed out:

International law is a real phenomenon, but international law scholars exaggerate its power and significance. We have argued that the best explanation for when and why states comply with international law

is not that states have internalised international law, or have a habit of complying with it, or are drawn by its moral pull, but simply that states act out of self-interest.

Many Asian countries do not treat international laws seriously. While a large number of labour related laws are not signed by the receiving countries of migrant workers in Asia, even those which have signed the conventions seem to lack interest in enforcing the articles of the convention. Thailand provides a peculiar example. Thailand is a center hosting many regional offices of multilateral organisations, and has been a signatory to many international labour related conventions, and yet it displays minimal effort towards enforcing the stances of the conventions. It is notorious for its explicit exploitation of both documented and undocumented migrant workers. The fishing industry, for example, is well known for abusing undocumented workers and child workers from neighboring countries such as Myanmar and Cambodia (US Department of Labour's Bureau of International Labour Affairs, 2012).

Despite its weaknesses, international laws and agreements have nevertheless provided a space for the maneuvering of IOs and NGOs. Urging the state to comply with international law standards has become an important part of the NGOs' advocacy work (Pittman, 2015: 19). Many also make use of various UN-based platforms to voice their concerns or facilitate the articulation by migrant workers of their concerns on the global stage, and to work proactively with international organisations such as the ILO and IOM. The conventions listed above have been involved in the endeavor of the ILO to set standards and exemplars for sovereign states to follow regarding labour migration governance. The ILO thus links up closely with the labour unions and NGOs of migrant workers, and builds solidarity with these rights-based groups to support advocacy.

The IOM is another Geneva based organisation which aims to provide an intergovernmental platform via which governmental organisations can work together over issues of migration and migrants. Unlike the ILO, however, it is not part of the UN. As an intergovernmental organisation working in the field of migration, the IOM is concerned with building effective communication between countries linked by migrants. It stresses diplomacy, rather than advocacy, in terms of arriving at humane ways in which to handle migration issues.

The IOM's Regional Consultative Processes (RCP) have provided a major mechanism and policy-oriented platform for the facilitation of intergovernmental work and negotiation, and for bringing about changes to regulations and the protection of workers. The realisation that it is essential that migration issues be tackled at the regional level provides a backdrop for the emergence of the RCP as a regional level response to the challenges of international migration and changes in trends (Klekowski von Koppenfels, 2010).

By April 2015, there were 14 active RCPs. The IOM stated that the RCP is a restricted information-sharing and discussion forum for states with an interest in promoting cooperation in the field of migration, with the following officially declared characteristics (IOM, 2013):

- They are repeated regional meetings dedicated to discussing specific migration issue(s). They are processes, not one-off events.
- They are informal, meaning that participants are not placed in a negotiating position to defend national interests or positions.
- They are non-binding, meaning that states do not negotiate binding rules and are not obligated to implement any changes following meetings.
- They are purposefully created to deal with migration issues only. RCPs bring together countries from a 'region', depending on the scope of the migration issue to be addressed. The term 'regional' is mostly used geographically, but sometimes also figuratively, to describe the common location of like-minded states on the 'migration map'.
- Most RCPs are not officially associated with formal regional institutions. However, they are often embedded in their regional context and interact with regional bodies, associations and integration processes in complex ways.

Among these, the Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia (Abu Dhabi Dialogue) (20 countries) and the Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin in Asia (Colombo Process) (11 countries) are two RCPs that focus on Asian

labour migration source countries and destinations. In addition, there are also the Almaty Process and the Bali Process, which target issues of irregular migration, human trafficking and refugees.

The Colombo Process was launched in 2003 and particularly concentrates on Asian countries. It encompasses a ministerial level of consultation and discusses overseas employment and contractual labour for countries of origin in Asia. Eleven countries have joined the process – the Philippines, Indonesia, China, Thailand, Viet Nam, Nepal, India, Pakistan, Sri Lanka and Afghanistan. It aims to provide a forum for Asian labour sending countries to share experiences, lessons learned and best practice on overseas employment; consult with each other on issues faced by overseas workers, and labour sending and receiving states; propose practical solutions for the well-being of vulnerable overseas workers, optimise development benefits from organised overseas employment and enhance dialogue with countries of destination; and review and monitor the implementation of the recommendations and identify further steps for action. Its current focuses include: (1) the protection of and provision of services to migrant workers; (2) optimizing the benefits of organised labour migration such as the development of new overseas employment markets and increasing remittance flows; and (3) capacity-building, data collection and inter-state cooperation (IOM 2015).

Upon reading the characteristics of the RCP, one may immediately notice that its strengths could at the same time be its weaknesses and limitations. To boost the interest of sovereign governments in joining, RCP stresses its informality and non-binding nature. It provides a platform ‘whereby states are “socialised” into a culture of cooperation, making consultation and exchange among states an “automatic” feature of the governance process’. The discussions within these processes also help to shape agendas, concretise issues, and build consensus’ (Hansen, 2010; also see Klekowski von Koppenfels, 2001). However, since this is all non-binding, RCPs can only ever play a complementary role. Moreover, RCPs seem to be more effective in attracting sending countries than receiving countries.

## Migrants' status – migrants as incomplete legal persons

New immigrants are often not 'complete' legal citizens. For temporary migrant workers, this is even more so. They are subject to specific regulations in terms of their right to stay and to work, and their access to various sources of welfare. For some, their basic human right to marriage and reproduction is also restricted. Thus, although we agree that there is a need for a general overall enhancement of protection for migrant workers and their rights, situations vary from country to country. Receiving countries, which import cheap labour from neighboring countries, often fail to consider the permanent integration of low-skilled workers as part of their long term gain. For example, the subject of the citizenship of migrants is often subjected to debate and extensive social processes of legal struggles. As Haines argues, 'Migrants are, of course, human beings. But the recognition of their full personhood is often a laborious legal process' (Haines, 2014: 21). Migrants' full personhood is often subject to a hierarchy of immigration practices and border control.

It is lamentable to see how NGO workers exercise every effort to press for enhanced human rights for migrant workers, only for them to realise that the people they seek to protect are in fact not even 'full (legal) persons'. Migrants are semi-legal persons whose rights are confined, if not removed. It is ironic that, whenever a migrant worker is found to have been abused or exploited by a bad employer, and seeks to exercise his/her rights through legal means, they are often immediately rendered illegal persons – out of contract (without a contract, they are not even legally allowed to remain in the hosting country). In Singapore, FDWs are deprived of marriage rights. If they do get married, their status immediately becomes illegal.

Thus, the regulatory systems overseeing the status and rights of migrants in receiving countries are critical in determining the plight of migrant workers. As stated by Ford (2014), it is important to understand the 'structural factors' that determine the circumstances faced by workers, which include, firstly, the workers' migration status (such as what visas they are holding, and what rights and responsibilities that entails) and, secondly, the workers' position within the industrial relations system of the host country. The migration experience of any given temporary labour migrant depends to a large extent on how much the host country relies on their labour, how long they are permitted to stay and, under what conditions.

The precariousness of the status of labour migrants is in itself a source of deterrence for migrants, in terms of them having to stand against abusive employers and EAs. Many migrant workers spend extended periods of time (or their entire youth) in the working destinations, with no chance of becoming a full (legal) person. They are long-term temporary or ‘half-complete’ citizens. Alex, one of our informants, commenced his work as a domestic worker in HK at the age of 18, but was still a temporary citizen when he turned 45 in 2015. He has lived in HK for longer than he ever did in the Philippines and yet he is not a full citizen of HK.

Having such an incomplete status can be detrimental to the well-being and long-term life plans of migrant workers. It seems that some protection mechanisms may have become a source of discrimination, or a digressive force in labour governance, and can impact very negatively on the international scene of governance of labour. As mentioned above, the UK government made a change to the conditions of its work visa for overseas migrant domestic workers, removing their right to change employers during their stay in the UK (Gower, 2015). The argument for the change is that the UK government has to prioritise entry for the ‘brightest and best’ skilled migrants, reinforcing the social perception that semi- or low-skilled workers are of less value.

## Mapping the faultlines in international labour migration governance

International labour migration in nature involves different sovereign states, and different civil and international actors, that work across borders of powers and regimes. As expounded above, this also involves a variety of regulatory systems that overlap and sometimes contradict each other. As presented above, the two systems of regulating EAs in HK may each have diluted the effort of the other, thus providing a leeway in which substandard EAs can survive. To map the faultlines of the governance of international labour migration, all actors may need to coordinate their efforts in order to provide good strategies for improving such governance.

### Short-range measures

While many criticisms have been voiced in relation to state control and regulation systems, and in relation to employers who abuse workers or fail to provide sufficient protection, one very important source of exploitation, as

stressed in this article, actually originates from the placement agencies. An increasing number of NGOs are pressing for the more efficient regulation of the malpractices commonly spread among EAs. NGOs, IOs and state authorities are absolutely able to come together to discuss effective ways to improve the situation.

To help curb unlawful acts of EAs, more support should be provided for workers who are willing to prosecute unlawful EAs. Moreover, receiving countries should put more resources into informing FDWs about their basic rights and duties. Rather than relying on EAs to do the job, governments should coordinate with the consulates to send out pamphlets of necessary information to every single worker. Blacklisting poorly operated EAs is one potential way to reduce unlawful acts. However, this information should be transparent and updated frequently. On the other hand, there may be more rewarding mechanisms for good practice in the commercial sector. NGOs may help coordinate this kind of work. For examples, some can put more effort into the above work by collecting data that will support the prosecution of unlawful operators, and providing updates for blacklisting purposes.

What is also realistic, and of help to the industry, is to enhance the transparency of the operation of both upstream and downstream companies. Having a list of records updated by consulates and related departments in both sending and receiving countries will help job seekers and employers to learn who is who, and which company is related to which. They can also compare the price lists of different companies so that everyone is clear about the charges when they solicit the services.

