



Malaysia vs Hong Kong

Employers' Perception and Attitudes Towards *FOREIGN DOMESTIC WORKERS*

Introduction

The systematic gross violations of foreign domestic workers (FDWs) fundamental rights are a direct consequence of them not being recognised as workers and therefore not protected under most national laws. The Malaysian Employment Act 1955 addresses FDWs as “servants”. FDWs do not have the rights for a weekly day off, no annual leaves and all other labour rights entitled to other categories of workers. They can only claim for unpaid wages. It is this very policy of exclusion that has made domestic workers vulnerable to widespread abuse, including all forms of violence, particularly sexual and mental violence to the point of systemic torture, denial of rest time and vulnerable to occupational health hazards with little or no access to treatment and care.

Comparatively, the Employment Ordinance and the Employees' Compensation Ordinance in Hong Kong established labour rights for FDWs that cover rest days, holidays and annual leaves, maternity protection and rights to unionise etc.

With such distinctive legislative background for FDWs, CARAM Asia with its network members in Malaysia and in Hong Kong conducted a comparative analysis on the perceptions of employers for FDWs in Malaysia and Hong Kong.

Methodology:

On behalf of CARAM Asia, Merdeka Center conducted by telephone interviews with 283 randomly selected employers across Peninsular Malaysia and East Malaysia. Meanwhile, the Social Sciences Research Centre of The University of Hong Kong (HKU) used random digit dialing and Computer Assisted Telephone Interview (CATI) to interview the opinions of 262 employers across Hong Kong.

Attitudes towards FDWs

A majority of the Malaysian (77.4%) and Hong Kong (82.8%) employers reported that they were satisfied with the overall performance and attitude of their FDWs. While a majority of employers cited work-based performance as basis of their satisfaction, a small but significant number of Malaysian employers also reported satisfaction on the workers ability to “not go out and mix with others”.



With respect to infractions on the rights of FDWs, a plurality (31.4%) of Malaysian employers confirmed NGO reports which noted that long working hours is the most common form of abuse followed by verbal abuse (24.0%) and physical abuse (20.8%).

Reported Treatment of DWs

Verbal reprimand or scolding was the preferred form of disciplining FDWs in Malaysia but in Hong Kong, the percentage for verbally reprimanding FDWs is lower and there are also a significant number of employers who prefer verbally reminding workers instead of punishment. When asked how strongly government should take actions against employers who verbally abuse their worker everyday and use vulgar words that put people down, **42.1%** of Malaysian employers strongly disagree with punitive measures against such verbal abuse by employers.

Interestingly it was found that as the severity of the perceived infraction by FDWs increases, Malaysian employers prefer to refer the matter to third parties, either the

employment agency or the police. In the case of Hong Kong, employers were found more likely to terminate if an FDW behaved in an abusive manner towards those under their care.

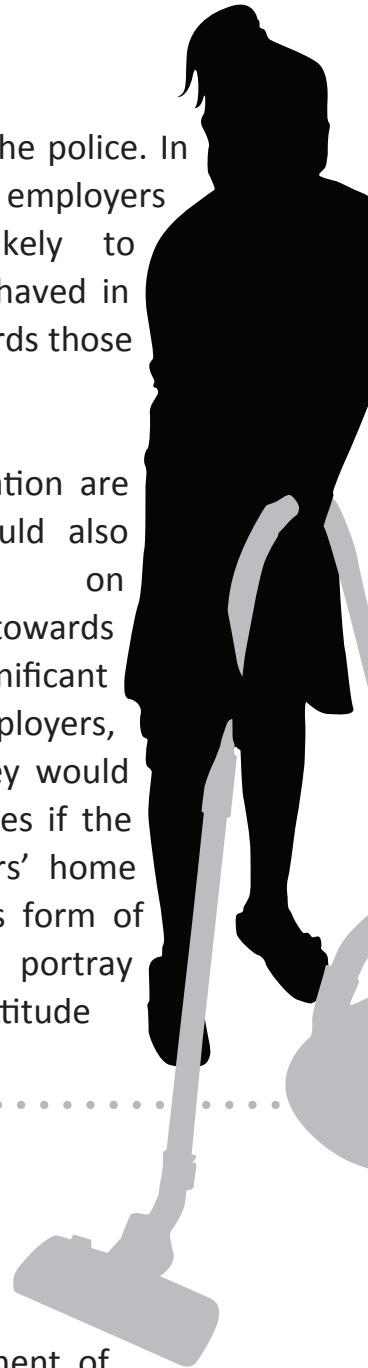
The reasons for termination are Also a subject that could also derive assumptions on employers' treatment towards FDW. For example, a significant number of Malaysian employers, 15.2% reported that they would terminate their employees if the FDWs left the employers' home without permission. This form of action seems to portray employers' possessive attitude towards FDWs.

Awareness and Knowledge of the Law

68.2% of Malaysian employers perceived that FDWs were sufficiently protected under Malaysian laws but a significant minority **22.6%** felt that they were not. In Hong Kong however, 92% of employers agreed that FDWs are sufficiently protected under Hong Kong labour laws as currently enforced.

Despite claiming otherwise, it was found that the vast majority of Malaysian employers were not familiar with laws and regulations

that affect the employment of FDWs. Only 6.3% were able to partially name the particular law concerning FDWs. On the other hand, 47% of Hong Kong employers showed awareness of the laws. The employment agencies were the primary source of information about laws on FDW both for Malaysian and Hong Kong employers, followed by the media and immigration department or labour department (in the case of Hong Kong).



