

Malaysia vs Hong Kong

**Employers' Perception and Attitudes
Towards
FOREIGN DOMESTIC WORKERS**



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Background

- ▶ **CARAM Asia's National and Regional Advocacy**
- ▶ **About Tenaganita**
- ▶ **About St. John's Cathedral HIV Education Centre**



Background

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 of, 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, Hong Kong is one of the few places in the world that grants most of the fundamental labour rights to FDWs. The Employment Ordinance and the Employees’ Compensation Ordinance 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. There are over 300,000 FDWs in Malaysia while there are over 200,000 FDWs in Hong Kong. Almost all are women.

For over a decade, the CARAM Asia network has been advocating for legislative protection for FDWs in the Asia Pacific region including active work with its members in Malaysia, Hong Kong and other countries where FDWs originate from, such as Indonesia, Philippines, Cambodia, Sri Lanka, Bangladesh and India. The outcome of this comparative analysis of employers’ perceptions towards FDWs founded on the lack of legal protection in Malaysia and the relatively better protection in Hong Kong; will feed into CARAM Asia’s broader advocacy in the region to call for greater legislative protection. We seek to understand how legislative protection influences employers’ attitude and perceptions towards FDWs.



RECOGNISE DOMESTIC WORK AS WORK!

CARAM Asia's national and regional advocacy

CARAM Asia is a regional network in Special Consultative Status with the Economic and Social Council of the United Nations. It is an open network of NGOs, trade unions and CBOs, consisting of 38 members covering 18 countries in Asia and the Middle East. Visit www.caramasia.org for more information on CARAM Asia. At the start of the millennium, the network organised a series of national consultations with FDWs themselves, advocates and government officials across the Asia Pacific region such as in Malaysia, Pakistan, Thailand and Taiwan.

The national consultations led to a multilateral regional summit on Foreign Domestic Workers in Colombo, Sri Lanka in August 2002. The summit culminated in the adoption of the Colombo Declaration outlining the rights of foreign domestic workers by the 132 participants from 24 countries which included migrants, government representatives, NGOs and UN representatives.

FDWs are housebound workers. It is a daunting task to organise FDWs. Therefore, taking into consideration all these complexities, CARAM Asia decided to embark on a public campaign for the recognition of domestic work starting with the demand for a weekly paid day off for FDWs.

An elaborate campaign as a living document that activists in their organizing toolkit reflects the concerns of FDWs as former FDWs were part of the production team. To ensure wider usage of the toolkit, the toolkit was translated into 7 different national languages of FDWs in the Asia region.



On 1st of May, 2007 the Campaign Toolkit for Foreign Domestic Workers was launched in Indonesia, drawing a plurality of stakeholders involved in the migration of women for domestic work. During the same time after the launch, that CARAM Asia also initiated the formation of a coalition of 5 regional NGOs sharing the same vision named the United for Foreign Domestic Workers' Rights (UFDWRs) bringing together the strength and resources of 4 other regional network, namely the Asia Pacific Forum on Women, Law and Development (APWLD), Asia Pacific Mission for Migrants (APMM), Mekong Migration Network (MMN) and the Global Alliance Against Trafficking in Women (GAATW).

In 2007 a regional campaign for the recognition of domestic work as a socio-economic activity was launched at the ASEAN Civil Society Conference (ACSC) in Singapore with the United for Foreign Domestic Workers' Rights (UFDWRs). At the same time, CARAM Asia also kick started its campaign "One paid day off a week" under the overarching goal of "Recognize Domestic Work as Work" for FDWs at national level with coordinated multi-stakeholder activities held during Labour Day or International Migrants Days across countries in Middle East, North, South and South East Asia.

The 2010 and 2011 International Labour Conference (ILC) will mark the possibility for a new international standard for Domestic Workers. Only International Labour Organisation's (ILO) tripartite members, namely trade unions, governments and employers associations can have a place at the ILC to vote for a new international standard and decide how binding the standards will be on state signatories. Prior to these two years, CARAM Asia had actively lobbied trade unions and governments to support a binding new international standard for DWs with comprehensive protection to FDWs.

Although NGOs are not ILO members, CARAM Asia found ways to intervene in the process through building partnership with trade unions. CARAM Asia members are the sole non-trade union groups present at the International Trade Union Confederation (ITUC) Asia Pacific's Regional Conference on Domestic Workers. The regional conference held from 14 to 15 October, 2009 in Kuala Lumpur developed Conclusions and Recommendations on Domestic Workers that was adopted by the ITUC General Council meeting in November, 2009. The recommendations made jointly had been submitted by trade unions to the ILO Governing Body. By 2010's ILC, CARAM Asia together with the Malaysian Trade Union Congress (MTUC) joined other ILO tripartite members in their debate for a historic international standard for DWs. Hence directly influencing and lobbying for better international recognition of rights for DWs which should eventually set the standards for national legislative change to confer to.

The Committee on the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW) has developed a draft General Comment (GC) on Migrant Domestic Workers (MDWs) in 2010. CARAM Asia had also given our feedback to the draft content to the United Nations Development Fund for Women (UNIFEM). UNIFEM then consolidated feedbacks from all NGOs working on this issue and submit them to the secretariat for the ICRMW. The new General Comment (GC) on Migrant Domestic Workers was adopted by December, 2010.

**More Information about CARAM Asia can be found at
www.caramasia.org**

Tenaganita is a Malaysian women and human rights organization that protects and promotes the rights of women, migrants and refugees so that they can achieve their full potential in society. Our vision is for a just, free and democratic society where all are equal human beings with dignity and rights.

The organization was founded in 1991, and born out of the struggles of women workers in the plantations and industrial sectors to gain their rights as workers; for decent wages, decent living and to stop discrimination and gender based violence.

Since then, Tenaganita's scope has grown in leaps and bounds and today, we address issues of exploitation, discrimination, unequal treatment violence not just against women, but also refugees and migrant workers and modern day slavery.

Currently, the Programs cover the following areas: Anti-Trafficking in Person (ATIP), Migrant & Refugee Rights Protection (MRRP) and Business Accountability & Responsibility (BAR). We work with various migrant communities both documented and undocumented, we reach out to vulnerable groups like the sex workers, trafficked women and children, refugees and plantations workers and other stakeholders like the business community for accountability .

The activities conducted by Tenaganita are outreach and awareness building, legal support and services, peer leaders development and strengthening of migrant associations and advocacy at all levels.

Tenaganita's Head Office is located in the Malaysia capital of Kuala Lumpur with a branch office on the Penang island.

**We can be reached at
www.tenaganita.net.**



About St. John's Cathedral HIV Education Centre

The HIV Education Centre of St. John's Cathedral (Anglican Church) was the first faith-based institution to undertake the AIDS ministry in Hong Kong. The Centre was established in 1995, with the goals of raising AIDS awareness amongst the general public, and of helping create an AIDS free society for our generation.

When the Centre was first established, its main service was to provide a safe place where people could easily get access to AIDS-related information and make initial enquiry about how HIV was transmitted. Over the years, our services have completely changed to meet the changing nature of the AIDS epidemic and its impacts on people's lives. Starting from 1998, the Centre began to develop reproductive health services for local women and new arrivals from Mainland China. Besides, we have also worked with local schools to educate young people on sex education and their reproductive health.

As we see the needs of ethnic minorities and Asian migrant workers are not covered locally, in 2004, the Centre took another step by providing reproductive health programmes for this neglected population. A series of activities such as health talks, workshops, outreaching activities, publishing educational materials and the annual AIDS festival have been developed. Today, we educate our clients on reproductive health and AIDS awareness, as well as concepts of equal opportunities, human rights and community integration.

At the international level, the Centre combines the energies and resources with many international women's groups, faith-based organizations and UN agencies to aggressively address the reproductive health and rights of people living with HIV and AIDS. Together, we have worked on many projects including interfaith dialogues, sharing experiences and resources at international conferences and conducting research activities.

Scope of Services

1. Inter-faith cooperation
2. Youth & Sex Education
3. Reproductive health Project for Asian Migrant Workers and ethnic minorities
4. Regional cooperation and research on migration and health

Membership with other networks or organisations:

1. Asian Interfaith Network of AIDS (AINA)
2. CARAM Asia
3. International Migrant Alliance (IMA)
4. World Council of Churches (WCC)
5. Hong Kong Coalition of AIDS Service Organizations (HKCASO)
6. Hong Kong Coalition of Service Providers for Ethnic Minorities

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Executive Summary

INTRODUCTION

This report covers the analysis and discussion of the findings of surveys carried out on behalf of CARAM Asia. The surveys represent a structured process to canvass opinions of Malaysian and Hong Kong employers of foreign domestic workers (FDW) regarding their understanding about regulations and treatment of FDWs.

METHODOLOGY

The Malaysian component of the survey was carried out between 12th March and 11th April 2010 by Merdeka Center on 283 randomly selected employers across Peninsular Malaysia and East Malaysia. The survey was conducted by telephone interviews. The Hong Kong component of the survey was carried out by the Social Sciences Research Centre of The University of Hong Kong (HKU) between 17th March and 8th April 2010. By using random digit dialing and Computer Assisted Telephone Interview (CATI), the implementer, the Social Sciences Research Centre of HKU contacted and interviewed the opinions of 262 employers across Hong Kong.

RESPONDENTS' PROFILE

- ✓ A majority (63.6%) of the **Malaysian** employers responding to the survey were female and the rest (36.4%) were male.
- ✓ In terms of geographic distribution, 55% were from the central region of Kuala Lumpur and Selangor while 35% were from the rest of the country. Another 10% of respondents were from East Malaysia.
- ✓ In **Hong Kong**, a large majority of respondents were female (74.4%) and 25.6% were male.

SUMMARY OF THE FINDINGS

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 FDWs

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 and 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 reveals significant differences between the attitudes of Hong Kong and Malaysian employers in their attitude towards FDWs. It was 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. This view pervaded in their attitudes towards treatment of the FDWs and also likely influenced their reservations about accepting proposals towards regulations that afford better protection of the rights of FDWs.

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). These views correspond with the "public outcry" against a CARAM Asia led campaign for one rest day per week in Malaysia since 2007.

2

Review of Laws, Policies & Practices

- ▶ Malaysia
- ▶ Hong Kong



MALAYSIA

Labour Laws

The Malaysian Employment Act of 1955 is the key labour law in the country for all workers. Domestic Workers are referred as “Domestic servant” in the Act which excludes them from enjoying rights guaranteed to all other workers. This concept of servant and its continued acceptance comes from how housework has been defined, understood and unrecognized. Housework is seen as unproductive within a capital centric system. Housewives have worked long hours without remuneration and remains so in Malaysia. The non recognition and maintaining the word “servant” creates a relationship of servant and master who has full control over the domestic worker and not one of employer and employee.

Domestic Workers can only invoke the Employment Act 1955 in the event of unpaid wages and/or irregular wages. The categorical exclusion of domestic workers resulted in them in being not entitled to weekly days off, holidays, overtime pay, termination benefits and other provisions stated in the law for other categories of workers.

According to the presentation made by Ravi Nekoo, a representative from the Malaysian Bar Council at the National Consultation on ILO Decent Work Agenda for Domestic Workers on 23 April, 2009, DWs are excluded from these sections in the Employment Act:

Section 12	Notice of termination of contract
Section 14	Termination for special reasons e.g. misconduct
Section 16	Employees on plantation estates to be provided with minimum number of days’ work in each month.
Section 22	Limitation on advances to employees.
Section 61	Duty to keep registers
PART IX	Maternity protection
PART XII	Rest days, hours of work, holidays and other conditions of service
PART XIII A	Termination, lay-off, and retirement benefits

The other provisions of the Employment Act which applies to foreign domestic workers (FDWs) are listed by the Malaysian Bar Council’s Press Release 8 July, 2009:

Section 18	Wage Period (shall not exceed one month)
Section 19	Time of payment of wages (i.e., not later than the 7th day after the last day of any wage period) If we consider the provisions for both Section 18 & 19, FDWs should be paid monthly by the 7th day after 1 month. Yet, it is found to be a practice among some employers to pay workers towards the end of their work contract. From, from the experience of Tenaganita, a Malaysian NGO which takes up foreign domestic workers abuse complaint cases found that many of them were paid towards the end of their 2 year work contract.
Section 24	Lawful Deductions (Deductions shall not exceed 50% of the wages earned – 24(8)). In reality most foreign domestic workers are not paid at all for the first six month of work as their salaries are deducted to defray employment agency fees.

Section 69	Director General's power to inquire into complaints (Dispute relating to wages or any other payment in cash due to the employee under the terms of the contract of service or the Employment Act)
Section 65	Powers of inspection and inquiry (Director General shall have power to enter without previous notice any place of employment and to make an inquiry)
Section 79	Powers of Director General to investigate possible offences under the Act
Part XVII	Offences and Penalties (Fines not exceeding RM10,000)

Experience in Malaysia thus far showed that most of these sections under the labour law has not been enforced or monitored.

Occupational Safety and Health

1952 Workmen's Compensation Act of Malaysia excludes foreign domestic workers from receiving compensation for workplace injuries and occupational illness.

Immigration Laws

According to the Immigration Act of Malaysia 1959/60, any person found to have entered the country without valid Entry Permit or a valid Pass, on conviction, be liable to a fine not exceeding ten thousand ringgit (about USD3,125)¹ or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes. The whipping is applicable to only males.

As for any person who remained in the country upon the expiry or cancellation of their travel Permits/ Pass, if found guilty, shall, on conviction, be liable to a fine of not less than ten thousand ringgit (about USD3,125) or to imprisonment for a term not exceeding five years or to both.