### Middle-Range Measures

This part may require much more patience with governments, to test the ‘temperature of the water’. Quite often, the receipt by governments of high-sounding, or a tied bundle of ‘too many’ requests may thwart them in their initiative to make improvements. Governments may develop ‘request fatigue’ towards NGO demands that are not easily met. Rather than putting forward demands to be frowned upon by government officials, NGO workers could help change governments’ attitude and improve the effectiveness of labour governance by formulating a list of priority work, which can be accomplished in a minimal amount of time, but which is

also likely to have a high chance of success. After all, governments also need incentives in order to achieve tasks. Accomplishments and achievements provide necessary incentives for governments to coordinate work with civil forces.

### Long-Range Measures

With the accelerated pace of international labour migration, one would expect issues concerning migrant workers, such as those of FDWs, to continue to emerge and necessitate long-term strategies from both governments and civil groups, so as to strengthen the governance of labour migration. Platforms involving discussions with governments concerning long-term visions may provide the framework for such governance. The IOM's RCP has provided an early model for such platforms and yet, noting the strengths and limitations of this model, IOs and NGOs may still need to increase their efforts in order to improve the operation of such a mechanism.

## References

Agunias, D.R.

2008 *Managing Temporary Migration: Lessons from the Philippine Model*. MPI, Washington DC. Available from <http://www.migrationpolicy.org/research/managing-temporary-migration-lessons-philippine-model> (accessed 26 July 2015).

Amnesty International

2013 *Exploited for Profit, Failed by Governments: Indonesian Migration Domestic Workers Trafficked to Hong Kong*. Available from <https://www.amnesty.org/en/library/info/ASA17/029/2013/en>

2014 Policies Relating to Foreign Domestic Helpers and Regulation of Employment Agencies (Submission to the Legislative Council's Panel on Manpower). Amnesty International, Hong Kong.

Caritas

2009 *Study on the Real Working Situation of Foreign Domestic Workers in HK*. Caritas Community Development Service, Hong Kong.

Chan, Y.W.

2006 *A Survey of the Social Integration of Indonesian in Wan Chai District*. International Social Service Hong Kong Branch, Hong Kong.

2015 Asian women and Asian migration: a review and prospective research agenda. In: *The Age of Asian Migration: Continuity, Diversity, and Susceptibility Volume 2* (Y.W. Chan, H. Fung, and G. Szymańska-Matusiewicz, eds.). Cambridge Scholars Publishing, Newcastle, pp. 18-41.

China Real Time

2014 Abuse images put focus on Hong Kong maids. *China Real Time, The Wall Street Journal*, 14 January. Available from <http://blogs.wsj.com/chinarealtime/2014/01/14/abuse-images-put-focus-on-hong-kong-maids/>

Constable, N.

2009 Migrant workers and the many states of protest in Hong Kong. *Critical Asian Studies*, 41:143-164.

Dickinson, H.

2014 *Performing Governance: Partnerships, Culture and New Labour*. Palgrave Macmillan, Basingstoke.

Doblados, A.

2015 End of a Canadian dream: Filipino temporary foreign workers face deportation. *Philippine Online Chronicles*, 5 April. Available from <http://thepoc.net/index.php/end-of-a-canadian-dream-filipino-temporary-foreign-workers-face-deportation/>.

Ford, M.

2014 Action and advocacy: movements for migrant labour rights in Asia. A paper presented at the 'Symposium on Labour Migration and Migratory Experiences in Asia', City University of Hong Kong, Hong Kong, 6-7 October 2014.

Goldsmith, J. and E. Posner

2005 *The Limits of International Law*. Oxford University Press, Oxford.

Government of Canada

2014 *Live-in Caregivers*. Available from <http://www.cic.gc.ca/ENGLISH/work/caregiver/index.asp>.

Gower, M.

2015 *Calls to Change Migrant Domestic Worker Visa Conditions*. House of Commons Library, London.

Haines, D.

2014 Introduction: migration and diversity in Japan and Korea. In: *The Age of Asian Migration: Continuity, Diversity, and Susceptibility Volume 1* (Y.W. Chan, D. Haines and J.H.X. Lee, eds.). Cambridge Scholars Publishing, Newcastle, pp. 18-26.

Hansen, R

2010 *An Assessment of Principal Regional Consultative Processes on Migration*. International Organization for Migration, Geneva.

HK Government Press Release

2014 *Minimum Allowable Wage and Food Allowance for Foreign Domestic Helpers to Increase*. HK Government, 30 September. Available from <http://www.info.gov.hk/gia/general/201409/30/P201409300619.htm>.

HK Helpers Campaign

2015 *News: A Break Through? Judge in Erwiana Case Calls for Review of Live-in Rule*. 27 February. Available from <http://hkhelperscampaign.com/en/judge-live-in-rule/#tc-comment-title>.

HKLD (Hong Kong Labour Department)

2015a *Practical Guide For Employment of Foreign Domestic Helpers* (What foreign domestic helpers and their employers should know). Labour Department, Hong Kong.

2015b *Importation of Labour: Foreign Domestic Helpers*. Available from <http://www.labour.gov.hk/eng/plan/iwFDH.htm>.

HKID (HK Immigration Department)

2015 *Employment Contract for a Domestic Helper Recruited from Outside Hong Kong*. Available from <http://www.immd.gov.hk/eng/forms/forms/id407.html>.

Hosen, M. N.

2005 Governance of Indonesian labour and migration to Malaysia: an overview. *Review of Indonesian and Malaysian Affairs*, 39(2):31 – 44.

Hugo, G. and S. Young

2008 *Labour Mobility in the Asia-Pacific Region: Dynamics, Issues and a New APEC Agenda – A Survey and Analyses of Governance Challenges on Labour Migration for APEC Economies*. Institute of Southeast Asian Studies, Singapore.

Human Rights Watch

2014 *Legal Framework for Migrant Domestic Workers in Singapore*. Available from <http://www.hrw.org/reports/2005/singapore1205/4.htm> (assessed 23 July 2015).

ILO

2004 *Law on Placement and Protection of Indonesian Workers Abroad* (Law No. 39/2004). International Labour Organization, Geneva. Available from [http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_isn=70915](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=70915) (assessed 2 July 2015).

2010a *International Labour Migration: A Rights-based Approach*. International Labour Organization, Geneva.

2010b *Decent Work for Domestic Workers: Fourth Item on the Agenda*. International Labour Organization, Geneva.

2012 *Effective Protection for Domestic Workers: A Guide to Designing Labour Laws*. International Labour Organization, Geneva.

2012 *The Regulation of Domestic Workers in Indonesia: Current Laws, International Standards and Best Practice*. International Labour Organization, Jakarta.

2013 *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*. International Labour Organization, Geneva.

2015 International Labour Organization. Available from <http://www.ilo.org/global/lang--en/index.htm> (assessed 2 July 2015).

IOM

2013 *Regional Consultative Processes on Migration (RCPs): Infosheet*. International Organization for Migration, Geneva.

2015 *Colombo Process*. Available from <http://www.iom.int/colombo-process> (assessed 2 July 2015).

- Kaur, A.  
 2007 International labour migration in Southeast Asia: governance of migration and women domestic workers. *Intersections: Gender, History and Culture in the Asian Context*, 15. Available from <http://intersections.anu.edu.au/issue15/kaur.htm> (assessed 21 May 2015).
- Klekowski von Koppenfels, Amanda  
 2001 *The Role of Regional Consultative Processes in Managing International Migration*. International Organization for Migration, Geneva.
- Kneebone, S.  
 2010 The governance of labor migration in Southeast Asia. *Global Governance*, 16:383–396.
- Meardi, G. and P. Marginson  
 2013 Global labour governance: potential and limits of an emerging perspective. A paper for the 2013 ‘Work, Employment and Society Conference’, University of Warwick, 3-5 September.
- Mosley, L.  
 2011 *Labor Rights and Multinational Production*. Cambridge University Press, Cambridge.
- Newman, J.  
 2001 *Modernizing Governance: New Labour, Policy and Society*. Sage Publications, London.
- Ng, T.  
 2014 *Regulation of Domestic Helper Employment Agencies in Selected Places, IN07/13-14*. Research Office, Legislative Council Secretariat, Hong Kong Government, Hong Kong.
- Opiniano, J.  
 2004 *Our Future Besides the Exodus: Migration and Development Issues in the Philippines*. Institute for Migration and Development Issues, Manila.
- Padilla, R. D.  
 2015 Filipino temporary foreign workers face deportation from Canada come April 1, 2015. *Overseas Filipino Workers Stories*, 31 March. Available from <http://ofwstories.com/filipino-temporary-foreign-workers-face-deportation-come-april-1-2015/> (assessed 3 August 2015).

- Palmer, W.  
2013 Public private partnerships in the administration and control of Indonesian temporary migrant labour in Hong Kong. *Political Geography*, 34:1-9.
- Pang, M.  
2013 *Live-in Caregiver Program, Parliament of Canada*. Available from <http://www.parl.gc.ca/Content/LOP/ResearchPublications/2013-11-e.htm> (assessed 24 July 2015).
- Phillips, N. and F. Mieres  
2015 The governance of forced labour in the global economy. *Globalizations*, 12(2):244-260.
- Pittman, P.  
2015 Alternative approaches to the governance of transnational labor recruitment. *International Migration Review*, Fall 2015: 1-46.
- Shaffer, L.  
2015 A new recruitment model for HK's maids, CNBC, 4 June. Available from <http://www.cnbc.com/2015/06/04/a-new-recruitment-model-for-hong-kongs-maids.html>.
- Singapore Ministry of Manpower  
2015 *About the Employment Act*. Available from: <http://www.mom.gov.sg/employment-practices/employment-act>.
- Silverman, V.  
2010 Whither or wither global labour? *Labour/Le Travail*, 65:149-160.
- Tan, E.  
2010 Managing female foreign domestic workers in Singapore: economic pragmatism, coercive legal regulation, or human rights? *Israel Law Review*, 43:99-125.
- Taylor, R.  
2002 A useful go-between? The key role of the ILO in global governance. *New Economy*, IPPR, 87-90.
- Time out  
2015 *The Fair Employment Agency: An End to Illegal Debt-bondage for Domestic Helpers?* Available from: <http://www.timeout.com.hk/big-smog/features/71237/the-fair-employment-agency-an-end-to-illegal-debt-bondage-for-domestic-helpers.html> (assessed 3 August 2015).