Attitude towards Law Enforcement & Compliance

The survey found that Hong Kong employers generally accepted the regulations currently enforced. However the survey discovered that Malaysian employers were only acceptable to minimum regulations that relate to the employment of FDWs but were less accommodating towards rules which recognize them as ordinary workers. In fact a majority of employers accepted that FDWs should work for the purpose they were hired, be provided with accommodation, be covered by insurance and provided a copy of the work contract in their language. However a majority of Malaysian employers did not

agree to giving workers a day-off work each week nor pay allowances if workers were made to work more than 14 hours each day.

A significant minority of Malaysians (and sometimes a majority) disagreed that the government should take actions against certain forms of negative behaviour of employers. Therefore these Malaysian employers have a tendency to shun punitive measures against exploitative employers. They appeared ready to condone behaviour that deny FDWs their basic rights.

CONCLUSIONS

The survey found that the average Hong Kong employer viewed and treated their FDWs as workers, Malaysians were more likely to view them as 'servants'. It is important to note that proper laws, recognition through regulations and effective enforcement of laws tend to bring positive perceptions and understanding of FDWs as seen in the Hong Kong employers' feedback. In the Malaysian case, employers preferred to maintain status quo that has benefited them.

The authorities of both Hong Kong and Malaysia have stated goals to reduce dependence on foreign domestic workers yet appeared to have taken different strategies to achieve them. The authorities in Hong Kong adopted measures which raised the threshold on FDWs rights and imposed more stringent regulations that were more in line with its own labour laws alongside implementing procedures that eased immigration processes while the authorities in Malaysia seem to take into consideration some issues raised by NGOs and countries of origin like Indonesia but none of the proposals have been translated into regulations and amendments to the labour laws. Is this a consequence of objections raised by employers and employment agencies? The net effect of these strategies appear to be higher acceptance of Hong Kong employers towards laws that protect the FDWs but at the same time afforded them protection by freeing access to hire FDWs.

The higher compliance obligations and "perhaps better public education" of Hong Kong employers is attributed to the fact that 47% of Hong Kong employers had some knowledge of employment laws.

The alarmingly low number of Malaysian employers – 6% - with knowledge of the law indicated that employers were not adequately informed of FDWs legal rights and employers' responsibilities. Despite their lack of knowledge of the law, around one in five Malaysian employers believed that their national laws protected FDWs, while 53% believed that both employers and FDWs were (presumably equally) protected. Another "disturbing insight" was the finding that more than half of Malaysian employers disagreed that the government should punish employers who made their FDWs work for more than eight hours without rest in a day (currently FDWs work 14 hours per day without rest days).

Recommendations

The results of the surveys along with additional feedback from employers in Hong Kong indicates that greater legislative protection for FDWs in Hong Kong had a positive impact on employers' respect for their labor rights as well as produced positive perceptions and attitudes towards their FDWs.



1 Malaysia should amend the existing Employment Act to change the term of "servant" to "domestic worker" in order to recognize domestic work as work. The government ensure that FDWs are no longer excluded from the rights given to all other category of workers such as weekly day offs, holidays, annual leave entitlements and all other labor rights



4 Host countries should develop a mechanism to enable the prosecution of employers and agents who hold on to the passports of the workers in accordance with the Malaysian and Hong Kong legislations. Passports or any other personal documents should not be kept for safekeeping by any other person.

Due to the specific nature of domestic work and conditions for FDWs, there is a need to have a standard contract for all FDWs regardless of their nationality. Hong Kong has such a standard contract in place but not for Malaysia. In order to ensure the terms stipulated in such standard contracts are enforceable by law, such contract should be attached as an appendix to the Employment Act which is the current legal framework in South Africa. In the Malaysian context some of the proposed terms were included in recommendations made by the Malaysian Bar Council, which among others include stipulating their scope of work, the place of the FDW's employment, duration of the contract with date of commencement, basic monthly salary, working hours with rest periods, and rest days. Further details of the Bar Council's recommendations are attached as Appendix II below.



Authorities in the FDWs' countries of origin must review the role of agencies at all levels and control the cost accrued that are transferred on to workers. While the governments of Malaysia and Hong Kong must monitor to ensure fees that are already paid by employers are not charged again to the worker.



Both governments of origin and destination countries should consider to establish a ceiling on placement fees to avoid the problem of debt bondage and excessive profiteering by recruitment agencies. Currently, Indonesian FDWs' salary can be fully deducted to about six months, as payments to recruitment agencies in Malaysia. Under the Hong Kong Employment Agencies Regulations, the maximum commission that agencies can charge to an FDW is not more than 10% of their monthly salary. However, Indonesian recruitment agents in Indonesia charges much higher fees that resulted in FDWs' salaries being deducted in full for seven month. Such debt bondage led to a bonded labour situation for FDWs. It also discourage employers from changing the employment engagement.



3 There should be clear guideline for direct recruitment by employers without the involvement of agents. Where agencies are used, they should be regulated in accordance with the ILO Private Employment Agencies Convention, C181, 1997. The policy governing employment agencies should ensure that the rights of FDWs are protected and it should not place FDWs into conditions of debt and labor bondage.



CARAM Asia is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations. It's a regional network of NGOs and CSOs across Asia that addresses the issues of migration and health.

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