In the case of FDWs who had entered and remained in the country on the basis of employment, their work permits served as valid travel documents. It is the responsibility of employers to renew work permits for their FDWs on a yearly basis. This is despite the fact that FDWs do not have the prerogative to renew work permits on their own. Employers who fail to do so face the possibility of being fined, while FDWs faced the risks of arrest, detention, fines and deportation. The FDW's cannot leave their employers as the work permit binds them to one employer only. Due to the fear that employers will cancel their work permits and render them punishable under the Immigration Act for overstaying in the country, some FDWs tolerate abusive or exploitative situations. The terms and conditions surrounding the matter of work permits for FDWs leads them to a bonded labour situation where they cannot change employers.

In the event that FDWs want to file labour dispute or access the judicial system while their work permits are no longer valid, FDWs will have to apply for special pass to stay in the country to pursue their right to redress. A fee of RM100 is charged for special pass valid for a month only (USD31.25) and renewable to a maximum of only 3 months. FDWs are predominantly poor and lack the financial resources to pay for such fees for the duration of their pursuit to seek justice. The FDW is even in a more vulnerable situation when she has not got her wages at

¹ USD1.00 = RM3.20 as at July 15, 2010

all. Through Tenaganita's experience in handling such cases, the process of filing a case until its resolution usually takes time between at least one year and up to four years. Therefore it will not only be costly to periodically renew the special pass for the duration of the case but she is forced to return home as the special pass cannot be renewed after 3 months. This abusive policy impacts seriously the FDWs access to justice. If the FDW continues to assert her right to redress, she can be fined or compounded for overstaying in spite of the fact that she has officially filed a case for redress.

The Malaysian Passport Act 1966 states that a person cannot hold another's passport, however it is a common practice that the employer retains the FDWs' passport, which is a direct violation of the Passport Act 1966. Recruitment agents encourage the employers to withhold the passports for the fear of "runaways". To date no employer has been charged under this Act. This situation places the FDW in a condition of forced confinement and risk of detention if caught by authorities in the event they step out of their employers' premises.

Criminal Justice System

The Malaysian Penal Code protects the foreign domestic workers against physical and sexual abuse, however very few perpetrators are brought to court to be charged and sentenced. Workers' inability to get out of their confined environment makes it impossible for them to raise their complaint to anyone and so they suffer in silence. Moreover, the time for police investigation, bringing cases to court and for courts to attend to perpetrators' appeals has been known to drag on for years and incurring high costs for FDWs to remain in Malaysia. For example, a well known case of abuse on an Indonesian FDW by the name of Nirmala Bonat has been dragged on for almost 8 years and the employer is still filing appeals with the courts while Nirmala cannot migrate to work again pending the final determination of the matter by the appellate court. She also has to bear the costs of paying fees for temporary stay in the country and the travel in and out of the country each time when there is a hearing at court.

Anti Trafficking in Persons Act

Malaysia, in spite of passing the Anti Trafficking in Person Act in 2007 and bringing it into enforcement in February 2008, has yet to address or even look at the whole dimension of recruitment, placement and employment of domestic workers as a form of trafficking in labour. The US government in its status report on Trafficking in Persons 2009² has included domestic work in its current reality as servitude and a form of bonded labour³. In 2009, the Malaysian government was placed on Tier 3, which is the lowest tier. This was the second instance that Malaysia was placed on Tier 3. According to the report, "The Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so... it has yet to fully address trafficking in persons issues, particularly labour trafficking in Malaysia." The report noted that the Memorandum of Understanding between Malaysia and Indonesia authorizes Malaysian employers to confiscate and hold the passport of the domestic employee throughout the term of employment and FDWs are subjected to 14 to 18 hours of work a day, seven days a week. Such treatments constitute labour trafficking in the US definition.

2 The US Trafficking in Persons Report 2009 can be found at <http://www.state.gov/g/tip/rls/tiprpt/2009/index.htm>
3 Tenaganita, Domestic Workers' Campaign Toolkit, 2009.

Policies

In 2010, the Malaysian labour department published a handbook for the recruitment of FDWs.⁴ Among interesting items that departs from the omission from the pre-existing labour laws, the handbook for the recruitment of FDWs states that FDWs should only be required to do housework as stated in the contract and that FDWs should not be required to work in employers' business premises such as cooking in hawker stalls etc.

However the handbook also states that it was mandatory for workers to live in with employers, which places FDWs under condition of greater control by employers.

Prohibition for Sexual and Reproductive Rights

Malaysian regulations prohibit FDWs from getting pregnant, If found so, FDWs will be deported and stand to lose migration costs paid to agencies while not given the chance to continue employment. The labour department's handbook for the recruitment of FDWs state that it is the responsibility of the employer to ensure that the FDW do not marry anyone from any nationality while still employed. In addition, the FDWs work permit also prohibits them from getting married while employed. This terms and conditions represent a direct contravention with the principles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which Malaysia has ratified in 1995.

Restriction in Movement

The work permit issued by the Malaysian Immigration department does not allow the domestic worker to change place of work or employer. The regulation places the worker in a situation where they remain bonded to the same employer and forces them to tolerate abusive situations in order to keep their job. Given the prevalent practice of employers or agents to hold on to a domestic workers' passport, FDWs who attempt to escape from their place of work, will face the risk of arrest and detention for staying in the country without valid travel documents.

Current recruitment fees in Malaysia costs employers approximately RM8,000 (USD2,500) per worker leading to 6 to 7 months of full salary deductions on the FDW. This places the FDW on a debt bondage situation. Additionally, employers will be fined RM250 (USD78) by the Immigration Department if a worker runs away from employer's home. At the same time, employers will have to bear the costs for recruiting a new worker. The fear of incurring additional recruitment costs, paying fines for FDWs who run away, and time spent reapplying for a new FDW, lead employers to forbid FDWs from leaving their place of work. This situation is also the primary cause for Malaysian employers to tend to hold on to the FDWs' passport.

The situation further aggravates as over 90% of the foreign domestic workers work without a day off for a whole year. Held in captivity, with no off days and wages fully deducted to repay recruitment costs for more than 6 months, the domestic worker is in a bonded labour or trafficked situation.

⁴ A copy of the handbook can be found at the following
URL: <http://jtksm.mohr.gov.my/images/stories/Penerbitan/buku%20panduan%20PRA.pdf>

Employers' Income Requirement

Malaysian immigration policy stipulates a much lower qualifying income for employers of Indonesian FDWs compared to employers of Filipina FDWs. The minimum annual employers' income level to employ Indonesian FDWs is RM36,000 (USD11,250). This is about one-third of the RM120,000 (USD37,500) minimum annual income of a Filipina's employer. These variances reflect the differential treatment for FDWs in that Indonesian FDWs can be employed at one third of the wages paid for a Filipina FDW by employers from a lower income group. In reality however, Indonesian FDWs shared commonality with Malaysian language and cultural background and thus also has similar skills with the Filipinas.

Deportation of Pregnant Women & HIV Positive Migrant Workers

The Malaysian government has a mandatory health testing policy that leads to deportation of workers tested positive for HIV, tuberculosis, pregnancy and other illnesses. Under current immigration policies, migrant workers who becomes pregnant or tested to be HIV positive is subject to immediate dismissal; her work permit is automatically revoked. On the contrary, in the current Malaysian scenario, employers can not dismiss a Malaysian worker on the grounds of pregnancy, yet such policy is imposed on FDWs.

As the International Guidelines on HIV/AIDS and Human Rights notes, "There is no public health rational for restricting liberty of movement or choice of residence on the grounds of HIV status. Any restrictions on these rights based on suspected or real HIV status alone, including HIV screening of international travellers are discriminatory and cannot be justified by public health concerns⁵. Furthermore it must be recognized that HIV positive migrant workers can remain productive for many years and contribute to the social, economic and cultural fabric of both destination and origin countries⁶. The policy of mandatory HIV testing on migrant workers contravenes with international standards such as the ILO Code of Practice on HIV/AIDS and the World of Work.

Country of Origin Policies

The agreements between the Malaysian government with other countries show differential treatment for FDWs of different nationalities. Some countries such as the Philippines stipulates standard contracts that state minimum wage and other terms for the employment of workers from their country. If Malaysian employers signed work contracts according to the terms contained in the standard contracts from origin countries, and if the terms do not contravene with Malaysian laws then, these employers can be charged in courts if they breach the contract. However Malaysian employers cannot be charged in Malaysian labour courts for not following such policies from workers' origin countries or the conditions mentioned in MOUs, since these policies are not covered under Malaysian labour laws.

The Malaysian government signed a Memorandum of Understanding (MOU) with the Indonesian government in 2006 and had been in discussion since 2009 to sign a new MOU. The widespread view is the 2006 MOU had failed to protect the rights of FDWs as it does not stipulate hours of work, specific numbers of rest days, holidays and rights to stay in the country while seeking justice for abuse or exploitation without paying immigration costs.

5 UNAIDS, International Guidelines on HIV/AIDS and Human Rights (2006 consolidated version), 127.
CARAM Asia, State of Health of Migrants 2007: Mandatory Testing (Kuala Lumpur: CARAM Asia Berhad, 2007), p. 11, http://www.caramasia.org/reports/SoH2007/SoH_Report_2007-online_version.pdf

6 CARAM Asia, State of Health of Migrants 2007: Mandatory Testing (Kuala Lumpur: CARAM Asia Berhad, 2007), p. 11, http://www.caramasia.org/reports/SoH2007/SoH_Report_2007-online_version.pdf

The MOU state that “The Employer shall, as reasonably practicable, and if requested by the Domestic Worker, assist the DW to open an account with any Malaysian financial institution.” In reality, many employers decided to open joint accounts with their FDWs which render them free access to withdraw money from the accounts at will. Such practice further denied FDW’s their basic right to have control and independent access to their hard earned income. The absolute control over their finances, puts the FDWs at the mercy of their employers.

Countries such as Indonesia, Philippines, Cambodia, Sri Lanka and India provide standard employment contracts for the recruitment of their nationals as foreign domestic workers in Malaysia. Below are some general terms stated in these contracts:

Rest Day	In the Philippines, Sri Lankan and Indian contracts, there is a provision for a paid weekly rest day. There is no such provision in either the Cambodian or Indonesian contract.
Hours of work	In the Indian contract, the monthly salary is for working an 8 hour day. The Philippines contract does not specify hours of work but states that the worker must be provided with continuous rest of at least 8 hours a day.
Passport and work permit	The Philippine contract states that the passport with the work permit are to remain in possession of the FDWs.
Variations to terms in contracts	Any variations to the Indian standard contract can only be made with the approval of the Indian High Commission. If not, the original term applies.
Visit to the workplace	In the Indian contract, employers has to accede to the request of the Mission officials to visit the workplace in order to look into the welfare of the Indian workers.
Employers’ Bond	In the Indian contract, employers are required to place a bond of RM9,000 (USD2812.50) with the Indian High Commission for each domestic worker employed.

Common Practices

Since Tenaganita started its 24 hours DW Action Line from June 2004, the organization had handled 286 FDWs cases as of July 2010. Out of these 286 FDW cases handled by Tenaganita, only 1 perpetrator had been charged and sentenced.

These 286 cases all involved 2288 forms of human rights violations. These human rights violations include non payment of wages, wrongful deductions, withholding of passports, physical abuse, sexual harassment and rape, psychological abuse, threats, long working hours, no off day, confinement, work in two places, employment of children, no proper food provided, various health problems with no treatment and not allowed to conduct religion obligations as well as denied access to family.

Every single case that Tenaganita received comes with multiple complaints and usually for one particular case there are 7-10 complaints and rights violations.

The minimum age for FDWs to be employed in Malaysia is 21 years old, however in the course of Tenaganita's work it has encountered many recruitment agencies that falsify the stated age of the worker on the passport to be above 21 years old resulting in a number of children being recruited as domestic workers. In one instance, a child as young as 14 years old was found to be recruited. Overall 20% of the cases handled by Tenaganita involved the employment of minors as FDWs.

The Malaysian government has stressed that migrant workers who are ill treated or denied benefits under the Employment Act 1955 or contractual terms and conditions can submit their complaint to the labour department. The long due process with the courts and the high costs in staying legal with the special pass, RM100 monthly (USD31.25), makes it very difficult, frustrating and sometimes impossible to seek redress. In some instances, labour officials refuse to accept a complaint from persons who are unable to produce their passport as their passport is held by employers. Even if the FDW wins her case, there is no guarantee that she will be fully compensated for all costs incurred or the award will be respected. In most cases, FDWs compromise in their negotiations with employers to only receive partial payment from the unpaid wages due to them because FDWs do not want to have their labour dispute dragged on longer.

Agencies Blacklisted

In the past, there had been agents who were blacklisted by the immigration department for various immigration offences, yet agents can reapply for their licence to operate upon paying a fine. Therefore, many agents who had been blacklisted resume operations after the low fines are paid or even register as another company.

Media and Other Sources of Information

There is no advertisement of information or public announcements made through the media regarding the rights for FDWs and obligations for employers. On the other hand, advertisements by recruitment agencies make promises of low hiring costs and highly skilled docile domestic workers.