US Department of Labour's Bureau of International Labour Affair

2012 *2012 Findings on the Worst Form of Child Labour: Thailand*.

Available from: [www.dol.gov/ilab/reports/child.../2012TDA/thailand.pdf](http://www.dol.gov/ilab/reports/child.../2012TDA/thailand.pdf) (assessed 25 June 2015).

UNIFEM, et al.

2011 *Made to Work: Attitudes Towards Granting Regular Days Off to Migrant Domestic Workers in Singapore*. UNIFEM Singapore (The Singapore National Committee for the United Nations Development Fund for Women), Humanitarian Organisation for Migration Economics, and Transient Workers Count Too, Singapore. Available from: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189) (assessed 4 June 2015).

Wee, V. and A. Sim

2005 Hong Kong as a destination for migrant domestic workers. In *Asian Women as Transnational Domestic Workers* (S. Huang, B.S.A. Yeoh and N. A. Rahman, eds.). Marshall Cavendish Academic, Singapore, pp.175-209.

Xiang, B.

2012 Predatory princes and princely peddlers: the state and international labor migration intermediaries in China. *Pacific Affairs*, 85(1):47-68.

2014 The dis-appearance of the intermediary, a seminar at the Department of Anthropology, National Taiwan University, 6 January 2013.

Zweynert, A.

2015 Interview: abolish fees to end HK domestic worker debt bondage - agency boss, *Thomson Reuters Foundation*. Available from: <http://www.trust.org/item/20150616174404-wriaq/?source=spotlight> (assessed 4 August 2015).

# GOVERNMENT EXPERIENCE





The Labour Policy of Hong Kong and Bangladesh :

The Missing Links in Supporting Bangladeshi Domestic Helpers in Hong Kong

Mirana Mahrukh<sup>1</sup>

## Introduction

<sup>1</sup>Bangladesh, with its population of 160 million, has targeted Hong Kong,<sup>2</sup> as a lucrative destination to which to export human resources, because of its comparatively high wages, employee friendly labour policies and its liberal socio-political environment. Initially, in 2014, the Bangladeshi government had planned to send several thousand Domestic Helpers (DHs); however, as of September 2014, around 563 helpers had arrived in Hong Kong. The most significant problem of Bangladeshi DHs concerns cultural conflict, especially in relation to language, food and religion, which makes their adaptation to Hong Kong life difficult. Very often they become victims and are exploited by employers or agencies, leading to both premature termination and labour/police/immigration related cases.

With the aid of a strong Employment Ordinance, Hong Kong protects the rights of employees as well as employers. The Bangladeshi government has also taken steps to ensure the smooth operation of the migration of DHs to Hong Kong. However, to make the stay of DHs in Hong Kong meaningful, from recruitment to placement, improvements are still required to the prevailing systems and rules of both the sending and receiving countries. Therefore, this report attempts to identify the adaptation-related challenges faced by Bangladeshi DHs in Hong Kong and explore the strategies that could be adapted to minimise those challenges. Data were collected from the reports of different employment agencies, through the administering of unstructured discussions while briefing or counseling the helpers, by way of observations gathered through those discussions, and also a specific case was studied. The data collected may have been biased, and so needed

---

1 Mirana Mahrukh is a consul at the Consulate General of Bangladesh in Hong Kong, China.

2 Hong Kong, China.

further validation. Therefore, the validation of this report may be subject to confirmation bias due to the subjectivity of the data collected.

## Overview of Bangladeshi labour migration governance

The Ministry of Expatriate Welfare and Overseas Employment (MoEWOE) of Bangladesh frames all the rules, regulations and ordinances regarding migrant workers. Under its direct supervision, the Bureau of Manpower Employment and Training (BMET) looks after all related issues. The Immigration Act of 1922 was the main guiding legislation in this regard. In 1982, the Immigration Ordinance came into operation, setting out the basic rules, especially in respect of the licensing and monitoring mechanisms of recruiting agencies. Based on that Ordinance, in 2002, several rules were proclaimed and, in 2006, the 'Overseas Employment Policy' (OEP) was framed. The OEP acknowledges the protection of migrant workers' rights, the value of pre-departure briefings and the necessity for the building of awareness among workers. To ensure workers' security in the destination countries, to provide legal assistance and to ensure the welfare of the migrant worker, the OEP also stresses the signing of a Memorandum of Understanding (MoU) with labour receiving countries. The transparency and accountability of the recruiting agencies, as well the optimum utilisation of remittance sent by workers, and the reintegration of migrants upon their return are also covered in the OEP. Nonetheless, putting all these issues into practice still remains a challenge.

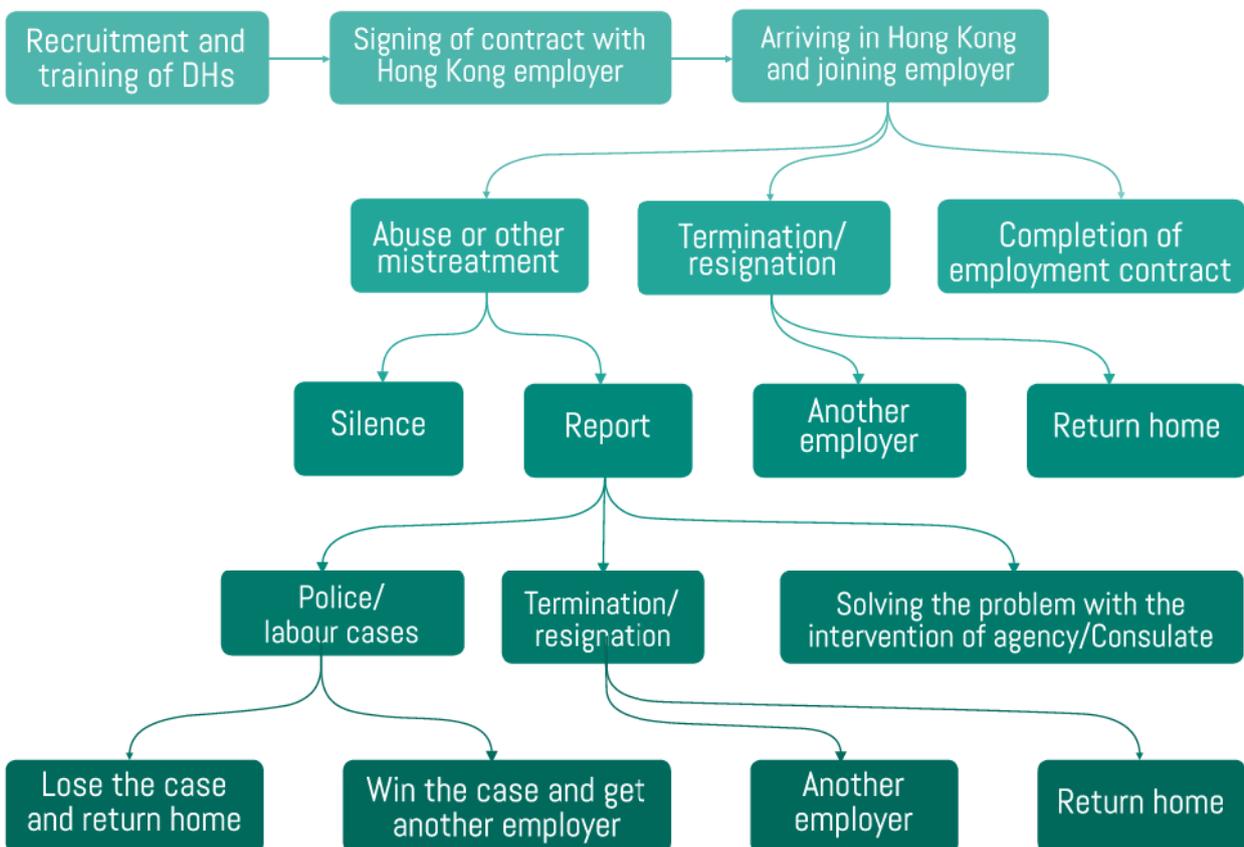
## Overview of labour legislation of Hong Kong

Since its enactment in 1968, the Employment Ordinance has been the core governing legislation of employment in Hong Kong. With the pace of time, the Ordinance has been substantially improved to provide comprehensive protection and benefits for employees, such as wage protection, rest days, holidays with pay, paid annual leave, sickness allowance, maternity protection, statutory paternity leave, severance payment, long service payment, protection against anti-union discrimination etc. Hong Kong has a specific and clear Occupational Safety and Health Ordinance, an Employee Compensation Ordinance, an Employment Agency Regulation and an Employment of Children Regulation to ensure the smooth operation of its labour market. The Labour Tribunal is very strong and is capable of

protecting the rights and safety of employees. Additionally, Hong Kong also allows its migrant workers to form and join trade unions to protect their own rights.

## Domestic helpers' migration process: a journey from Bangladesh to Hong Kong

BMET has signed several MoUs with different Hong Kong recruiting agencies. Hong Kong recruiting agencies have signed agreements with their counterpart local recruiting agencies approved by the Bangladeshi government. The local recruiting agencies are responsible for recruitment and the Hong Kong agencies are responsible for providing the required training to the recruited workers, so as to ensure they are able to work efficiently in Hong Kong. An overview of the process, from recruitment to placement, is shown below:



## Ms. Salma Akter – A case study

Ms. Salma Akter was taken to a local recruiting agent by her friend, where she handed over HKD 10,000 to be sent to Hong Kong to work as a domestic helper. She found the agency to be vague and, after a few months, she realised that she had lost her money. She complained to the concerning authority but with no result. One day, she came across an advertisement regarding employment in Hong Kong; she contacted the agency and gave them HKD 2,000 to register her name and provide the necessary training to go to Hong Kong for work. She then paid the agency a further HKD 10,600 by way of a placement fee, for which she received no receipt. She paid another HKD 1,500 to the agency for medical, passport, visa fees etc. She received training over a two month period and arrived in Hong Kong in October 2013, when she began working as a domestic helper.