Planned Policies and Reactions

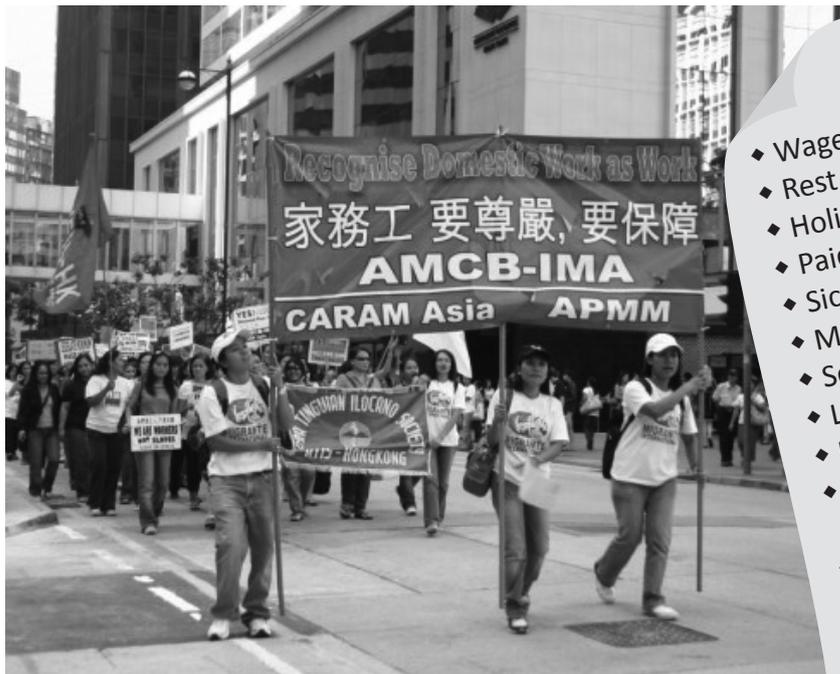
Since 2007, CARAM Asia, and its local member, Tenaganita together with the Malaysian Trade Union Congress and other faith-based organisations in Malaysia have been campaigning for a weekly paid day off for FDWs. In 2009, the Malaysian government announced that they would amend the Employment Act to make it mandatory for FDWs to have a weekly day off from work. However, the move triggered a public outcry from employers and politicians.

Malaysian media reports state that employers feel that there will not be anyone to do the household chores if the FDW is on leave or they suspect that FDWs will run away on their day off or be influenced negatively by friends. Perhaps reflective of the general attitude towards FDWs, a senior politician from the governing coalition also commented that if FDWs are given a day off, they would flood the city centre on Sundays and portray "an image of an alien city to Malaysians". It underlies the mentality that FDWs are only workers to meet the needs of the Malaysian employers. FDWs are not perceived as humans with psycho-social needs to have a rest day, meet with their friends and to have a social life. In fact, every often, their engagement in social activities are perceived as social ills. Letters by employers written in local newspapers objecting to the proposed mandatory weekly day off policy to FDWs reveal employers' fear that "workers will run away with boyfriends and get pregnant".

HONG KONG

Labour Laws for All Employees, Including FDWs

In Hong Kong, foreign domestic workers (FDWs) are considered as employees. Employment laws that are applicable to local employees in general are also applicable to foreign domestic workers. Among the employment laws, **the Employment Ordinance**, Chapter 57 is the main piece of legislation governing conditions of employment in Hong Kong. It covers a comprehensive range of employment protection and benefits for all employees working in Hong Kong. This ordinance set the rights of employees on:



- ◆ Wage Protection
- ◆ Rest Days
- ◆ Holidays with Pay
- ◆ Paid Annual Leave
- ◆ Sickness Allowance
- ◆ Maternity Protection
- ◆ Severance Payment
- ◆ Long Service Payment
- ◆ Employment Protection Contract
- ◆ Termination of Employment
- ◆ Protection Against Anti-Union Discrimination

Another employment law, **The Occupational Safety and Health Ordinance** Chapter 509 provides for the safety and health protection of employees in all workplaces, both industrial and non-industrial. This Law protects all employees (i.e. including FDWs regardless of documentation status) in the event of an incident at work requiring medical attention.

In addition to those 'universal' ordinances applicable to every employee in Hong Kong, under the current policy, all FDWs, (regardless of their nationality) and their employers are required to sign a legal document '**Employment Contract For A Domestic Helper recruited from abroad**' (Appendix I) which lists all the additional conditions that both the employers and FDWs need to comply with. Legal actions can be taken by both parties and/or the government institutions if any party violates the employment ordinances and/or the conditions listed in the contract. The intention of the additional conditions listed in the contract is to ensure that the FDWs have reasonable working and living conditions.

Special Labour laws for FDWs (refer to Standard Employment Contract Form 1D 407)

In Hong Kong, FDWs are the only group of employees who are guaranteed a minimum monthly salary by law, which is known as the Minimum Allowable Wage (MAW). Currently, the government is in the process of introducing a ‘Statutory Minimum Wage’ Legislation which is proposed to cover all employees with some exemptions for certain categories of workers. There are debates whether live-in domestic workers (ie FDWs) should be excluded or not.

In Hong Kong, FDWs are also the only group of employees of whom the employers are responsible for any medical expenses incurred during the contract period, whether or not the illness or personal injury is due to their employment conditions.

In sum, it states clearly in the laws of Hong Kong that a foreign domestic worker is entitled to:

A minimum monthly wage (MAW)	HK\$3,580 (USD460) ⁷ per month at the moment;
Rest days	one rest day for every period of seven days; a rest day must be a continuous period of at least 24 hours;
Statutory holidays	12 days each year;
Paid annual leaves	seven days’ paid leave if FDWs have worked for the same employer for at least 12 months; this increases progressively according to the length of service; up to a maximum of 14 days;
Home leave	FDWs should return to their place of origin, at the expense of their employer, for a vacation of not less than seven days before commencement of the new contract. FDWs must reach an agreement with their employer before signing the contract whether the vacation will be paid for or not;
Sickness allowance	the daily rate is a sum equivalent to four-fifths of average daily wages for sick leave of not less than four consecutive days, provided that FDWs have accumulated the number of paid sickness days and their sick leave is supported by appropriate medical certificate;
Maternity leave	10 weeks’ leave for a female foreign domestic worker (who had been employed for at least four weeks immediately before the commencement of maternity leave). She must give notice of pregnancy to the employer. She can also be eligible to maternity leave pay, a daily rate equivalent to four-fifths of the average daily wages if she satisfies certain conditions;
Severance payment	equivalent to two-thirds of FDWs last month’s wages for each reckonable year of service if the FDW satisfy certain conditions;
Long service payment	equivalent to two-thirds of FDWs’ last month’s wages for each reckonable year of service if they satisfy certain conditions;

⁷ Exchange rate: 1USD = HK\$7.79

Accident/injury compensation	if FDWs are injured or incapacitated in an accident arising out of and in the course of their employment, or if FDWs suffer from a prescribed occupational disease, the employer is liable to pay compensation.
Provision of medical treatment	the employer is responsible for any medical expenses incurred during the contract period, whether or not the illness or personal injury has arisen out of employment. But if FDWs leave Hong Kong out of their own volition and for their own personal purposes during the contract period, FDWs have to bear their own medical expenses while they are outside Hong Kong.
Free travel	The employer should provide for the travel of FDWs from their place of origin to Hong Kong and, upon termination or expiry of the contract, free repatriation back to their place of origin, as well as a daily food and travelling allowance in both circumstances;
Food allowance	must be paid to FDWs if no food is provided by their employer. At the moment, the allowance is not less than HK\$740 (USD95) per month.

The contract also states that an employer who underpays wages commits an offence under the Employment Ordinance and is liable to a maximum fine of HK\$350,000 (USD44,929) and 3 years' imprisonment.

Anti-discrimination Laws

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was extended to Hong Kong, at the consent of the People's Republic of China and the United Kingdom of Great Britain and North Ireland, on 14 October 1996. Besides, Hong Kong has an obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to prohibit and eliminate racial discrimination. By virtue of Article 39 of the Basic Law, Hong Kong also has an obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race or other status.

The Equal Opportunities Commission (EOC) is a statutory body set up in 1996 to implement the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) and the Race Discrimination Ordinance (RDO). It is unlawful under the SDO to discriminate against a person on the grounds of sex, marital status or pregnancy. Under the DDO, it is unlawful to vilify a person with a disability in public, or discriminate or harass a person on the ground of disability. Under the FSDO, it is unlawful to discriminate a person on the ground of family status. Another piece of legislation is the Race Discrimination Ordinance (RDO) 2008. This is an anti-discrimination law to protect people against discrimination, harassment and vilification on the ground of their race. Under the RDO, it is unlawful to discriminate, harass or vilify a person on the ground of his / her race. In Hong Kong, foreign domestic workers are regarded as ethnic minorities and thus the above mentioned anti-discrimination laws also apply to them.

Rights to File Cases to All Government Institutions and Courts, Rights of Forming Unions and Taking Collective Actions

Like any local resident, FDWs can file cases and make complaints to any government institutions and file legal cases to any level of courts. The Crimes Ordinances and Offences Against the Person Ordinance can be applied to protect FDWs against violence. Regardless of their nationality, the FDWs are eligible to apply for Legal Aid Scheme provided by the Government. FDWs' rights of forming their own trade unions and take collective actions such as demonstrations and marches are protected by laws.

Constitutional and Mainland Affairs Bureau, Race Relations Unit

The Race Relations Unit (RRU) of the Constitutional and Mainland Affairs Bureau is providing a number of support services to facilitate the integration of settled and newly arrived ethnic minorities into Hong Kong. These facilities include radio programmes on the Radio Television Hong Kong (RTHK) to provide entertainment and to keep listeners up-to-date with local affairs and government announcements. Additionally, four support service centres for ethnic minorities were established in 2009 to provide Chinese and English classes, orientation and a number of other programmes. Two community development teams for ethnic minorities provide district-based services including mutual support groups, tutorials, orientation programmes and enquiries of public services. FDWs are entitled to these services.

Laws Related to Passports and Personal Identity Card

Similar to Malaysia's laws, in Hong Kong, any person who possesses another person's identity documents, including the passport, is subject to criminal charges unless there are legal reasons. So neither employment agencies nor the employers are allowed to hold the passport of the FDWs, and the penalty of this criminal act is rather serious, usually resulting in imprisonment. While there were reported cases of employers taking the FDWs' passports away, this practice is considered as very uncommon. The major reason is that in Hong Kong, most government records are computerised. Soon after they arrive in Hong Kong, the FDWs have to go to the immigration department and apply for the Hong Kong Identity Card (HKID). By comparing the immigration records from the borders and the HKID application records, cases of not applying HKID cards on time are detected and government officials will go to the employers' house to investigate. So, employers cannot stop the FDWs from obtaining the HKID card.

When a FDW applies for HKID cards, the information of his/her passport is recorded and a finger print is taken and recorded. With the information kept in the Immigration Department, the FDWs can get replacement copies of their passports by presenting their finger prints to the Immigration Department and make a claim of lost. The Immigration Department will not inform the employers nor the employment agencies that a replacement is issued.

Therefore, keeping the FDWs passport is generally not considered a good option to prevent the FDW from running away. More importantly, as the supply of FDWs well exceeds the demand, the employers' consideration is generally how to recruit FDWs who have low chances of running away in the first place, rather than to prevent this from occurring through other means. An evidence of this is that at the beginning periods of introducing FDWs into Hong Kong (about three decades ago), Chinese employers preferred FDWs from Thailand as the cultural background and living habit of Thais was similar to Chinese. However, as it was considered that there were a higher proportion of Thai FDWs 'running away', employers

soon turned their preference to Filipino FDWs. At present, the proportion of FDWs from Thailand is less than 2% of all FDWs. In addition, FDWs' 'running away' does not induce legal responsibility to the employers, but keeping the FDWs' passports brings the risk of jail. Hence, while decades ago some of employers kept the FDWs' passports, it is not common in the recent decade.

Immigration Policies

The current immigration policy in Hong Kong requires FDWs to sign the '**Employment Contract For A Domestic Helper recruited from abroad**' before they are allowed to enter Hong Kong and start their work. Some FDWs and their advocates considered this a restriction of the human rights of freedom of movement. FDWs are also excluded from the right to apply for permanent residence after seven years of residing in Hong Kong, which is granted to most legal migrants. Some advocates of FDWs considered this as injustice to FDWs.

Policies Related to Termination of Contracts

In Hong Kong, except in cases where a contract is renewed with the same employer, FDWs usually can only stay for two weeks after the contract had ended. This two-week rule applies to all FDWs who have either finished their contract or are prematurely dismissed. Under the two-week rule, they can stay in Hong Kong for two weeks after their contracts are expired or terminated. If they have legal cases, they can extend their stay. However, during the period of the court case, it is illegal for the FDW to be employed. Every two weeks, they would be required to go to their consulate and extend their visas. The resolution of these labour disputes may take as much time from six months to one year⁸. During this long period, FDWs would have no place to stay, no formal employment status and would be forced to rely on their savings to pay for their living expenses. Thus, in many cases, FDWs end up not pursuing their labour dispute cases and opt to return to their countries of origin.

In another aspect, if FDWs are unhappy with their current employment and quit their jobs or are dismissed by their employers, they will only have two weeks to find a new employer in Hong Kong unless they file legal action. Many FDWs are unhappy with this arrangement as they may not be able to find new employers in such a short period. However, while FDWs can only stay in Hong Kong for two weeks, they can still have their names registered in the employment agencies in Hong Kong and / or ask other people in Hong Kong to help them seek new employment. When new employers are found, they can come back to Hong Kong and work again. This rule of two-weeks' staying does not mean that the FDWs must get a new job in two weeks or else the chance of working in Hong Kong again is over.

Policies to Discourage the Employment of FDWs

Since the 1998 Asian Financial Crisis, the economic growth of Hong Kong slowed down and in some years, unemployment rates increased. In order to create jobs for local labour force, Hong Kong Government developed some policies to discourage the employment of FDWs.