In November 2013, Salma was tortured by her employer until she was senseless and was subsequently taken to hospital. The duty doctor called the police. Salma was a poor Bangladeshi girl who had responsibility for four of her younger siblings back at home, as her mother had been dead for a long time and her father remarried and left them. She became afraid of the police and afraid of losing her job and so she kept silent and told the police that her employer was good.

Once again, in January 2014, Salma was inhumanely tortured by her employer and was locked up in the store room, from where the police rescued her. This time, she made a complaint against her employer and a police case was commenced in January 2014. In her statement to the police, she stated that her employer would pull her hair, bang her head hard against the wall, use chopsticks to hit her body parts and even rub her knuckles against metal sponges at times. She had been admitted to hospital twice as a result of incidents of torture. She also reported that her employers would always deduct her salary by giving her unexpected leave time, which she had not requested.

The police investigated the case over a period of more than one and a half years, and they were convinced that Salma was indeed a victim. They submitted a detailed report to the Department of Justice. The Department took several months to examine the report and finally returned it to the police, commenting that the depth of her wounds was not too severe and that, since there were no neutral witnesses to the incident, the court might not accept the case. Subsequently, in July 2015, the investigation was concluded and no charges were filed against anyone.

During this one and a half year period, the agency provided Salma with free accommodation and food. However, she had to accept humiliating treatment from the agency staff and, most of the time, she had to work extraordinarily hard to satisfy them. Accommodation and food are obvious requirements but she also needed extra money. She needed to pay HKD 2,080 to the Immigration Department to extend her visa during this period. She also needed to take care of her siblings back home. Therefore, day by day Salma became more immersed in debt, with it always on her mind that one day she would get justice and would have a better future.

Salma has now been jobless for the past one and a half years and has suffered greatly, both financially and emotionally. Her previous employer refused to compensate her return air ticket and her visa expired at the end of July 2015. She does not have the required money to purchase an air ticket to return home. The agency agreed to find an alternative employer for her but they asked her to pay HKD 6,000 for doing so. She also came to understand that Hong Kong immigration law will not permit her to stay in Hong Kong while she awaits her second working visa. Salma does not know what she should do now.

## Missing links in protecting domestic helpers

- 1 The licensing and monitoring mechanisms of recruiting agencies are clearly stipulated in the Employment Ordinance of Bangladesh; however, most workers are charged illegally and exaggeratedly by the agencies. In Hong Kong, agency fees cannot exceed 10 per cent of the first month's salary of a worker but most agencies charge much more than this as placement fees. The study observes that most workers pay HKD 15,000 on average to meet initial placement fees. If a worker's employment is terminated, he/she must pay another HKD 6,000–8,000 to source a second employer. Agencies usually do not provide workers with a receipt, thereby making it difficult for them to seek help from law enforcing agencies. Neither sending nor receiving countries have effective monitoring mechanisms in place to protect these substantial migration costs.
- 2 In 2013, a survey conducted by the Mission for Migrant Workers, which included 3,000 DH participants, revealed that 58 per cent of DHs suffer verbal abuse, 18 per cent physical abuse and 6 per cent sexual abuse. Salma forced herself to stand up against her

employer after several incidents of torture. She accepted tremendous financial and emotional suffering in order to attain justice; however, ultimately, she now finds herself in a situation in which she either needs to return home empty-handed along with a huge burden of debt or place herself in even more debt to fulfill the demands of the agency in terms of sourcing a second employer. In this situation, the following questions arise:

- Are employers permitted to abuse DHs inside the home, or deduct salary, as the opinion of the Department of Justice in Salma's case was that the court may not accept the case since the depth of her wounds was not sufficiently severe and there was no neutral witness to the incident?
- Why did the police take such a long time to complete their investigation?
- Why did the Department of Justice take such a long time to provide their opinion?
- Where do victims like Salma stay during the police investigation or court proceedings?
- How do victims survive and cover their everyday expenses?
- How do victims support their families back at home?

Salma's case is not an exception. Most workers prefer to stay silent due to the fear of losing their jobs, despite the high incidence of abuse shown in the survey. They could suffer even more if they choose to fight for justice. Neither the receiving nor sending countries have in place adequate arrangements to provide necessary shelters, financial assistance and other support while workers face police or court cases.

3

Section V, article 14 of the Hong Kong Immigration Department's Quick Guide for the Employment of DHs from Abroad (ID 989) mentions that, when a DH's contract is terminated, he/she is only "permitted to remain in Hong Kong for the remainder of the permitted limit of stay or 2 weeks from the date of termination of contract, whichever is earlier". In practice, it is quite difficult for a DH to find a suitable job within two weeks. Other than abuse, this study has also observed that some workers are forced to engage in chores that are not mentioned in the contract, such as work in other houses, shops, restaurants and clinics owned by the employers or their relatives. The two week policy set out above has made DHs too anxious about losing their jobs and thus has made employers ever more powerful, as the workers simply have too much to lose by disagreeing with their employers.

- 4 Hong Kong Immigration has recently fortified their assessment of workers' visa applications to more closely examine those who have changed employers several times. It has also taken the same measures against employers who have changed DHs several times, although in practice most cases were against the workers. When an employer terminates a worker's employment, he/she can state whatever he/she wishes as the cause of the termination. The employment contract gives them this liberty. Moreover, other family members can apply for termination if the family requires it. Therefore, the stricter measures introduced to avoid 'premature contract termination' do not necessarily result in a suitable solution.
- 5 This study analyses the training modules of different agencies and observes that these only include the duties and responsibilities of a DH and not their rights and entitlements. Additionally, the introduction of training modules relating to protection laws would be prudent for DHs, to better enable them to deal with unacceptable situations. Sending countries are very reluctant in this regard.
- 6 The most significant problem for Bangladeshi DHs is the cultural conflict, especially in relation to language, food and religion, and thus it is difficult for them to cope with the Hong Kong culture. In most cases, DHs are forced to modify their values and accept those in place in their employer's house. They almost live like strangers in the employer's house. Trade unions, non-government organisations, the media and other social organisations are robust in Hong Kong; however, the awareness programme necessary to ensure employers are aware of the cultural differences and values of the DHs are not observed and this may be a major reason for misunderstandings between employers and DHs.

## Recommendations

A huge population and insufficient employment opportunities compels Bangladesh into the open labour market abroad, to allow the country to transform its manpower into a human resource. Hong Kong could be an

attractive destination for Bangladeshis. Some possible recommendations that can be taken into consideration in this regard are:

- 1/ Both sending and receiving countries should strengthen their recruitment agency regulatory functions for recruitment violations, especially in relation to collecting excessive fees and other illegal recruitment practices.
- 2/ The Immigration Ordinance should be reviewed and a testing period should be introduced into the contract so that both employers and DHs have a buffer period prior to facing premature termination.
- 3/ The two week rule could be extended to six to eight weeks, to allow terminated DHs a more realistic amount of time to find suitable alternative employment.
- 4/ Police investigations and court procedures in cases involving DHs should be given priority, as they are not eligible to work during such conditions.
- 5/ Both sending and receiving governments should provide financial support to DHs' facing cases. Immigration could give them permission to work during case procedures; however, a penalty could be imposed if any false case is filed. Immigration could also waive the fees related to visa extensions and other government expenses.
- 6/ Sending countries should put greater emphasis on security and protective measures and offer awareness building programmes for workers, to make them aware of their rights and entitlements. Sending countries could negotiate with receiving countries in terms of strengthening their law enforcement and monitoring measures, so as to protect the rights of workers.
- 7/ Awareness could be built among Hong Kong employers regarding the inherent cultural differences, to help them accept workers from different countries, religions and cultural backgrounds, and treat them as helping staff for their family.

# POSITION PAPERS





## Position Paper on Indonesian Migrant Domestic Workers in Hong Kong

Amnesty International

In November 2013, Amnesty International published a report entitled “Exploited for Profit, Failed by Governments”.<sup>1</sup> The report provides a detailed examination of the experiences of Indonesian migrant domestic workers, from their recruitment in Indonesia to their employment in Hong Kong,<sup>2</sup> and documents a series of human rights abuses and labour rights violations that these workers are subjected to in both territories.

There are more than 300,000 migrant domestic workers in Hong Kong. About half of them are from Indonesia and nearly all are women. Recruitment agencies and brokers in Indonesia often deceive migrant domestic workers during the recruitment process. Prospective migrants are promised good jobs with lucrative salaries, but are not properly informed about the large fees they will incur during the recruitment process or the lengthy mandatory pre-departure training they will have to undertake. On arrival in Hong Kong, many find that their jobs and terms and conditions are not what they were promised, but that instead they are at risk of serious abuse.

In the report, Amnesty International’s research found that significant numbers of Indonesian recruitment agencies, along with their partner placement agencies and frequently employers in Hong Kong, are manipulating debts relating to recruitment fees, confiscating identity documents and restricting migrant workers’ freedom of movement in order to coerce them into working in situations of forced labour. The research also documented that migrant domestic workers are subjected to a range of other human rights abuses during the migration process.

In late 2015, roughly two years after the release of the report, both the Indonesian and Hong Kong governments have still failed to comply with their international obligations to prevent and suppress trafficking,

---

<sup>1</sup> *Exploited for Profit, Failed by Governments: Indonesian Migrant Workers Trafficked to Hong Kong* (Index: ASA 17/029/2013). Available from <https://www.amnesty.org/en/documents/asa17/029/2013/en/> (accessed 24 September 2015).

<sup>2</sup> Hong Kong, China

exploitation and the use of forced labour, including by taking adequate action to enforce relevant domestic legislation in their own jurisdictions which could protect migrant workers, and provide effective remedies in cases of abuse. In particular, they have not properly monitored, regulated or punished recruitment and placement agencies who are not complying with the law.

### **Erwiana's case -exposing the 'damning indictment' of the governments' failure**

On 10 February 2015, a District Court in Hong Kong made a final verdict on the high-profile court case of Erwiana Sulistyaningsih, an Indonesian migrant domestic worker who had been abused for more than seven months in the home of her Hong Kong employer.<sup>3</sup> The court found the employer guilty, and sentenced her to six years' imprisonment for abusing Erwiana and another Indonesian migrant domestic worker.

Following the judgment, Amnesty International said in a statement that the guilty verdict against the Hong Kong employer for the extreme abuse she had inflicted on the two migrant domestic workers must act as a wake-up call for the authorities to stop the widespread exploitation of tens of thousands of women. The verdict was seen as a 'damning indictment' of the Hong Kong government's failure to reform a system that trapped women in a cycle of abuse and exploitation.<sup>4</sup>

In a blog for Amnesty International's LIVEWIRE – "I speak up so no one will have to go through the same suffering" – the same month, Erwiana described her plight as well as the systemic root causes of the exploitation that Indonesian domestic migrant workers face.<sup>5</sup>

"I am happy that I won my case and justice for me and other victims is finally upheld. The one reason we Indonesian domestic workers come to

<sup>3</sup> Indonesian domestic worker, Erwiana Sulistyaningsih, was named one of TIME magazine's 100 most influential people of 2014, following her struggle for the rights of domestic workers. She had returned to Hong Kong to give evidence against her former boss for the abuse she suffered while she worked for her from mid-2013 to January 2014.

<sup>4</sup> "Hong Kong: Guilty verdict in migrant domestic worker abuse trial a 'damning indictment' of authorities' failure", 10 February 2015. Available from <https://www.amnesty.org/en/latest/news/2015/02/hong-kong/> (accessed 24 September 2015).

<sup>5</sup> Information from <https://www.amnesty.org/en/latest/campaigns/2015/02/i-speak-up-so-no-one-will-have-to-go-through-the-same-suffering/> (accessed 24 September 2015).

Hong Kong is to help our families. I speak up so no one will have to go through the same suffering,” said Erwiana.

## Recommendations to both the Indonesian and Hong Kong governments

Amnesty International calls on both Indonesian and Hong Kong governments to fully comply with their international obligations and to implement their domestic laws which are designed to protect migrant domestic workers from labour and human rights violations and to amend existing regulations so that migrant domestic workers are not dependent on recruitment and placement agencies. Amnesty International also urges both governments to set up structures that will enable and empower migrant domestic workers to challenge exploitative employers and agencies.

Amnesty International’s specific recommendations in this regard are outlined below.

### The Government of Indonesia should:

Review and amend Law No. 39/2004 concerning the Placement and Protection of Indonesian Overseas Workers (Law No. 39/2004) to ensure it complies with international law and standards. The revision of the law should be conducted in full consultation with migrant workers and their representatives, trade unions, non-governmental organisations, women’s groups and other key stakeholders.

- ❑ Fully implement those provisions in Law No. 39/2004 which provide protection for migrant workers. In particular, implement the provisions which state that prospective Indonesian migrant workers can depart independently without the assistance of a recruitment agency (article 7) and that they can extend their work agreement directly with an employer without going through a recruitment or placement agency (article 57).
- ❑ Register and monitor brokers through the National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI), ensuring that when brokers are involved in deception, trafficking or any other human rights abuse, they and the recruitment

agencies they work for face adequate sanctions including, where appropriate, criminal sanctions.

- Ensure that recruitment agencies provide migrant domestic workers with a contract in writing, in the Indonesian language, with standard terms and conditions offering them appropriate employment law protection, and an itemised receipt for the recruitment fee charges which reflects the structure set out in Ministerial Decree No. 98/2012.
- Oblige recruitment agencies to assess migrant workers' skills on arrival at the training center, to set a training period based on existing skills and needs, and reduce charges proportionately. Ensure that the training and assessment system is not open to abuse.
- Consider reducing the maximum 110 day training period, end the mandatory imposition of this maximum on all trainees and reduce the recruitment fee accordingly.
- Guarantee that migrant workers who are working and living with families as "interns" while at the training centers are paid wages that are commensurate with the local area and that they are not charged for accommodation, food or training while they are working as "interns".
- Review and improve the quality of the government's general oversight of the training provided by recruitment agencies.
- Review and improve the quality of the government's Final Pre-departure Programme (PAP) in Indonesia and its welcome and exit programmes in Hong Kong. Migrants should be informed of their rights and duties in the destination territories (particularly their right to retain possession of their personal identity and travel documents, and employment contract), be provided with relevant contact details for if problems should occur (e.g. agency staff, nearest Indonesian embassy/consulate, local NGO or trade union) and be advised how to access complaints and compensation mechanisms in Indonesia.

- Strengthen the capacity of the embassy/consulate staff so that they can play a more active role in supporting and assisting migrant domestic workers, and resolving problems when they arise.
- Involve IGOs, NGOs and/or trade unions in the Final Pre-departure Programme (PAP) in Indonesia, and welcome and exit programmes in Hong Kong.
- Strengthen the monitoring of recruitment agencies, including through increased capacity for regular and unannounced inspections, and fully enforce Law No. 39/2004, in particular the following provisions:
  - Penalise recruitment agencies which do not treat trainees “humanely and in a normally acceptable manner” (article 103), including practices that restrict freedom of movement, the confiscation of documents, enforced contraception and carrying out unpaid work for staff and exploitative “internships”. Where appropriate, agencies’ licences should be revoked and criminal sanctions applied;
  - Ensure that recruitment agencies compensate workers if they receive a salary which is below the minimum standard in the destination territory or lower than the wages they were promised (article 8); and
  - Sanction recruitment agencies if workers do not have a written work contract or KTKLN (Kartu Tenaga Kerja Luar Negeri – foreign employment identity card) (article 103).
- Cooperate with the Government of Hong Kong SAR and other destination territories to ensure that abuses carried out in the destination are also properly sanctioned.
- Use the 2007 anti-trafficking regulations to prosecute recruitment agencies involved in the trafficking of migrant domestic workers and amend Law No. 39/2004 so that the use of deception as a means of trafficking attracts adequate punishment rather than the

administrative sanctions currently outlined in article 72 of the Law.

- ❑ Publish annual reports on the number of recruitment agencies that have their placement licences (SIPPTKI) revoked for failing to properly protect migrant domestic workers, and that have been investigated, charged and prosecuted for violations of Law No. 39/2004 and, if convicted, what sentences they receive.
- ❑ Incorporate the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families into domestic law and implement it in policy and practice.
- ❑ Ratify and fully implement ILO Convention No.189 concerning Decent Work for Domestic Workers (2011), incorporate its provisions into domestic law and implement it in policy and practice. In particular, take measures to ensure that fees charged by recruitment agencies are not deducted from the remuneration of domestic workers.

## The Government of Hong Kong SAR should:

- ❑ Thoroughly regulate and monitor placement agencies in its territory and sanction those which are operating in violation of Hong Kong's laws (e.g. in respect of illegal wage deductions and confiscation of contracts or identity documents), including the application of criminal sanctions when appropriate.
- ❑ Take action to prevent and address human rights abuses and violations of Hong Kong's domestic legislation by employers, including through the application of criminal sanctions when appropriate.
- ❑ Amend the Two-Week Rule to allow migrant domestic workers a reasonable period to find new employment, including incorporating the average time of 4-6 weeks it takes to issue a new visa.
- ❑ Amend current legislation which forces migrant domestic workers to live with their employers and excludes them from the Minimum

### Wage Ordinance.

- Review current legislation which completely excludes migrant domestic workers from ever being considered for right of abode.
- Waive the costs of visa extensions for migrant domestic workers who are seeking compensation for human and labour rights abuses, and ensure that they have effective access to appropriate support measures, such as shelters and interpretation, at all stages of redress, including the conciliation process at the Labour Department.
- Provide trafficked migrant workers with appropriate support and a temporary residency permit which allows them to work.
- Ensure that the prohibition of illegally exacted forced or compulsory labour is clearly defined in law with penalties that are adequate and strictly enforced, in accordance with obligations under article 25 of ILO Convention No. 29 concerning Forced or Compulsory Labour (1930).
- As a matter of priority, extend the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) to Hong Kong SAR (ratified by the People's Republic of China in 2010), incorporate its provisions into Hong Kong law and implement them in policy and practice.
- Pursue with the Central Government in Beijing the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and ILO Convention No. 189 concerning Decent Work for Domestic Workers (2011), incorporate their provisions into Hong Kong law and implement them in policy and practice.

## Promote human rights and justice for migrants in Asia-Pacific

### Asia Pacific Mission for Migrants

Asia-Pacific is a region of active and dynamic migration. Migration in the region has been influenced by economic, political and social conditions prevailing in the world and in Asia-Pacific. Even historical and cultural ties have a bearing on migration, as shown by migration policies in Oceania.

Three countries from the region are in the top four countries of origin—China, India and the Philippines. The latter is widely considered as having one of the most developed systems of migration, so much so that the Philippine experience is sometimes touted as a model for other countries to follow.

Major migration corridors, such as China-Hong Kong and India-Bangladesh, are also in the region. Asia hosts the largest number of refugees in the world, with many found in West Asian countries such as Syria and Iran, and in Southeast Asia such as Burmese refugees in Thailand.

Migration in and out of Asia Pacific is on the increase. From 2000 to 2013, migration outflow from EAP increased by 60 per cent. The UN Population Division released new estimates of migrant stocks, showing that there are approximately 35 million South Asian cross border migrants, of which 10 million have migrated within the region.

Within the past decade, migration has become a discussed theme in intergovernmental meetings, particularly on the topic of development. While these meetings profess to not use migration as a development strategy, grassroots migrants and advocates the world over have noted that statements that come out of such meetings are really geared towards the further systematisation of migration, and not to resolving forced migration and upholding the rights of migrants.

For governments, current migration is not a problem of development that must be resolved but an opportunity to be maximised. The World Bank,

various UN agencies and other multilateral and multi-stakeholder bodies, such as the GFMD, all choose to emphasise the enormous contribution of migration to development. They are advancing the flawed strategy of using remittance as a motor for development, be it as part of the GDP, as a credit-rating booster, or as a means to increase social capital through economic capacity given to households of migrants.

The framework of migration for development has a close bearing on the post-2015 development agenda.

Fourteen years ago, the Millennium Development Goals (MDGs) were developed with little mention of migrants or migration, although most, if not all, of the MDG themes were relevant to migrants. This, it may seem, was an oversight that the Open Working Group on Sustainable Development wished to rectify.