Policies aim to discourage the employment of FDWs only

These policies include: the introduction of a levy for employing FDWs, prohibition of providing FDWs with accommodation not inside the employers' place of residence, and families with no dependent members (i.e. young child, elder, or disabled person) not permitted to employ FDWs unless they can provide good evidence of the needs.

⁸ In one case, One FDW at Bethune House Migrant Women's Refuge (a shelter for distressed FDWs who have been terminated and pursuing labour cases) took about 3 years to finish her case.

Law enforcement to discourage FDWs involvement in non-permitted jobs

In order to reduce the chance of FDWs involving in non-permitted jobs, the standard penalty for employers of FDWs who involve their FDWs in non-permitted jobs is imprisonment. There is no penalty on the FDWs. However, if the FDWs are involved in paid jobs with employers other than the legal ones, the standard penalty for the employers is a jail term and deployment for the FDWs.

Policies that discourage the employment of FDWs as well as protecting the FDWs

To restrict the employment of FDWs as well as to ensure the employers can afford to pay the salary to the foreign domestic workers, the current policy is that only those families whose monthly family incomes are at least four times of the foreign domestic workers are allowed to hire foreign domestic workers. Employers are required to provide evidence of their financial status to the Immigrant Department of the Hong Kong government when they apply to hire foreign domestic workers.

To discourage the employment of FDWs as well as to ensure reasonable working conditions for foreign domestic workers, the employers must provide suitable accommodation within the home and with a certain amount of personal privacy for the foreign domestic workers. Also, the foreign domestic worker is only allowed to do domestic work and can only work for one family.

Policies and Practices to Encourage Reporting Illegal Treatments of FDWs to Governmental Institutions and Courts

The government has encouraging policies for reporting ill treatments of FDWs. FDWs are allowed to report to any related governmental institutions and file legal cases to any level of courts. The litigations between employers and FDWs are fast tracked in the legal process.

Non-governmental agencies and trade unions are also encouraged to help the FDWs to report illegal treatments and provide legal advice and other supports to the FDWs. Yet, as reporting the illegal treatments can result in losing jobs i.e. the incomes, very few FDWs are willing to testify against their employers.

Government Practices in Promotion of the Rights and Welfare of the FDWs

While Hong Kong government is not directly involved in the activities for the promotion of the rights and welfare of the FDWs (except in the legal aspects), non-governmental agencies (NGOs) and trade unions are eligible to apply government funding to organize activities to promote the rights and welfare of the FDWs.

Government Practices to Ensure the Recognition of Conditions of Employment

To give a clear notion of the acceptable working conditions for foreign domestic workers, both the employers and foreign domestic workers are required to sign a standard employment contract set by the Hong Kong Government. A copy of this contract is required to be sent to the Immigration Department of The Hong Kong Government. This contract lists all the details of employment conditions that the employers are required to provide for the foreign domestic workers (The contract is attached in Appendix I). Both parties are required to sign the contract and expected to have understood its terms. However, in reality, not all employers have read the contract carefully before they signed it. The government also make announcements and advertisements broadcasted to the public via mass media to remind important points

related to the employment of foreign domestic workers, especially when there are changes in legislations and policies.

There are complaints that most government announcements and advertisements are either in English or Chinese and FDWs from Indonesia or other non-speakers may not receive the messages. As a result, a one-hour program targeted at Indonesians is scheduled on a government-funded radio channel on Sunday mornings. This program provides entertainment as well as information and receives calls from listeners.

Observations

To maintain the image of a fair and just society, the Hong Kong government tries to give FDWs as much as possible, similar legal protections to local employees. This results in better working conditions for the FDWs working in Hong Kong than most other major destination countries for FDWs.

In order to defend its image of a just society, when the Hong Kong Government enacted the policies to discourage the employment of FDWs, the restrictions are mainly imposed on the employers rather than on the FDWs. The results from these restrictions are mixed - as some enhanced the working conditions of FDWs and while other measures had indirectly reduced their employment prospects for the longer term. Generally, these restrictions had led to improvements in the working conditions of FDWs. However it is worth noting that the government's longer term intention is to reduce dependence on FDWs, but this fact is seldom communicated to the FDWs. On the other hand, with the intentions of Hong Kong government in mind, it is expected that any suggestions of practicable measures to reduce the exploitation and abuses of Hong Kong employers to the FDWs will be welcomed by the Hong Kong government.

3

Principal Research Findings

- ▶ About the Research
- ▶ Methodology
- ▶ Malaysia Research Findings
- ▶ Hong Kong Research Findings



About the Research

There are a number of research studies reporting on the abuse and exploitation of foreign domestic workers (FDWs) both in Hong Kong and Malaysia. This study seeks to complement preexisting work and provide some insight into the attitudes and mindset of the employers of FDWs. The need for such a study is necessary as they are the ones in contact with FDWs and are primarily responsible for provisioning the basic human rights such workers are entitled to. Experience has shown that even countries with more developed regulations have its fair share of employer misconduct however countries with weaker regulatory environment and protection of rights have a larger and more acute violation of rights and misconduct among employers of FDWs.

Although there are a few qualitative studies on employers of foreign domestic workers, all of them only interviewed several respondents. There is no reported scientific study with a representative sample of employers of foreign domestic workers in Hong Kong or Malaysia. Therefore, CARAM Asia decided to initiate a research and survey canvassing opinions from Malaysian and Hong Kong employers of foreign domestic workers (FDW) regarding their understanding about the treatment of FDWs and employment regulations in Malaysia & Hong Kong.

This report covers the analysis and discussion of the findings of surveys done in collaboration by CARAM Asia, St. John's Cathedral HIV Education Centre, Tenaganita and the Merdeka Center. The basic terms of reference for the assignment were as follows:

- ***Obtain an understanding of the views, attitudes and perceptions held by Malaysian and Hong Kong FDW employers towards their employees;***
- ***Undertake surveys in Malaysia and Hong Kong that reasonably provide a representative sample possible of the targeted population of FDW employers; and***
- ***Compare the results of the research carried out in Malaysia and Hong Kong.***

Methodology

MALAYSIA

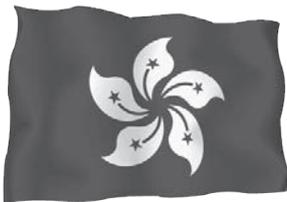


The survey for Malaysia part was carried out between 12th March and 11th April 2010. During this period, survey implementer Merdeka Center contacted and interviewed via telephone 283 randomly selected employers across Peninsular Malaysia and East Malaysia to solicit their opinions.

For the purpose of this survey, Merdeka Center sampled respondents on the basis of the proportions of the employers' population as indicated in the updated Malaysian Census tables published in 2003. Sampling of respondents was carried out using the random stratified sampling method where respondents were selected along the lines of ethnicity and state of residence.

Focus group discussions (FGDs) was also done involving employers mainly from the key areas where most FDWs are hired in Kuala Lumpur and Klang Valley. The focus group session in Malaysia was held to primarily assess the viability of the survey instrument and to provide some subjective insight into potential responses. In order to compensate for the lack of qualitative response, we substituted commentaries and quotes from employers' responses to FDWs' issues and concerns as reported in the local media. CARAM Asia conducted the FGD together with the Merdeka Center.

HONG KONG



The survey for Hong Kong part was carried out by The Social Sciences Research Centre of The University of Hong Kong (SSRC HKU) between 17th March and 8th April 2010. The SSRC HKU contacted and interviewed the opinions of 262 employers across Hong Kong.

Telephone interview by using Computer Assisted Telephone Interview (CATI) was adopted. A random sample was drawn from 20,000 residential telephone numbers. These numbers were generated from the 2007 English residential telephone directory by dropping the last digit, removing duplicates, adding all 10 possible final digits, randomizing order, and selecting as needed. This method provides an equal probability sample that covers unlisted and new numbers but excludes large businesses that used blocks of at least 10 numbers.

Focus group discussions (FGDs) were also done covering participants from the various territories of Hong Kong, such as from the main Hong Kong Island, Kowloon Island and New Territories. Representatives from CARAM Asia and the St. John's Cathedral HIV Education Centre were also present during the FGDs.

Malaysia Research Findings

Foreign domestic workers have been an integral part of the workforce in Malaysia for the past three decades. Prior to this period, middle and higher income Malaysian households depended upon domestic workers drawn for the lower income and mostly rural population. However as demand for labour to meet its rapidly industrializing economy increased, the need to domestic workers began to be increasingly filled by foreign sources. Based on Malaysian immigration statements to the media, there are approximately 300,000 foreign domestic workers presently employed in Malaysia. Of this figure, over 90% are Indonesian in origin while the remainder being Filipinos, Cambodians and some lesser numbers of other nationalities.

One of the principal reasons of the continuing high demand for FDW is the comparatively lower wage they attract when compared to the domestic workforce. The average wage of a Malaysian factory worker is about RM800 (USD250) per month compared to RM600 (USD187) for an Indonesian FDW or RM1,500 (USD469) for a Filipino FDW.

Partly designed as a measure to restrict the employment of FDWs as well as to ensure employers can afford to pay FDWs their wages, the current policy stipulates that the combined income of the employer and spouse be at least RM3,000 (USD937) per month (to hire Indonesian or Cambodian FDWs) or RM10,000 (USD325) in order to hire Filipinos.

Respondents' Profile

In terms of geographic distribution, 55% were from the central region of Kuala Lumpur and Selangor while 35% were from the rest of the country. Another 10% of respondents were from East Malaysia which were Sabah and Sarawak.

Region & State	n	%
Northern	58	20.5
• <i>Perlis</i>	2	0.7
• <i>Kedah</i>	15	5.3
• <i>Pulau Pinang</i>	41	14.5
Central	135	47.7
• <i>Perak</i>	15	5.3
• <i>Selangor</i>	57	20.1
• <i>Kuala Lumpur</i>	63	22.3
Southern	31	11.0
• <i>Negeri Sembilan</i>	3	1.1
• <i>Melaka</i>	2	0.7
• <i>Johor</i>	26	9.2
East Coast	28	9.9
• <i>Kelantan</i>	15	5.3
• <i>Terengganu</i>	10	3.5
• <i>Pahang</i>	3	1.1
East Malaysia	31	11.0
• <i>Sarawak</i>	19	6.7
• <i>Sabah</i>	12	4.2
Total	283	100

Table 1: Region and state of the survey

A majority (63.6%) of the Malaysian employers responding to the survey were female and the rest (36.4%) were male. Results on respondents' age showed that 36.4% of respondents were between 31 and 40 years, 33.6% were between 41 and 50 years, almost 14% of the respondents were at the age between 51 and 60 years. The findings also showed that 39.9% respondents were Malays and the other 39.9% were Chinese. While ethnic Indians were represented by 14.1% of the respondent and about 6% were represented by Muslim Bumiputra (Muslim natives), non-Muslim Bumiputra and other ethnic groups.

The survey sampling plan was designed to provide a moderated view of the employers in the country. Based on Merdeka Center's prior research on foreign domestic workers for the Malaysian government in 2008, we were informed by officials in the Malaysian Immigration Department that approximately 70% of registered employers of FDWs were ethnic Chinese, about 20% were Malay and remainder of ethnic Indian and other descent.

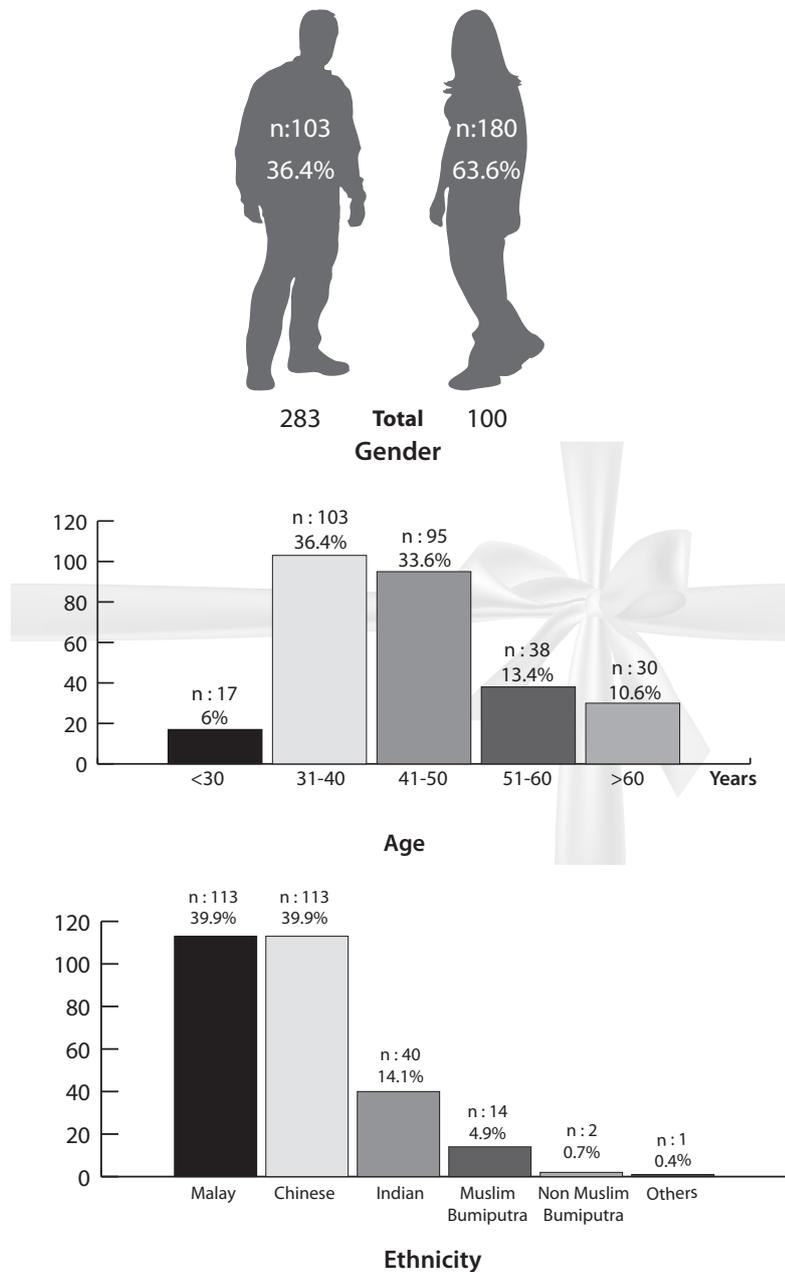


Table 2: Respondents' Demographic Profile

Majority (70.7%) of the respondents were working and about 28.7% were not formally employed. Most of them (36.4%) worked in private sector while 17.0% of the respondents were housewives.

Occupation	n	%
Employed - Private	103	36.4
Employed - Government	37	13.1
Own business – operates a business that hires other people	42	14.8
Self employed/ small business or trader	18	6.4
Student	1	0.4
Homemaker	48	17.0
Retired	27	9.5
Others	6	2.2
No response	1	0.4
Total	283	100

Table 3: Respondents' Occupation

Results on respondents' household income showed about quarter (25.1%) of the respondents reported earning income between RM4001 and RM6000. Interestingly, the survey found that some ten respondents (3.5%) reported household incomes of less than RM2,000 (USD625.00) which is significantly lower than the RM3,000 monthly household income threshold set by the Malaysian authorities for employers seeking to employ an FDW. This finding could reflect either a situation where the respondent has deliberately underreported her household income or indicated an actual situation employers who did not meet the minimum income level were still able to employ FDWs.

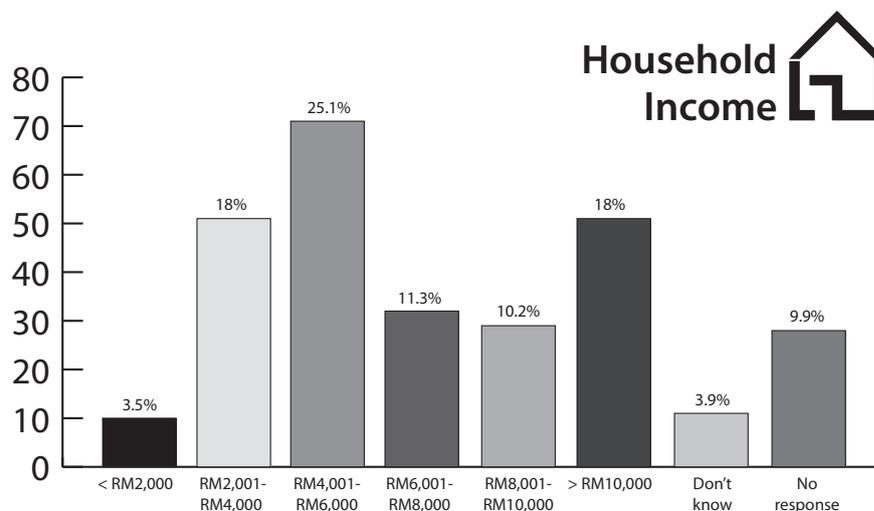


Table 4: Respondents' Household Income

About 70% of the respondents reported having experience employing foreign domestic workers for more than 5 years. This finding is indicative of the longstanding dependency on FDWs to support family life among a significant proportion of Malaysians in the middle and upper classes.

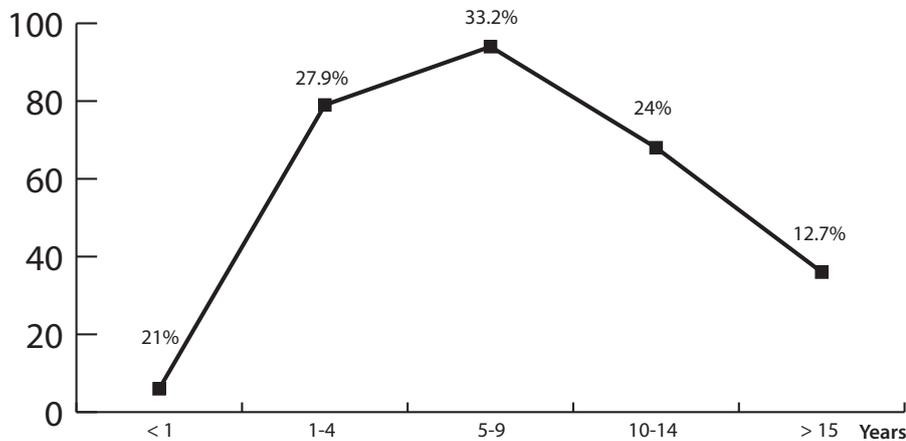


Table 5: Experience in employing FDW

a. Attitudes Towards FDWs

Foreign domestic workers have been a part of the Malaysian landscape in large numbers for more than three decades and the issues surrounding their presence have been in the realm of public discourse for such a long time. The public discourse regarding FDWs often reflects the view of a government that wanted to limit the reliance on foreign labour but at the same time acknowledged that Malaysian households have grown increasingly dependent on them as the country's economic growth demands greater participation of women in the formal workforce.

In the past, more than two decades ago, a majority of FDWs were mainly recruited from the Philippines. When the Philippines government increased wages and improved terms and conditions for their workers, the Malaysian government increased the recruitment of workers from Indonesia, Sri Lanka and Cambodia. Since the Indonesian government imposed a freeze on recruitment of Indonesian domestic workers to Malaysia, the Malaysian government opened up recruitment from new countries such as Vietnam, Laos, Myanmar and Timor Leste. This policy of recruitment reflects that the Malaysian government does not want to address problems and violations of rights of FDWs but circumvent it by moving to new countries for the supply of domestic workers.

For the most part, the public discourse relating to FDWs in Malaysia has been dominated by media reports of the treatment they receive from employers, employment agencies and government agencies; calls and responses from the civil society towards addressing weaknesses in employment laws and negotiations with the source countries for domestic workers.

The Malaysian immigration department which oversees the hiring of FDWs stipulates different qualifying threshold salaries of employers, i.e. according to the FDWs' country of origin: those

who seek to employ FDWs from the Philippines, Sri Lanka and India need to establish proof of a minimum monthly salary of RM5,000 (USD1562.00) while those who hire FDWs from Indonesia, Cambodia, Vietnam and Laos need to provide proof that their income is higher than RM3,000 (USD952) per month⁹. As such, legally employed FDWs are typically found in the middle to upper income households in the country and tend to be concentrated in the major urban centers of the country such as the Klang Valley, Penang and Johor Bahru. Despite these requirements, it is possible that some FDWs are recruited to work for employers with lower than the stipulated income levels. The findings from the survey noted that a small number (3.5%) of employers had lower than RM2, 000 (USD 625) monthly income.

The survey began with an exploration of employers' attitudes towards FDWs. Based on the focus group¹⁰ conducted with a small group of employers in the Klang valley, it appeared that FDWs were hired to relieve employers from carrying out all household chores as well as to assist in child-minding and/or care giving for sick or elderly household members.

The survey began by asking employers on their satisfaction with the services rendered by their FDWs. The survey found that a majority (77.4%) of the Malaysian employers reported that they were satisfied with the overall performance and attitude of their FDWs.

Level of satisfaction	n	%
 Strongly dissatisfied	16	5.7
 Somewhat dissatisfied	47	16.6
 Somewhat satisfied	154	54.4
 Strongly satisfied	65	23.0
 Don't know	1	0.4
Total	283	100

Table 6: Satisfaction with the FDW

Efficiency and obedience were seen as the two most important factors driving employers' satisfaction with their FDWs. A third cited reason was the ability of the FDW to fit in the employers' household and possession of communication skills.

About 63 from 283 (22.3%) Malaysian respondents who were dissatisfied with their FDWs cited reasons such as the inability of FDWs to perform well on house chores, lack of experience and inadequate training (34.9% of employers expressing dissatisfaction or 7.77% of all respondents), others cited "laziness", "always chatting with the neighbours", "leaving the house without permission" (22.2% of employers who expressed dissatisfaction or 4.95% of all respondents), "negative attitudes" such as "crying", "being disobedient against the employer instructions", "lacks respect to the employer (19% of dissatisfied employers or 4.24% of the overall Malaysian sample) as fundamental reasons for their dissatisfaction.

⁹ Department of Immigration Malaysia, www.imi.gov.my

¹⁰ On 2nd March, 2010, Merdeka Center moderated a focus group convened by CARAM Asia comprising 5 employers of FDWs residing from different parts of Klang Valley.

Reasons	Dissatisfaction		Satisfaction	
	n	%	n	%
Hardworking, good and efficient	1	1.6	66	30.8
Comply with employers instructions and not much comments	1	1.6	53	24.8
No problems with the chores and close to employer family members, experience workers	-	-	23	10.7
Good attitude, reliable, honest, trustworthy	-	-	26	12.1
Can fulfil employer original needs such as helping to make house chores and take care of children	2	3.2	29	13.6
There is conflict and communication problems when giving directions and the distribution of work, different language between the employer and maids	5	7.9	2	0.9
Didn't know how to do the house chores, not adequately trained and inexperienced	22	34.9	4	1.9
Negative attitudes such as easily crying, raising their voice against the employer, not listening to the employers' instructions, lack of respect for the employer	12	19.0	5	2.3
Lazy, frequently chatting with neighbours, leaving the house without employers' permission, depressive behaviour	14	22.2	3	1.5
Employers consider/ expect the maids to know how to perform all the chores	1	1.6	2	0.9
Unattractive appearance and untidy	2	3.2	-	-
Stealing and running away from home	3	4.8	1	0.5
Don't Know			3	
No Responses			2	
Total	63	100	219	100
Not Applicable (respondent answered "don't know" in prior question)	1			
TOTAL	283			

Table 7: Reasons for satisfaction/dissatisfaction

Almost 40% of Malaysian employers agree that the most important characteristic of the "good maid" is that the FDW who is hardworking, possesses good manners (18.4%), is obedient (14.5%) and gets along well with employers' family (9.5%). It is also important to note that a significant number also felt that "not mixing with outside friends" (9.9%) was seen as a positive trait in an FDW.

The characteristics	n	%
Can perform work well and hardworking	111	39.2
Obedient	41	14.5
Good manners	52	18.4
Gets along well with employers' family	27	9.5
Not mixing with many outside friends	28	9.9
Others, please specify:	22	7.8
Don't know	1	0.4
No response	1	0.4
Total	283	100

Table 8: The most important characteristics of a good "maid"

Superficially the satisfaction expressed by Malaysian employers towards their FDWs for the most part reflects the ordinary expectations of hiring workers that are diligent and honest. On the downside however, other expectations are not work performance related, i.e. nearly 10% feel that "not mixing with outside friends" is a positive trait; this finding accentuates the view that significant numbers of Malaysian employers still perceive the FDW as a servant whose sole purpose is to serve and would not have a social life.

More importantly, the survey finding points out that what is perceived to be “hardworking” and “diligence” may exceed what is considered reasonable - it is a common practice that foreign domestic workers in Malaysia work an average of 14 hours daily for seven days a week without a weekly day off. It is possible that the attitudes of Malaysian employers towards FDWs may be influenced by the laws under which FDWs are regulated in the country - the Malaysian Employment Act 1955 defines FDWs as ‘domestic servant’ and under such law, FDWs do not have similar rights as with other formally employed workers, instead their rights under this Act is limited towards making claims for unpaid and/or irregular payment of wages. More importantly, it excludes them from being entitled to weekly day off, holidays, overtime pay, termination benefits and other provisions stated in the law for other categories of workers. The lack of legal protection and fair treatment as workers under the law mean that employers are under no obligation to perform more beyond the minimum that is required.

General Perception and Awareness of the Laws Affecting FDWs

A majority (68.2%) of Malaysian employers reported that FDWs were sufficiently protected under Malaysian laws but further probing within the survey discovered the numbers of those who could name the specific regulations was only 6%. Nonetheless, it was noted that over one in every five employers (22.6%) reported that FDWs were not protected under the law. When asked if they thought whether FDWs were exploited in Malaysia, a large majority (62.2%) disagreed while nearly a third (32.9%) agreed – implying some recognition for the problems faced by FDWs, most likely due to the occasional reporting of serious abuses of FDWs in the local media in the last few years¹¹. Employers in the focus group discussions also shared their observations of various kinds of exploitations faced by FDWs working in their neighbourhood such as instances when FDWs working for neighbours were fed with meagre leftover food, sent to work in more than one household and restricted from leaving employers’ homes, among others.