However, the outcome document of the OWG last July still left much to be desired.

Remittance – which is even greater than official development aid and second only to foreign direct investments – is targeted as a source of “new and additional” financing for sustainable development.

Migrant-sending countries are markedly pushing for an increase in migration flows and the lowering of restrictions in destination countries. Host countries, meanwhile, are pushing to attract skilled workers and professionals – an agenda they have pursued since the GATS Mode 4 was introduced; this plan is now being continued in the TISA negotiations and temporary worker / guest worker programmes are being perfected.

Under this trend, the commodification of migrants and their situations of modern-day slavery are intensified. The human rights of migrants are relegated to the margins in favor of profit, border control and national security.

While there exist international conventions that should act as overarching guides on whether policies adhere to human rights standards, these remain on paper while rampant abuses and exploitation occur on the ground.

Briefly, some of the major problems of migrants in the region are:

- 1/ **Violations of economic, political, social and cultural rights of migrants**  
Policies abound that not only restrict but also violate the comprehensive rights of migrants, such as in relation to wage and other labour rights, the rights of migrants to organise and unionise, the right to health and their access to justice, among others. The livelihoods and even the lives of migrants are always at risk. Various actors, the foremost of which are the sending and receiving countries, are parties to such violations.
- 2/ **Problems of migrants in precarious labour**  
While all migrants are vulnerable to abuses and exploitation, these are most blatant among domestic workers, agricultural workers and undocumented migrants. Many migrant domestic workers are live-in domestic workers and are living and working under the sufferance of their employer or their recruitment agency. Meanwhile, the irregular status of undocumented migrants makes them vulnerable to abuses, aside from the threat of being arrested, detained and deported, usually in an intensely violent manner.
- 3/ **Development of temporary labour schemes**  
Temporary labour schemes are increasingly implemented in the region to maintain the vulnerable status of migrants. Even Australia, which has traditionally provided permanent migration options, is now resorting to a temporary labour scheme, or the Visa 457 scheme, to provide the cheap and flexible labour that its businesses need.

The obvious framework is that those who can be useful to the country can be residents. While permanent residency can provide an opportunity for better working conditions, it is certainly not an assurance, since countries such as Australia also continue to become mired in a protracted crisis.

We recommend the following, by way of changing policies on migration:

- 1/ Desist from the remittance-driven framework of development and, instead, uphold the centrality of human rights and justice in national development programmes. Development must be attained with the

full dignity of people and respect for the planet.

- 2/ Conduct a periodic review of the observance of countries of human rights standards in relation to migration and the treatment of migrants. This should be conducted under the auspices of the United Nations through its relevant agencies.
- 3/ Enable the active and meaningful participation of grassroots migrants and advocates in policy dialogues on migration and related concerns at national, regional and international levels.

## Present Position of Labour Migration in Asia

### Christian Action Domestic Helpers and Migrant Workers Programme

#### Christian Action

**Christian Action** is a Hong Kong registered charitable organisation (Charity no. 161383), established in 1985. Our clients include unemployed adults and youths, new arrivals from Mainland China, ethnic minorities, refugees, asylum seekers and migrant domestic helpers, orphans and abandoned children in Qinghai.

#### Domestic Helpers and Migrant Workers Programme

- 1/ At present there are around 300,000 foreign domestic workers (FDWs) in Hong Kong from countries such as Indonesia, the Philippines, Sri Lanka, India and Bangladesh. The total number of FDWs amounts to almost 4 per cent of the present population of Hong Kong.
- 2/ The services of these FDWs are of such great importance to the continued existence of Hong Kong's social and economic structure that they have become a permanent feature of the Hong Kong labour market.
- 3/ In this regard, the Standard Employment Contract addressing the rights of FDWs is prescribed by the government in addition to or in qualification of the rights provided in the Employment Ordinance.
- 4/ Despite the above, FDWs are still subjected to various forms of abuse and exploitation ranging from underpayment, to denial of food and rest, and physical and sexual abuse. Further, agencies often charge FDWs illegal fees while also withholding their passports and other documents until the settlement of such fees.

5 The **Domestic Helpers and Migrant Workers Programme** (DMW) was established in 1993, to bring justice to FDWs who have been exploited or unfairly treated by their employers or employment agents. Our assistance is furnished in four main ways – through paralegal advice through shelter services, and through community outreach and educational and empowerment training for these FDWs.

### Labour migration in Hong Kong - practical application of the rule of law

6 As stated above, the Standard Employment Contract (“the contract”) as prescribed by the Department of Labour is the primary instrument governing the relationship between the FDW and the employer. The contract provides for the rights and obligations of both the employer and the employee with a view to ensuring resolutions to possible disputes.

7 Furthermore, should possible disputes arise, the Department of Labour is empowered to assist in the resolution of these disputes through conciliation or adjudication, as the case may require.

8 One of the primary protections afforded to FDWs is the minimum allowable wage (MAW) which at present is set at HKD 4110.00 (an increase of 2.5 per cent from the previous MAW). In addition, employers are obliged to provide FDWs with food or a food allowance amounting to HKD 946.00 per month, while also providing for paid rest days, statutory holidays and annual leave holidays. Additionally, the Employment Ordinance prescribes the manner in which termination of an employment contract should take place.

9 Another significant feature is seen under clause 2 of the employment contract, wherein the FDW is required to work and reside at the employer’s address; this is also a condition of stay under the permissions received by Immigration for the FDWs employment visa.

- 10 Furthermore, the Department of Immigration, in granting the employment visa, stipulates that an FDW should only work at the employer's residence, as agreed under the contract, and will be required to leave Hong Kong within two weeks, should the contract be terminated prior to the culmination of the two year period.
- 11 This causes the FDW significant difficulty in cases where the FDW is due further entitlements from the employer upon termination of a contract. Since procedures before the Department of Labour require that the parties be present personally, an FDW is faced with the decision of whether to pursue her labour claim, which may be a protracted procedure, or seek new employment.
- 12 One of the most debated policies is the requirement that FDWs work and reside in the employer's residence which is also known as the 'live in rule'. It is argued by many that such a requirement puts the FDW in danger of being exploited and abused by the employer, with no means of escape. Further, since Hong Kong to date has no legal maximum working hours for employees, FDWs residing at their employers' homes are often required to work up to 18 or 20 hours a day.
- 13 Considering the entitlements due to FDWs, it can be seen that FDWs are in most cases individuals from lower income families with little or no education or language skills. Therefore, employers are able to obtain signatures from the FDWs acknowledging the receipt of such entitlements even though these entitlements have not been received.
- 14 Therefore, although it is quite admirable that Hong Kong has taken such great strides in enacting laws and regulations to ensure the protection of the rights of both employers and employees, such laws and regulations have come under great public scrutiny due to their practical weaknesses.

## The journey to Hong Kong - labour migration, forced labour and labour trafficking

- 15 As stated previously, FDWs arriving in Hong Kong primarily originate from countries such as Indonesia, the Philippines, Sri Lanka, India and Bangladesh. While some of these FDWs are uneducated and illiterate, many others have obtained university degrees and other higher qualifications; they have been forced to work as domestic helpers since they are not afforded suitable employment opportunities in their own countries.
- 16 When considering the situation of migrant workers, it is always important to consider the laws and policies of their countries of origin. Under the Indonesian government policy for FDWs, all FDWs must contract employment through a licensed employment agency in Indonesia – also known as a PT. In theory, such policy is considered to regulate the migration of FDWs and to ensure their protection from exploitation and abuse, as the agency is responsible for their well-being.
- 17 Since many of these FDWs come from dire situations of poverty, migrating to foreign countries as FDWs is seen to be their only option. However, this can lead to complications for the FDWs as many employment agencies see fit to confiscate the FDW's passport, employment contract and other important identification documents until such time as payment of the agency fees is settled.
- 18 While Hong Kong has also stipulated under the Employment Ordinance that employment agencies are restricted to charging only 10 per cent of the FDW's first month's salary, employment agencies in both Hong Kong and the country of origin are seen to charge higher agency fees, with the assistance of finance companies. Upon arrival in Hong Kong, FDWs are taken to finance and loan companies and compelled to take out loans under their own names.

## What Migrant Domestic Workers Face

Hong Kong Federation of Asian Domestic Workers Unions

There are currently in excess of 330,000 migrant domestic workers (MDWs) in Hong Kong, China<sup>1</sup>, constituting almost 9 per cent of the workforce of HK's economy. Although the exposure of certain cases shows that MDWs are vulnerable, the HK government refuses to change its policy to protect migrant workers from exploitation.

One of the central problems when discussing policies in HK relates to the rights of unions. Although workers can organise unions, the government refuses to meet with them for discussions. However, the government should have regular meeting with represented unions, in order to remain current in its understanding of problems and the views of workers.

In the following, we will present the major concerns of unions in connection with MDWs.

### Immigration policies

Current immigration policies for MDWs in HK act to discourage MDWs from standing up for their rights.

#### Two week rule

MDWs with pending legal cases are not permitted to work in HK, making them unwilling to bring a case against an employer. A simple labour case takes some four to six months to complete, from filing the case with the Department of Labour to arriving at a labour tribunal. During this period, although the worker is allowed to stay in HK as a "visitor", they cannot earn money. This rule makes it very difficult for MDWs to seek justice.

In addition, workers tend to remain silent, even when facing unfair treatment, because they are afraid of losing their job; if they should lose

---

<sup>1</sup> Hereinafter Hong Kong or HK.

their job, they are permitted only two weeks to find an alternative employer, which is inadequate.

### Forced live-in policy

MDWs are forced to live with their employer, which makes them vulnerable since they have no place to go while they are forced to live in the workplace. Also, due to the lack of monitoring of the living environment, workers often live in extremely poor conditions, such as sleeping in a toilet or a kitchen, which is unacceptable. We call for a relaxation of the forced live-in arrangement; the government should allow the employer and employee to decide.