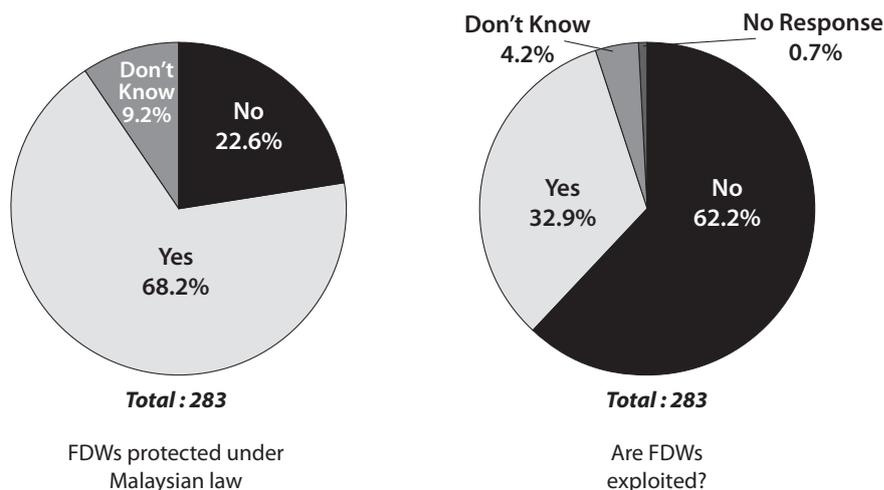


Table 9: Protection under Malaysia Law and exploitation

¹¹ There were abuses that had resulted in death of the FDWs, for example in 2009, Muntik Bani, an Indonesian FDW was severely beaten by her Malaysian employer, bound and locked up in a toilet for two days before she died. Her employer was sentenced to death in 2010, New Straits Times, 27th October 2009.

Slightly over half of the employers (53.4%) viewed that the law and regulations in Malaysia provided equal protection for employers and FDWs. Nevertheless, about 9.2% employers felt that it neither protected the employer nor the FDW. Perplexingly, nearly 22% of employers felt that the laws in Malaysia favoured the FDWs. These findings again illustrate the lack of awareness among employers about basic rights as it applies to domestic workers a matter that has been highlighted by the Malaysian government¹².

Protected under the law?	n	%
More to FDW	62	21.9
More to employer	25	8.8
Protect employer and FDW	151	53.4
Neither protect employer nor FDW	26	9.2
Don't know	13	4.6
No response	6	2.1
Total	283	100

Table 10: Perceived protection under the laws in Malaysia for employer and FDW

General Awareness

65.3% of Malaysian employers claimed that they were aware of the laws in the country that regulated employers of FDWs but most of them failed to name the regulations or the act correctly. Among those who claimed awareness of laws regarding the employment of FDWs, only 6.3% were found to be able to name or partially name the act or particular regulation. This situation likely reflects the extent to which employers are familiar with the law.

Level of awareness	n	%
Not aware at all	25	8.8
Aware a little	68	24.0
Somewhat aware	143	50.5
Very aware	42	14.8
Don't know	3	1.1
No response	2	0.7
Total	283	100

Table 11: General awareness about laws that regulates employers of FDWs

A plurality of Malaysian employers reported learning about such regulations from the FDW employment agency (29.7%), mass media (27.6%) and immigration department (20.5%).

12 "Recognize their rights", The Star, 1st July 2009 in which Minister for Women, Family and Community Development Shahrizat Jalil remarked that "it takes a paradigm shift to create awareness among Malaysians to respect and recognize the rights of maids". At the same event, the minister remarked that she did not want the issue to affect bilateral relations between Malaysia and Indonesia.

Level of awareness	n	%
Immigration Department	38	20.5
Mass media	51	27.6
Employment Agent/ Agency	55	29.7
Internet	12	6.5
Friends and acquaintances	14	7.6
Others, please specify	13	7.4
Don't know	1	0.5
No response	1	0.5
Not Applicable	98	34.5
Total	283	100

Table 12: Source of information

In general the findings reveal Malaysian employers have low knowledge of the law and are ignorant of the rights of FDWs and their right to protection.

Perceived Common Abuses of FDWs

Based on the report by Tenaganita, one of the most common forms of abuses of the FDWs was the non-payment or irregular payment of their wages. This irregularity was common among the complaints the advocacy group handled. When asked how common they felt such abuses were, nearly two-thirds (64.7%) of the Malaysian employers thought that such cases were somewhat uncommon or not common at all. While 16% felt that it was fairly common. This feedback may reflect the employers' own perceptions over the incidence of non or late payment of wages. Optimistically, it may also project the employers' own practice on what they perceive to be the case elsewhere.

There is difficulty in assessing the full extent of incidents of abuse and denial of the FDWs fundamental rights as government statistics in Malaysia appear limited (e.g. the Malaysian Labour Department acknowledged only 78 cases between 2007 and March 2009), the capacity of civil society organizations is also constrained. However, in what indicative of the terrain of the problem, reports obtained from the embassies of countries of origin by the Malaysian government show that within 2008, there were 834 complaints lodged by FDWs, of which non-payment of wages was the highest citing 207 cases¹³. In reality, there might be more unreported cases.

Non-payment of wages topped the complaints recorded by embassies of the FDWs' countries of origin in Malaysia. According to a presentation by a representative of the Malaysian Labour Department at the National Consultation on ILO Decent Work Agenda for Domestic Workers on 23 April, 2009, there were 207 reported complaints for the year in 2008. It was unclear as to whether these complaints resulted in formal charges being laid.

In another instance, civil society organization Tenaganita noted that of the 286 FDWs they handled between June 2004 and July 2010 involved 2,288 separate counts of human rights abuses. Of these cases, only one perpetrator had been charged and sentenced.

13 Presentation by a Representative from the Malaysian Department Of Labour at the National Consultation on ILO Decent Work Agenda for Domestic Workers on 23 April, 2009.

Level of views	N	%
Not common at all	67	23.7
Somewhat uncommon	116	41.0
Moderate	15	5.3
Somewhat common	30	10.6
Very common	17	6.0
Don't know	34	12.0
No response	4	1.4
Total	283	100

Table 13: Perception of FDWs not paid their wages on a regular basis

When asked to choose among a list of common abuses frequently reported by FDWs and reports of their treatment in Malaysia, the survey found that a plurality (31.4%) of employers agreed that long working hours was a common transgression against the workers. It is important to note that presently in Malaysia there is no policy or regulation that restricts the hours of work for FDWs. Present regulations also do not provide clear description or limit to the types of duties that an FDW may be asked to perform - with the exception of the immigration policy which states that FDWs should not be allowed to wash cars, however to date no employers are penalised for this offence, it is likely that most employers are not aware about such rules.

This was followed by verbal abuse (24.7%) and physical abuse (21.9%). The fact that nearly one in four of the employers chose physical abuse as a response to transgressions against FDWs raises some concern as to whether this reflects their reaction to media reports of such cases or some implicit knowledge over incidents that they have heard or encountered in their daily life.

Level of views	n	%
Physical abuse	62	21.9
Verbal abuse	70	24.7
Sexual abuse	2	0.7
Giving non-nutritious food or leftover food	24	8.5
Long working hours	89	31.4
Others, please state	4	1.4
Don't know	23	8.1
No response	9	3.2
Total	283	100

Table 14: Perceived abuse faced by FDWs in Malaysia

There is a fear among Malaysian employers that their FDWs will run away. This particular issue is noted on the presentation by the Malaysian labour department among the “common grouses of employers”. This concern also prompts a common practice among Malaysian employers to withhold the FDWs’ passports. This attitude also explains the practice by some employers to hold payments of wages until they feel they have sufficient trust that FDWs will not likely run away from them. In some cases documented by NGOs and embassies of countries of FDW’s origin, some employers only fulfil their obligation to pay the wages of the workers towards the end of their contract, which means, most will only be paid after 1-2 years of commencing employment.

Almost half (48.8%) of Malaysian employers believed that when FDWs abscond from their employers it was because they wanted to get married or run away with men, however 20.1% acknowledge that such action on the part of FDWs may be due to poor treatment. The perception that FDWs abscond “to run away with men” may reflect negative perceptions about FDWs despite there being no available data to substantiate this allegation. Statements by employers in local media reinforce this perception and reported their support for the ruling that prohibits FDWs from becoming pregnant¹⁴. Such response clearly reinforces employer’s self interests that discriminate against FDWs compared to the professional sector migrants who can marry and have their own family. It is worth noting that there is no regulation or negative perception towards expatriate workers who marry or becomes pregnant.

Responses	n	%
Think they can get better pay elsewhere	53	18.7
Poor treatment	57	20.1
Family personal problem	11	3.9
Maid already made enough money	4	1.4
Get married/ run away with men	138	48.8
Others, please specify	11	3.9
Don't know	8	2.8
No response	1	0.4
Total	283	100

Table 15: Perceived reasons FDWs would run away from their employers

Reported Treatment of FDWs

Verbal reprimanding or scolding was the preferred form of disciplining FDWs in Malaysia. 84.8% of employers said they would scold their FDWs should the worker made infractions such as failing to perform an essential household chore, bringing a stranger home without the employer’s consent (52.7%), slapping child or harming a frail elderly household member without reason (38.5%), leaving the house frequently without permission or sneaking out while the employer was out working (42.4%), if the FDW stole something that was valued more than RM50 (USD15.63) (49.5%), and if they found the FDW talking too often on the phone or texting her friends (62.2%).

Beyond verbal reprimands, the second most likely course of action to be taken by employers would be to refer the FDW to some authority such as the immigration department or most likely, to be brought back to the employment agency from which they were hired for some form of counselling, depending on the severity of the infraction.

The survey results showed that most employers reported that they would refrain from physically punishing the FDWs for infractions although a handful (three respondents) did disclose that they might resort to physical punishment if they found their worker abusing a child or an elderly adult entrusted to their care. A significant number, 15.2% reported that they would terminate their employees if the FDWs left the employers’ home without permission.

¹⁴ “Maids like it but not employers”, New Straits Times, March 8, 2010; in the article an employer was reported as saying “my previous maid had a secret relationship and she ran away. After three days she called me and said she was married. My blood pressure went up as there was no one to look after my aged father”.

Cases	Your FDW forgot to do an important household chore		Your FDW brought a stranger home without your family's consent		Your FDW slapped your child or a frail elderly household member without reasons		Leaving the house frequently without permission/ sneaking out when employers was working		Your FDW stole something that valued RM150 and above. That was her first time		Your FDW often talk on the phone or sent SMS to her friends	
	n	%	n	%	n	%	n	%	n	%	n	%
Do not do anything	13	4.6	1	0.4	1	0.4			3	1.1	26	9.2
Verbally reprimand/ scold her	240	84.8	149	52.7	109	38.5	120	42.4	140	49.5	176	62.2
Take away her benefits/ accommodation	6	2.1	2	0.7	3	1.1	10	3.5	21	7.4	48	17.0
Punish her to do more work	5	1.8			1	0.4			1	0.4		
Physically punish her					3	1.1			1	0.4	1	0.4
Terminate her employment	2	0.7	34	12.0	38	13.4	43	15.2	36	12.7	4	1.4
Report to the police or refer to Immigration Dept./ Employment Agency	11	3.9	86	30.4	115	40.6	94	33.2	68	24.0	14	4.9
Don't know	4	1.4	7	2.5	9	3.2	10	3.5	10	3.5	5	1.8
No response	2	0.7	4	1.4	4	1.4	6	2.1	3	1.1	9	3.2
Total	283	100	283	100	283	100	283	100	283	100	283	100

Table 16: Reported treatment of FDW

Attitude towards Law Enforcement

Attitude towards Punishment

The findings from this section provided some disturbing insight into the mindset of Malaysian employers in that while a majority ascribed to expected attitudes, there remained a significant minority who appeared ready to condone behaviour that denies FDWs their basic rights.

More than half (51.2%) of Malaysian employers disagreed that the government should take action if the employer asked the FDW to work for more than 8 hours without rest in one day continuously. This finding confirms the cases highlighted in reports over treatment of FDWs made by organizations such as Human Rights Watch, Tenaganita, CARAM Asia and APWLD in recent years.

A majority (76.7%) of Malaysian employers agreed that the government should take action if the employer did not pay the FDW's full salary while 22.9% disagreed with the suggestion. This result suggests that a significant number of employers do not see late payment of wages to be a major abuse of the rights of the FDW.

More than half (54.8%) of Malaysian employers agreed the government should take action if an employer verbally abused their FDWs everyday and used vulgar terms to humiliate their workers. Significantly, a high number (42%) of employers do not see it as wrong to verbally abuse their domestic worker in a demeaning way, a worrying prospect as it indicates a level of tolerance towards this practice.

About 53.7% of Malaysian employers agreed that action be taken if an employer asked the FDW to perform work other than what they were originally hired to do. Again a high minority (43%) disagreed that it was wrong to ask an FDW to perform other work. It was likely that FDWs were being asked to work on commercial premises or in homes of relatives of the employer.

Significantly, 64% of employers disagreed that the government should take action against those amongst them who deducted the wages of their FDWs for meals taken outside the home along with the employers' family. This finding implies a cavalier attitude displayed by a majority of employers over a basic right of the worker - that of getting their wages paid in full. As it stands, Malaysian employers are balking at committing to a higher minimum pay to FDWs especially those originating from Indonesia. At present, the recommended wage for FDWs as agreed with the Indonesian government is set at USD187 (RM600)¹⁵, while the minimum level is set at USD156 (RM500). It was reported in the local Malaysian media that at some locations in the country particularly in Sabah and Sarawak, some FDWs from Indonesia were paid as low as USD62.50 (RM200)¹⁶.

The Malaysian government currently stipulates a minimum household income below that of RM440 (USD137) per month as hardcore poverty and RM750.00 (USD234) as "poor" by comparison, a recent statement by the human resource minister notes that the average salary of Malaysian workers in some segments of the manufacturing sector were around RM760 (USD237) per month after including all allowances¹⁷. The view that FDWs do not deserve higher pay has even found support from the public sector employees union, CUEPACS which remarked that it was "unfair to propose that foreign maids be paid RM800 per month when some government servants are only getting RM600 as their starting monthly salary"¹⁸. The exploitation of some government employees cannot and should not be condoned. The time has come for the government to institute a decent living minimum wage structure for the whole country. But to use the above rationale to justify the denial of decent wage for domestic workers cannot be accepted. In fact one should look critically at the myriad job scope where the FDWs not only cook and clean, but also baby sit and care for the entire family and is subjected to 24 hours on call to work, including night work. Such revelations by the public only accentuates the fact that FDWs' contribution is not valued as skilled work and further reinforces the concept of housework as unrecognized labour.

15 USD1.00 = RM3.20 as at July 15, 2010

16 20 Sept 2009, The Sun – Indonesian Ambassador to Malaysia Gen Da'i Bachtiar said the embassy would be flexible although the benchmark set was RM600. The benchmark setting were at RM600 but it is between the maid and her employer to decide on what is acceptable. But it can't be lower than RM500. The Indonesian FDW salary, in Peninsular Malaysia, is between RM500 and RM600 on the average. But in Sabah and Sarawak, it is as low as RM200 to RM300.

17 Ministry of Human Resources Malaysia – Official Blog: <http://mohreng.blogspot.com/2010/03/mtuc-argument-on-minimum-wages.html>

18 "RM800 too much for maids", The Star, September 9 2009.

Should the government take action on employers if they commit the following:	Employer did not pay the FDWs' Full Salary		Employer verbally abuse their FDW everyday and use vulgar language		Late renewing FDWs' contract and work permit if the employer still use the same FDW after contract has ended		Asking the FDW to work for more than 8 hours without rest in one day continuously		Asking the FDW to perform work other than what they were originally hired for		Deducting the pay of the FDW if she follow the employers at dinners outside the home	
	n	%	n	%	n	%	n	%	n	%	n	%
<i>Strongly disagree</i>	32	11.3	43	15.2	32	11.3	45	15.9	42	14.8	95	33.6
<i>Somewhat disagree</i>	30	10.6	76	26.9	66	23.3	100	35.3	79	27.9	86	30.4
<i>Somewhat agree</i>	111	39.2	110	38.9	118	41.7	77	27.2	100	35.3	49	17.3
<i>Strongly agree</i>	106	37.5	45	15.9	59	20.8	52	18.4	52	18.4	44	15.5
Don't know	4	1.4	5	1.8	3	1.1	7	2.5	7	2.5	6	2.1
<i>No response</i>			4	1.4	5	1.8	2	0.7	3	1.1	3	1.1
Total	283	100	283	100	283	100	283	100	283	100	283	100

Table 17: Attitudes towards punishment

Attitudes towards Improvement of Regulations

Civil society organizations working on the issues related to the rights of FDWs have long advocated for improvements to Malaysian regulations pertaining to their employment. Among some of the proposals made have been to emphasize fundamental rights such as ensuring that employers meet their obligations in paying wages on a timely basis, providing the workers with adequate living facilities and allowing at least one day of rest each week. Evidence suggest that advocating these improvements have been a challenge, for example attempts by the Malaysian Trade Union Congress (MTUC) to assist FDWs to establish an association was rejected in 2008 . International Labour Organisation (ILO) had written to the Malaysian government on this matter, as the rejection contravenes with the ILO core labour standards which gives equal rights to all categories of workers, foreigners or locals to organise themselves into unions or associations. In response, the Malaysian government stated that the rejection was justified on the grounds that existing laws and guidelines of foreign workers, especially FDWs were adequate to accommodate their concerns and that FDWs could bring issues to the attention of their respective embassies and the association of foreign maid employment agencies¹⁹. However, such reaction clearly contradicts with international standards of the ILO which Malaysia is a member and had agreed to subscribe to such standards.

19 Committee on Freedom of Association Report, Malaysia Case No 2637, April 10, 2008, ILO.

When asked about their reactions to some of the proposed improvements to the regulations of FDWs, responses from employers were varied. The levels of agreement for respective items were as follows:

- ☛ Most (92.2%) of the employers surveyed agreed that the FDWs religious beliefs must be respected. However local media continues to occasionally carry reports which indicate that FDWs were not allowed to pray or were forced to eat food contrary to their religious beliefs. For example, Indonesian FDW, Siti Hajar endured constant beatings and was offered plain rice with pork, which she as a muslim refused to take. Finally, she ran away after the temperament employer scalded her.²⁰
- ☛ Again nearly all of the employers interviewed agreed that FDWs be provided with proper accommodation facility (91.9%),
- ☛ 83% agreed that the FDW be given one copy of the contract in her native language, while nearly 14% disagreed;
- ☛ 82.3% agreed that the employer must pay FDWs' salary on a monthly basis while nearly 16% disagreed - suggesting again the disturbing implication that a significant number of employers actually condone the infringement of a fundamental right of the FDW, one that is already contained in the pre-existing regulation;
- ☛ 72.8% agreed that the employer must provide insurance for the domestic worker during employment while nearly a quarter (23.7%) disagreed;
- ☛ The survey found that a majority, 53.7% disagreed with the idea that FDWs be accorded overtime and allowances for working beyond regular or reasonable hours. It was found that 43.4% agreed with this proposal;
- ☛ Only slightly over one-third, 34.3% were open to consider giving their FDWs a day off each week while 63.9% were opposed to the view. In September 2009 it was reported that the Malaysian government had agreed to make it mandatory for employers to give a day off each week to their FDWs, however the move will only become enforceable once the necessary amendments had been made to the Employment Act, which to-date, has yet to be tabled in the Malaysian parliament.

The issue is a matter of contention as many Malaysian employers are afraid that allowing their workers a day off would encourage their workers to mix around with others resulting in negative outcomes for them, ranging from the workers eventually absconding or engaged in activities that may invite problems to the family such as bringing strangers to the home²¹; This reflect

20 "Maid was starved and scalded ... before escaping" New Straits Times, 9 June 2009 which quoted Indonesian Embassy officials that mentioned the employer, a 43-year-old woman, went to the embassy and willingly admitted abusing Siti.

21 "Malaysian employers against mandatory days off for maids", The Star, June 18, 2009

Malaysian employers' self centred behaviour that denied FDWs rights all together without considering other preventive measures that other categories of employers also take to safe guard their interests without infringing on workers basic human rights for a day of rest.

- Linked to the resistance of allowing the FDWs freedom of movement and right to a day of rest where they would be free to go out is the latent fear among Malaysian employers that their FDWs would take the quickest opportunity to abscond and leave them. In a normal working environment, Malaysian employers would not hold on to the identification documents of their worker, knowing that both parties have a choice for choosing their employer/ worker. Yet the high recruitment fees paid by both employer and worker had fostered a debt bondage situation. This partly explains why only 12% of employers were amenable to the idea that workers be allowed to hold their own passports while a very large majority, 85.2% were opposed to the idea. An Amnesty International report²² on migrant worker conditions in Malaysia noted that Malaysian government officials disclosed that the memorandum of understanding between Malaysia and seven origin labour countries currently allow employers to safe keep workers' passports and that thus far the practice has remained unchanged. The US government in its status report on Trafficking in Persons 2009²³ states that "The government also continued to allow for the confiscation of passports by employers of migrant workers - a common practice in Malaysia. This practice is recognized by many in the international anti-trafficking community as facilitating trafficking."

From the standpoint of the Malaysian employer, it is likely that employers' refusal to release the FDWs passports were motivated by their desire to recoup the costs they had encountered in hiring the FDWs²⁴. A Malaysian employer typically has to pay upfront six-months of the FDWs wages (paid to the agent to defray the cost of recruiting and transporting the worker to Malaysia) along with the employment agency's fees which amounts to between RM8,000 to RM9,000 (USD2500-USD2812.50). Another practical factor is the inconvenience of not having a worker to carry out duties pending the recruitment process of a new FDW, a process that can take between 3 to 6 months. However all such motivations are defending employers interest at the expense of the FDWs rights and welfare. Although employers in Hong Kong faced the same predicaments - paying high recruitment costs and long wait for new recruitment- it is uncommon among Hong Kong employers to keep FDWs passports. On the contrary, keeping the FDWs' passports brings the risk of imprisonment for Hong Kong employers. This attitude and recognition of rights comes from how laws and regulations are enacted to ensure rights protection.

On the part of the FDW, the withholding of the FDWs passports puts them in even greater vulnerability as unlike other migrant workers that reside in work encampments. FDWs work in isolated individualized work environment in private domains and thus are more open to

22 "Trapped: Exploitation of Migrant Workers in Malaysia", Amnesty International, March 2010

23 The US Trafficking in Persons Report 2009 can be found at <http://www.state.gov/g/tip/rls/tiprpt/2009/index.htm>

24 "Bosses fear rule will help maids to abscond", New Straits Times, May 19 2010. In the article, several employers report their concern that allowing FDWs to hold their passports will make it easier for them to run away. Similar reportage in Berita Harian's article "Bercuti boleh, passport jangan" on May 21, 2010.

abuse. The lack of a passport prevents them from escaping from abusive employers as they may be arrested for travelling without a valid document and could be sent to a detention camp prior to deportation. In addition, lengthy amount of time needed to resolve labour disputes, prolonged court processes and high legal costs for workers seeking to extend their stay pending the resolution of their cases have resulted in many workers giving up on seeking justice.²⁵

	% Agree	% Disagree
The employer must respect the religious beliefs of the FDW	92.2	5.3
The worker must be provided with proper accommodation facility	91.9	6.4
The FDW should be given one copy of the contract in her native language	83	13.8
The employer must pay FDWs' salary monthly	82.3	15.9
The employer must provide insurance for the FDW during the process of employment	72.8	23.7
A FDW should only work at the home of its employer	66.8	32.1
FDW be provided with at least 8 days paid annual leave each year	51.6	45.5
Aside from monthly salary, the FDW should also be paid overtime and allowances	43.4	53.7
FDW be provided by 1 off-day each week	34.3	63.9
The FDW passport should remain in the possession of herself	12.3	85.2

Table 18: Attitudes towards Proposed New FDW Regulations



25 "International Day of Solidarity with Foreign Domestic Workers", CARAM Asia statement on 28 Aug, 2010. http://www.caramasia.org/index.php?option=com_content&task=view&id=874&Itemid=346

Hong Kong Research Findings

1. Introduction

In Hong Kong, there is a high demand of foreign domestic workers to relieve families of household chores. According to Communications and Public Affairs, Immigrant Department of Hong Kong Government, at May 2010, the population of foreign domestic workers was 276,737 (132,846 are Filipinos, 136,460 are Indonesians, 3,789 Thais and 3,642 are made up of other nationalities).

One of the reasons of the high demand is the very low wage of foreign domestic workers as compared to local workforce. According to government statistics of 2009, the hourly wage of foreign domestic workers is among the lowest 5th percentile of the Hong Kong employees, i.e. more than 95% of employees in Hong Kong have the hourly wage higher than the foreign domestic workers. On the other hand, the salary of foreign domestic workers working in Hong Kong (currently HK\$3,580/US\$459 per month²⁶ plus free food. If free food cannot be provided, a HK\$740/US\$95 per month of food allowance needs to be paid²⁷) is higher than most of the major destination countries for FDWs, making supply of foreign domestic workers well excess the demand in Hong Kong.

To restrict the employment of FDWs as well as to ensure employers can afford to pay the salary to the foreign domestic workers, the current policy is that only those families whose monthly family incomes are at least four times of the foreign domestic workers (i.e. HK\$15000/US\$1926 per month²⁸) are allowed to hire foreign domestic workers. To ensure a reasonable working

26 As mentioned, more than 95% of employees in Hong Kong have the hourly wage higher than the foreign domestic workers, so the salary of FDWs cannot be considered as high in the Hong Kong standard. Whether the salary of FDWs is enough for a living in Hong Kong, the comparison can be with government social security scheme. Under the Comprehensive Social Security Assistance (CSSA) Scheme, the maximum monthly allowances for an able-bodied and a 100% disabled adult aged under 60 is HK\$1,830 (USD235) and HK\$2,745 (USD352) respectively. Exchange rate: 1USD = HK\$7.79
(source: http://www.swd.gov.hk/en/index/site_pubsvc/page_socsecu/sub_socsecurity/#CSSAsr)

While in the impression of most tourists Hong Kong is an expensive city, the prices of most basic daily necessities are quite cheap. In the famous Big Mac Index i.e. the price of a Big Mac burger in term of US dollar. Hong Kong is often ranked as the first, i.e. the lowest price in the world.

(sources: <http://www.oanda.com/currency/big-mac-index>).

The transportation fees can also be very cheap. Regardless of distance (the longest distance is about 10km), it is only HK\$2/US\$0.26 for a travel by tramway, which is one of the cheapest means of transportation in the big cities around the world. As Hong Kong is in the 'World Factory' i.e. China, the prices of most lower-end manufactory products are also very cheap.