## Labour protection

### Minimum wages and standard working hours

MDWs are excluded from the minimum wage ordinance which protects workers in HK. This represents a form of discrimination. Nowadays, the wages of MDWs follow an executive act called “minimum allowable wages”, which offers no transparency or rationale. Also, there are no terms about working hours in the standard employment contract of MDWs making the working hours of MDWs unlimited. In fact, the working hours of MDW’s is extremely high, on average 16 hours per day.

### Orientation programme

Despite promises by the HK government to establish an orientation programme for every MDW, when it finally came to it, the government forgot its promise and the proposed programme was rejected. We are in firm favor of such a programme and request that the government involves the unions in the design of the course.

## Monitoring of employment agencies

Excessive agency fees are the central issue of the MDW movement. Excessive agency fees have become a burden to the fight of MDWs for justice. They shoulder the debt and dare not speak up for fear of facing abuse. There is also a great deal of malpractice on the part of employment

agencies, such as detaining workers' passports and contracts, forcing workers to pay the loan and so on.

The lack of regulations on employment agencies is actually allowing these illegal and excessive agency fees. In the past few years, only four or five employment agencies have been charged with the offence of overcharging, while over 1,500 employment agencies are doing business with MDWs. This demonstrates that the regulations are inadequate and the government does not take a sufficiently strong view to monitor the employment agencies.

### Inter-government cooperation

In order to protect the rights of MDW's and monitor the practices of employment agencies, inter government cooperation is needed. However, to date there have been no bilateral agreements among governments concerning the protection of MDWs. The HK government should actively communicate with the various countries of origin to establish bilateral agreements with them.

### Laws on slavery and human trafficking

Despite the warnings of US human trafficking reports, as well as international pressure, the HK government still does not recognise the issue of debt-bound workers as a trafficking issue. HK has no laws covering human trafficking, other than in relation to sex workers, and even though migrant workers may suffer in slave-like situations, there are no laws to deal with it.

### Suggestion for policy changes

For the HK government:

- 1/ Review immigration policy, in particular in relation to the two week rule and the forced live-in policy;
- 2/ Include MDWs in the minimum wage ordinance;

- 3/ Monitor and enforce the behaviours of employment agencies;
- 4/ Force the reduction of excessive agency fees for migrant workers;
- 5/ Establish laws on slavery and human trafficking, to include migrant workers.

For the governments of the countries of origin and HK:

- 1/ Establish bilateral agreements between countries of origin and the destination country, to protect MDWs;
- 2/ Allow the direct hiring of MDWs to avoid exploitation from employment agencies.

## Modern-day Slavery in a Modern-day City

Mission for Migrant Workers (MFMW)

Hong Kong, China<sup>1</sup> is one of the top destinations of migrant workers in the region. Aside from foreign domestic workers from Asia – Indonesia, the Philippines, Nepal, Sri Lanka and Thailand – there are also refugees and asylum seekers, expatriate workers from developed countries, migrants from Mainland China and marriage migrants.

However, the bulk of foreign workers in Hong Kong is made up of domestic workers. Composed overwhelmingly of women, the situation for migrants in Hong Kong is far from that commonly conceived in this ultramodern city.

The vulnerability of migrants in Hong Kong actually begins in their country of origin and is multiplied several-fold when they arrive in Hong Kong. They oftentimes find themselves trapped in a seemingly endless cycle of poverty, unemployment and displacement in their country of origin, forcing them to leave for Hong Kong in the hope that a better future awaits them.

However, while conditions for the migrant's family may slightly improve, this comes at significant cost – debt traps, slave-like treatment, exploitation of private businesses, family separation and its social impacts, discrimination and social exclusion.

The celebrated case of Erwiana Sulistyaningsih has shown, not only to the people of Hong Kong and the Asia Pacific region, but to the people of the world that all is not well with the situation of migrants in Hong Kong. Meanwhile, the Hong Kong government has tried to brush it off as an isolated case. There is no denying that, while it may be an extreme case, it is definitely a showcase of the degree of abuses that foreign domestic

---

<sup>1</sup> Hereinafter Hong Kong or HK.

workers (FDWs) in Hong Kong may be experiencing in the privacy of households and under the threat of losing their jobs.

Erwiana's case was soon followed by that of Anis and of Rowena who suffered similar forms of maltreatment. These were not the first FDWs to experience abuses, violence and violations to their rights as workers and as women. Others have come before them and still many others continue to suffer in the same way, but their cases go unreported.

Based on a study of the case work of the MFMW in 2013, 58 per cent of women domestic workers suffer verbal abuse, 18 per cent experience physical abuse and 8 per cent are victimised by sexual abuse. Moreover, 88 per cent complained of long working hours and minimal rest and privacy, 77 per cent have experienced problems with the illegal fees and overcharging of recruitment agencies and 11 per cent reported severe maltreatment. While these offences have been committed by unprincipled employers, household members who treat FDWs as lower than human beings, and unscrupulous recruiters who see only profits, there is a deeper problem that places FDWs in Hong Kong in a situation of modern-day slavery and exclusion. At the core of these problems lie the policies of the Hong Kong government, which act to purposely make FDWs' jobs insecure, their labour cheap, their working conditions inhumane and their rights restricted.

The following policies set the stage for abuses and violence against FDWs.

- 1/ *New Conditions of Stay (NCS) (or the Two-Week Rule)*. This is the law that hangs over the heads of FDWs every day and instils in them the concern of job loss if they act against their employer's will. Despite its unpopularity, the Hong Kong government has refused to change the NCS. Even though the UN Committee for the Elimination of Discrimination Against Women has strongly recommended that the NCS be reviewed, still the Hong Kong government refuses and continues to defend the rule.
- 2/ *Mandatory live-in employment arrangements*. For more than a decade, this policy has forced FDWs to accept any living and working

conditions that employers place on them. It is not unusual to find FDWs sleeping on the floor, in the kitchen, in a cupboard or in a bed constructed just above the toilet seat; their privacy may be totally absent and their safety threatened. Because of this arrangement, many of the abuses that leave no lasting physical marks remain hidden and unaddressed.

- 3 *Low wages.* Through the unjust, arbitrary and non-transparent Minimum Allowable Wage (MAW) policy, salary is maintained at a minimal level. Over the past 15 years, the wages of FDWs have increased by a mere 3.8 per cent, or around HK\$10 per year. In fact, the current MAW is only HK\$150 more than its 1998 level, before the drastic wage cuts occurred in 2000 and 2003. Wages have not yet recovered despite the supposed recovery of the HK economy.
- 4 *Problems with recruitment agencies.* The Hong Kong government continues to reiterate that existing policies already ensure that FDWs only pay the equivalent of 10 per cent of one month's salary to the agencies but this is not true for many FDWs. Recruitment agencies and their partner financing agencies have been freely profiting by charging way beyond the legally set limit. Be it Filipinos, Indonesians or any other nationality, these agencies employ different kinds of modus operandi to extort as much as HK\$25,000 placement fees. Sadly, the prosecution rate of these erring and unscrupulous agencies remains so slow that they oftentimes get away with their crime. Because of overcharging, many FDWs start their new lives in Hong Kong already in debt.
- 5 *Exclusion and discrimination.* These include exclusion from the Statutory Minimum Wage and the most probable exclusion again from the Statutory Minimum Working Hours that can prevent many from being forced to work without sufficient rest periods. Exclusion can be seen also in inserting the "W" into FDWs' HKID, which acts to separate them from other residents in Hong Kong. This results in different treatment in commercial establishments towards FDWs. The separate and isolated counter for FDWs in Hong Kong International Airport's immigration area is also an attempt to separate and distinguish FDWs from other Hong Kong residents.

- 6 *Lack of services and protection from home government.* Sending governments are only concerned with keeping their nationals in Hong Kong working under any conditions so that they can be sure of continued remittances and profits from fee collections.

To curb these problems, the MFMW has on several occasions forwarded recommendations for the Hong Kong government and sending governments to:

- 1 Review and reform the two-week rule and realign the framework on migrant workers as an issue of labour primarily, and not of immigration and national security;
- 2 Repeal the mandatory live-in arrangement and make living arrangements a mutual agreement between FDWs and employers. While this may not address the power imbalance between the FDWs and employers, it gives either party the chance to find an arrangement that is satisfactory to both.
- 3 Treat FDWs as workers and remove all discriminatory and exclusionary policies against them. In relation to this, push for the approval of the government of China of the International Labour Organization (ILO) Convention No. 189 or the Domestic Work as Work convention;
- 4 Improve the investigation and prosecution of erring recruitment agencies. The Hong Kong government must work closely with the governments of sending countries to curb the overcharging that occurs with the collusion of recruiters and loan agencies in Hong Kong and the sending countries, and;
- 5 Improve service provision to FDWs, especially those in distress. Structures and systems must be put in place to create responsive publicly funded services. While sending governments should shoulder this responsibility in the main, the Hong Kong government should also increase the level of fiscal resources devoted to FDWs and other ethnic minorities in Hong Kong.

## Position Paper of PathFinders

Kay McArdle<sup>1</sup>

### PathFinders' Mission

PathFinders<sup>2</sup> works to ensure that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected.

There exist currently severe limitations to the statistical data collected and disclosed by Hong Kong's government departments relating to the issues the women and children at PathFinders face and about migrant domestic workers (MDWs) more generally.

The fact that Hong Kong's Women's Commission is able to exclude the migrant domestic worker population from its generally excellent annual statistical review<sup>3</sup> and that MDWs have specific HKID card numbers, implies that the data exists and is capable of being obtained (albeit from multiple government departments including, specifically, the Health, Immigration, Labour, Justice and Home Affairs Departments) and analysed.

PathFinders has its own significant and reliable data to demonstrate the size and depth of the specific issues it sees on a daily basis. The ability to identify, measure and then to recommend solutions to the issues we encounter at PathFinders would be significantly enhanced if large-scale and longitudinal data were publically available, including:

- a) How many MDWs give birth in Hong Kong's public hospitals each year?
- b) How many babies are born in Hong Kong each year to former or current MDWs? Of these, how many acquire a Birth Certificate and/or become Hong Kong residents?

<sup>1</sup> Kay McArdle is CEO of PathFinders Limited.

<sup>2</sup> To learn more about PathFinders and its work, please visit:  
Website: <http://www.pathfinders.org.hk/public/>  
Facebook: <https://www.facebook.com/pathfindershk>  
Public Submissions: <http://www.pathfinders.org.hk/public/services/accesstojustice/>

<sup>3</sup> [Http://www.women.gov.hk/download/research/HK\\_Women2013\\_e.pdf](http://www.women.gov.hk/download/research/HK_Women2013_e.pdf)

- c/ How many children on recognizance papers are born in Hong Kong to former or current MDWs?
- d/ How many babies are born each year to former MDWs who have become immigration criminals and give birth in prison?
- e/ How many children of MDWs stay in Hong Kong and how many leave Hong Kong?
- f/ How many MDWs have received/are receiving perinatal checkups in Hong Kong's public healthcare system?
- g/ How many criminal investigations and prosecutions, successful or otherwise, are brought against employers for the unlawful termination of a contract due to pregnancy? What percentage of these victims are MDWs?
- h/ The difference in access to social welfare systems (accommodation, food, living allowance, visa charges, medical fees) between unlawfully terminated, pregnant MDWs, refugees and torture claimants.

## Recommendations and conclusion

The lives of the babies, children and migrant women we help at PathFinders are complex and are affected by multiple local and international laws, policies and practices.

Pregnant MDWs in Hong Kong frequently find themselves in a catch-22 situation. Economic factors and dependencies drive their vulnerabilities. Social and cultural stigmas exacerbate their problems. Limited or unclear protection at law, and in practice, offers meagre financial and practical support.

Pregnant MDWs in Hong Kong are all too frequently fired. That unlawful and discriminatory dismissal renders them immediately homeless. Within two weeks, they lose their visa status and all access to Hong Kong's social welfare system, including, critically healthcare for their unborn child and

themselves. A swift downward spiral of events then occurs resulting in the crisis in which PathFinders then finds them.

The fact that vulnerable, pregnant women who are victims of unlawful activity frequently then themselves become criminally liable demonstrates that the justice system is failing some of Hong Kong's most vulnerable people.

However, PathFinders remains optimistic that this situation can be improved by continued, concerted and collaborative efforts between all key stakeholders to ensure that no child born in Hong Kong is born in a crisis and that MDW mothers obtain effective and lasting access to justice when they have been wronged.

Reports of MDW abuse and discrimination have increased. Reports of unregistered births have also plagued the headlines and have resulted in an investigation by the Ombudsman. PathFinders is under no illusion that there are significant challenges to be overcome before the holes in the social and welfare safety net for PathFinders' babies, children and mothers, can be closed.

Based on our experience at PathFinders, we offer below a number of actionable recommendations and suggestions. Some are relatively straightforward. Some will take more effort.

In addition to addressing some of the data gaps mentioned above, PathFinders recommends that:

- 1/ Before or shortly after the arrival of migrant domestic workers in Hong Kong:
  - a/ provide MDWs with online, free, mandatory, language-appropriate information and training about their health, labour, discrimination rights and recourse options. This should include culturally appropriate information about female health and where to go for advice. It should be specified that an employer cannot lawfully require a migrant domestic worker to be forcibly given contraceptive injections against her wishes. The Family Planning Association and women's health

clinics should make their services more easily accessible and user-friendly to migrant workers, for example by opening on Sundays when most MDWs have their statutory, weekly rest day;

- b) provide employers and employment agencies with online, free, mandatory, language-appropriate information/training about their rights and obligations in relation to hiring and employing a migrant domestic worker. There should be increased publicity of employer prosecutions;
- 2) Develop a database of abusive employers and include any abusive, connected household members to prevent recidivist abusers from importing and abusing vulnerable women from overseas. Continue to increase publicity of employer prosecutions;
- 3) Develop and publish multi-lingual, government-endorsed, cross-departmental guidelines as to how best and successfully to manage the pregnancy of a MDW. This should include a specific discussion around the treatment of the live-in requirement during all statutory leaves, including specifically maternity leave;
- 4) Amend the standard MDW employment contract to include a specific reference that MDWs are entitled to statutory maternity leave and protection against discrimination under Hong Kong's labour, discrimination and criminal laws;
- 5) As for other vulnerable populations with claims or determinations pending, provide appropriate social and welfare support and victim support for victims of criminal activity who are MDWs and are required to stay in Hong Kong but who have nowhere to live and are not permitted to work while their claim is being processed;
- 6) Recategorise 'emergency' services and/or sickness to specifically allow pregnant migrant domestic workers, and their Hong Kong-born babies, reasonable access to essential medical services before, during and after pregnancy; also to encompass the specific needs of

pregnant women and newborns in accessing essential perinatal and child care and to mitigate against public contagion risks. Alternatively, ensure that a medical fee waiver is granted. A relevant comparison might be made to Hong Kong's granting of public healthcare access to refugees and torture claimants who have claims/status determination pending;

- 7/ Ensure that all children in Hong Kong receive essential vaccinations regardless of their immigration or documentary status;
- 8/ Conduct a statistical review of incidents of communicable disease contagion within MDW families and deliver corresponding policy proposals;
- 9/ Deliver cultural and gender sensitivity and awareness training to government and judicial officials and front-line staff as to how to deal with migrants and ethnic minorities respectfully, equitably and humanely and educate them about where to ask for help or to refer complex cases to when they themselves cannot deal with the issue;
- 10/ Set up a consistent approach to visa extensions for MDWs accessing Hong Kong's justice system, ideally waiving visa extension fees while civil and/or criminal claims are in process. Alternatively, allowing claimants to return to their home country and be brought back at the government's expense for court and tribunal hearings;
- 11/ Analyse and make publically available the economic savings and social value the MDW population brings to Hong Kong.<sup>4</sup>

---

<sup>4</sup> For further discussion, also see International Labour Office (2011), *Measuring the economic and social value of domestic work* Domestic Work Policy Brief No.3 (Geneva). Available from [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_156071.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_156071.pdf).

# APPENDIX

## Symposium on Labour Migration and Migratory Experiences in Asia

Co-hosted by Department of Asian and International Studies,  
International Organisation for Migration,  
and Network for Asian Migration Studies

Date: 6-7 October 2014

Venue: Connie Fan Multi-media Conference Room, City University of Hong Kong

6 October 2014

### 09:00 - 09:30 Official Opening

#### Welcome remarks

- Way Kuo, President, City University of Hong Kong
- Gloria Ko, IOM, Head of Office, Hong Kong
- Paul Cammack, Head, Department of Asian and International Studies

### 09:30 - 09:45 Coffee and Tea Break

### 09:45 - 13:00 Plenary session– Labour Migration in Asia: Policies and Advocacy

#### Chair

- Paul Cammack, Department of Asian and International Studies

#### Panelists

- Michele Ford (The University of Sydney), "Action and advocacy: movements for migrant labour rights in Asia"
- Xiang Biao (Oxford University), "Migratory movements and mobility in Asia"
- Bernardita Leonido Catalla, Consul-General of the Philippines
- Mirana Mahrukh, Consul of People's Republic of Bangladesh

#### Discussants

- Wint Mon Htun, Consul, Consulate General of Myanmar
- Yuk Wah Chan (City University of Hong Kong)
- Qoiriah Nurul, IOM Indonesia
- Gloria Ko, IOM Hong Kong

*To be followed by open discussion*

**13:00 - 14:00** Lunch

**14:0 - 17:30** **Thematic Panel –  
Labour Migrants' Welfare and its Policy Repercussions**

Chair

- **Stephen Chiu** (Chinese University of Hong Kong)

Panelists

- **Norma Muico** (International Secretariat, Amnesty International), "The role of recruiters in the trafficking of migrant workers for exploitation and forced labour"
- **Mohammad Sarwar Mahmood**, Consul-General of Bangladesh
- **Reda Manthovani** (Legal Consul, Consulate General Republic of Indonesia), "The 8-Point Agenda for Making Migration Work and Its Relation with Indonesian Migrant Worker Policy to Hong Kong"
- **Ramon Bultron** (Asia Pacific Mission for Migrants), "Crisis of Migrants, Crisis of Migration: Issues on Welfare and Policies"

Discussants

- **Fish Ip** (International Domestic Workers Federation)
- **Wayne Palmer** (Christian Action, Jordon Centre)
- **Wesley Man** (Caritas Asian Migrant Workers Social Service Project)
- **Leo Tang** (Hong Kong Federation of Asian Domestic Workers Unions)
- **Sringatin** (Indonesian Migrant Workers Union)

*To be followed by open discussion*

**18:00** **Official Reception (by invitation only)**

7 October 2014

**09:00 - 12:30** **Recap of Day one**

**Chair**

- Yuk Wah Chan (City University of Hong Kong)

**Panelists**

- Jonathan Martens (IOM), "Assisting migrants and victims of human trafficking"
- Asad Beg (EU), "EU strategy on anti-human trafficking"
- Pratana Udommongkolkul, Consul of Royal Thai Consulate-General

**Discussants**

- Hoàng Chí Trung, Consul General of Vietnam
- Mahesh Prasad Dahal, Consul General of Nepal
- Francis Teoh, UNHCR
- Mabel Au (Amnesty International)
- Adrielle M. Panares (International Social Service, Hong Kong)
- Victoria Wisniewski Otero (Justice Centre Hong Kong)

*To be followed by open discussion*

**12:30 - 13:30** **Lunch**

**13:30 - 17:00** **Thematic Panel – Health, Security and the Migration Governance**

**Moderator**

- David Haines (George Mason University)

**Panelists**

- Reiko Harima (Asian Migration Centre / Mekong Migration Network), "Integration of migrants and social cohesion in the Greater Mekong sub-region"
- Cynthia Ca Abdon-Tellez (Mission for Migrant Workers) "Advancing the promotion & protection of the rights & welfare of migrant workers"

**Discussants**

- Kay McArdle (Pathfinders)
- Alison Mackay (Justice Centre Hong Kong)
- Eni Lestari Andayani (Asian Migrants Coordinating Body)
- Archana Kotecha (Liberty Asia)
- Justin Murgai (Christian Action, Chungking Mansions)

*To be followed by open discussion*

**Closing Ceremony**