27 In Hong Kong, the retail price of white rice is about \$11(USD1.4) per kg, and chilled chicken is about \$30 (USD3.85) per kg, So the HK\$740 food allowance can buy 67kg rice or 27kg chicken, the amount of raw materials that is more than enough for a month for a person. However, if the FDWs have to eat in restaurants, a set lunch/dinner meal of McDonald Restaurant is about HK\$25, while burgers or filled muffins are about HK\$5-9 each. Therefore, \$740 per month i.e. HK\$25 (USD3.2) a day is only enough to take one McDonald meal or 3 burgers or filled muffins a day)

28 According to Hong Kong 2006 By-Census, about 57% of Hong Kong households has the monthly income of HK\$15000 or more i.e. more than 1.2 million families are financially eligible to employ FDWs.
(source: http://www.bycensus2006.gov.hk/en/data/data3/statis_are_financially_eligible_to_employ_FDWs_tical_tables/index.htm#D1)

condition for foreign domestic workers, both the employers and foreign domestic workers are required to sign the Standard Employment Contract (Form 1D 407) set by the Hong Kong Government. A copy of this contract is required to be sent to the Immigrant Department of the Hong Kong government. This contract lists all the details of employment conditions that the employers are required to provide for the foreign domestic workers. (The contract is attached in Appendix I)

There are a number of research studies reporting that the working conditions of some foreign domestic workers were not up to the standard set in the government employment contract and a number of foreign domestic workers were abused by their employers. There are also some episodes of newspaper reporting about the criminal charges on the misbehaviours of the foreign domestic workers towards their employers. There were also a few qualitative studies on the employers of foreign domestic workers and all of them interviewed several respondents only. Yet, no reports of scientific study on a representative sample of employers of foreign domestic workers in Hong Kong community can be found.

This research project aims at studying of the perceptions and attitudes of the employers of foreign domestic workers in Hong Kong.

2. Research Methods

This research project used a mixed-methods approach. The project consists of two components: (a) a telephone survey and (b) two focus group discussions.

The questionnaire for the telephone survey and the semi-structured discussion guide for the focus group discussions were developed by St. John's Cathedral HIV Education Centre with minor editing by the Social Sciences Research Centre of The University of Hong Kong (SSRC HKU). The questionnaire was translated to Chinese by SSRC HKU. The field works were commissioned to SSRC HKU. The telephone survey was conducted between 17th March and 8th April 2010 at the Social Sciences Research Centre. By using random digit dialling and Computer Assisted Telephone Interview (CATI), a randomly selected sample of 262 employers of foreign domestic workers (FDWs) was successfully interviewed.

The first focus group was held at the Kowloon Bay Campus of HKU SPACE on 17th March 2010. Participants were recruited via direct invitation in the current telephone surveys undertaken by the SSRC advertisements posted online, email networks of any interested parties, as well as referral. The target participants were the employers of FDWs who were living in the regions of Kowloon and New Territories. A total of 10 participants showed up at this focus group. The discussion started at 7:15 pm and ended around 9:00pm. The second focus group was held at the same venue on 18th March 2010. The target participants were the employers of FDWs who were living in the region of Hong Kong Island. A total of 8 participants showed up at this focus group. The discussion started at 7:10 pm and ended around 8:30pm. Staff of our organization was also present at the focus group as an observer. The focus group discussions were facilitated by researchers of SSRC HKU by using a semi-structured discussion guide.

3. Results

A. Results Of The Telephone Survey

A1. Socio-economic background of the respondents

The data of socio-economic background of respondents and the length of employing FDWs are listed in (Table 19) - It is computed that the distribution of these data in our sample are not statistically significantly different from the comparable data in 2006 Hong Kong By-Census except in gender distribution. Our sample has about 75% of female respondents. This can be considered as reasonable, as the management of issues related to FDWs is usually performed by the female members of the family in Hong Kong. The self-reported family incomes shows that for about 13% of the families, the salary of FDWs is more than 18% of the employer's family income, for about 21% families, the salary of FDWs is about 10 to 18% of the family income, and for 56% families, the salary of FDWs is 10% or less of their family incomes.

Variable	Categories	n	%
Age	20-29	2	0.8
	30-39	68	26.0
	40-49	92	35.1
	50 or above	99	37.8
	Refuse to answer	1	0.4
	Total		262



Gender

Ethnicity	Categories	n	%
Ethnicity	Hong Kong Chinese	234	89.3
	Other Chinese	8	3.1
	S/SE Asian	7	2.7
	Other Asian	2	0.8
	Westerner	11	4.2
	Total		262

Occupation	Employed – Private	90	34.4
	Employed – Government	26	9.9
	Employed – NGO	14	5.3
	Self-employed with employees	12	4.6
	Self-employed without employee	13	5.0
	Unemployed, looking for work	2	0.8
	Student	1	0.4
	Homemaker	59	22.5
	Retired	44	16.8
	Refuse to answer	1	0.4
	Total	262	100

Total household income	Less than \$20,000	33	12.6
	\$20,001 - \$35,000	56	21.4
	\$35,001 - \$45,000	30	11.5
	\$45,001 - \$55,000	29	11.1
	\$55,001 or above	88	33.6
	Don't know	14	5.3
	Refuse to answer	12	4.6
	Total	262	100

Years of employed FDWs	Less than 1 year	29	11.1
	1 - 4 years	81	30.9
	5 - 9 years	60	22.9
	10 - 14 years	40	15.3
	15 years or more	52	19.8
	Total	262	100

Table 19: Socio-economic and demographic profiles of the 262 respondents

A2. General perceptions

Among the respondents, 83% of the respondents were satisfied or strongly satisfied with the overall performance and attitude of their present FDWs. About 13% were dissatisfied or strongly dissatisfied with their present FDWs (Table 20). It is expected that the risk of having conflict between the employers and FDWs is high among this 13% of dissatisfied employers.

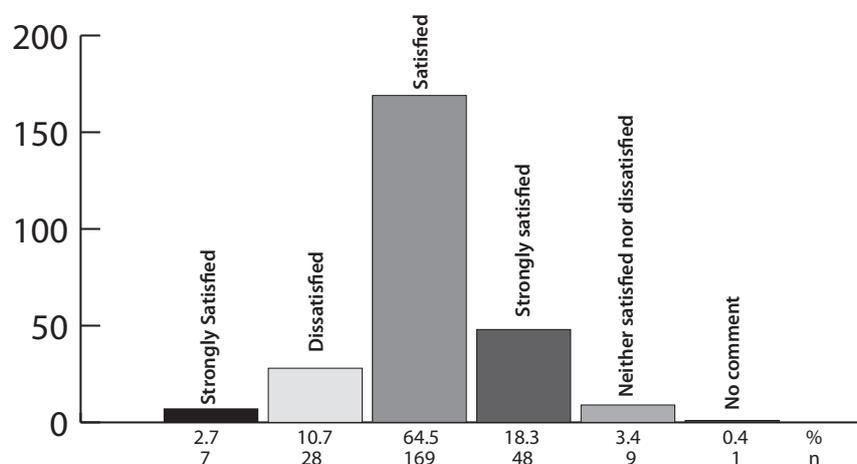


Table 20: How satisfied or dissatisfied are you with the overall performance and attitude of your present FDW?

About 45% of respondents considered that they are aware or very aware of the labour laws in Hong Kong that regulates employers of FDWs. 43% considered that they are aware a little and 10% considered they are not aware at all. (Table 21) Although employers signed the Standard Employment Contract which lists out all their responsibilities and obligations as employers, it shows that more than half of the respondents are not aware of their responsibility at all.

	n	%
Not aware at all	27	10.3
Aware a little	112	42.7
Aware	92	35.1
Very aware	31	11.8
Total	262	100

Table 21: How aware are you of labour laws in Hong Kong that regulates employers of FDW?

About 92% agreed or strongly agreed that FDWs are sufficiently protected under Hong Kong labour laws as currently enforced. (Table 22)

Level of agreement	n	%
Disagree	8	3.1
Agree	173	66.0
Strongly agree	68	26.0
No comment	13	5.0
Total	262	100

Table 22: Do you agree that FDWs are sufficiently protected under Hong Kong labour laws as currently enforced?

About 49% of respondents viewed the labour laws in Hong Kong provide equal protection to employers and FDWs; 44% viewed the labour laws in Hong Kong provide more protection to FDWs and 3% viewed as more to employers. (Table 23) This shows that about 44% of employers are not entirely happy with the current labour laws in Hong Kong.

	n	%
More to FDW	115	43.9
More to employer	8	3.1
Equal	128	48.9
Don't know	11	4.2
Total	262	100

Table 23: In your view, are the labour laws in Hong Kong provide more protection to employers, FDWs or equal protection to both parties?

A3. Courses of action the respondents would most likely take for the FDWs' misbehaviours

Respondents were asked to choose the courses of action they would most likely take for the FDWs' three misbehaviours. Among these three misbehaviours, the most serious courses of action would most likely take was for that the FDW got frustrated with the child or a frail elderly household member and slapped them. About 53% would terminate the employment and 23% would verbally reprimand or scold them.

FDW brought a stranger home without the family's consent would likely induce less serious actions. About 58% of respondents would verbally reprimand or scold them and 18% would terminate the employment.

FDWs' forgot to do an important household chores would likely induce more mild actions. About 60% of respondents would verbally remind them and 28% would verbally reprimand or scold them. While physical punishment is legally forbidden, it is found that one respondent choose physical punishment if the FDW got frustrated with the child or a frail elderly household member and slapped them (Table 24). These results are articulated with the results of focus group discussions that the major concern of most employers is the performance of FDWs in taking care of children or the elderly. Capabilities in performing household chores are secondary.

Action	Forgot to do an important household chores (e.g., wash clothes)		Brought a stranger home without your family's consent		Got frustrated with your child or a frail elderly household member and slapped them	
	n	%	n	%	n	%
Do not do anything	19	7.3	4	1.5	1	0.4
Verbally reprimand / scold her	73	27.9	152	58.0	61	23.3
Make her do more work	5	1.9	-	-	-	-
Physically punish her	-	-	-	-	1	0.4
Terminate her employment	1	0.4	48	18.3	138	52.7
Verbally remind	157	59.9	44	16.8	15	5.7
Written reprimand	1	0.4	3	1.1	1	0.4
Inform Employment agency	-	-	3	1.1	4	1.5
Call the police	-	-	1	0.4	27	10.3
Do it by myself	3	1.1	-	-	-	-
Don't know	3	1.1	7	2.7	14	5.3
Total	262	100	262	100	262	100

Table 24: Courses of action likely to be taken for the FDWs' misbehaviours

A4. Treatment to FDWs to be considered as misusing power of employers

Respondents were asked to state their perception of whether five treatments to the FDWs were considered in their own standard as misusing power of employers. Four treatments are illegal and one is not illegal.

Among the four illegal treatments asked, the highest percentage of answering as 'Yes' was 'Give no food or food allowance' (93%), the second one was 'Make FDW works on their rest day without compensation or replacement' (91%). About 83% of respondents chose 'Yes' for 'Deducting FDW salary' and 78% chose 'Yes' for 'Make FDW works in other places than the originally agreed household'. (Table 25) These results show that while about 83-93% of respondents considered the four illegal treatments to FDWs are also misusing power of employers in their own standard i.e. can be considered as their standard are the same as the legal standard, about 5-13% respondents considered these four illegal treatments to FDWs are not misusing power of employers in their own standard. We may wonder if 5-13% respondents could have higher chances of applying illegal treatments to their own FDWs.²⁹

On the other hand, the responses to a not illegal treatment 'Verbally reprimanding or scolding their FDW' are very different from the four illegal treatments. About 84% of respondents chose 'No' for this treatment and only about 8% chose 'Yes'. (Table 25) This result shows that most employers need to be reminded about the proper manners in employer-employee relationship.

	No	Maybe justified	Yes	Don't know
Verbally reprimanding / scolding their FDW				
No. of respondents	219	16	22	5
(%)	(83.6)	(6.1)	(8.4)	(1.9)
Give no food or food allowance				
No. of respondents	14	3	243	2
(%)	(5.3)	(1.1)	(92.7)	(0.8)
Make FDW works on their rest day without compensation or replacement				
No. of respondents	16	6	239	1
(%)	(6.1)	(2.3)	(91.2)	(0.4)
Make FDW works in other places than the originally agreed household				
No. of respondents	34	23	204	1
(%)	(13.0)	(8.8)	(77.9)	(0.4)
Deducting FDW salary				
No. of respondents	27	15	218	2
(%)	(10.3)	(5.7)	(83.2)	(0.8)

Table 25: According to your standard, do you consider the following treatment to the FDWs to be misusing power of employers?

²⁹ These percentages are in similar ranges of the reported illegal treatment from the FDWs in a small unofficial survey conducted by Helpers for Domestic Helpers of St. John's Cathedral in 2009. The reported illegal treatments in the studies conducted in previous decades were higher than this.

A5. Attitude towards the labour laws in Hong Kong that regulates employers of FDWs

On a five point scales: strongly disagree, disagree, agree, strongly agree and don't know, the respondents were asked to state their attitudes towards five current labour laws in Hong Kong that regulate employers of FDWs and three items that the domestic workers proposed to be imposed.

Respondents' attitudes towards the current laws are mostly positive. The highest proportion of positive attitude (i.e. agree + strongly agree) is towards the law 'The worker must be provided with proper accommodation facility' (99%) followed by 'FDW be provided by 1 off-day each week' (98%) and 'The employer must provide insurance for the domestic worker' (97%). In Hong Kong, by the Standard Employment Contract, it is the responsibility of the employer to provide accommodation and medical insurance to their FDWs during the contractual period.

The positive attitudes for other two laws are: 'An FDW should only work at the home of its employer' (79%), 'FDW be provided with at least 8 days paid annual leave each year' (75%). Yet the proportion of negative attitude (i.e. disagree + strongly disagree) of these two items are 20% and 22% respectively. (Table 26) These results may imply that a significant proportion of employers is not happy with these two current labour laws.

However, the respondents' attitude towards the two items that the domestic workers proposed to be imposed is not as positive as the current laws. About 70% of the respondents stated positive attitudes towards 'The domestic worker should be given one copy of the contract in her native language', 50% stated positive attitudes towards 'Aside from monthly salary, the FDW should also be paid or given allowances if working more than 14 hours a day' and 33% stated that positive attitudes towards 'Domestic workers should be included in the proposed statutory minimum wage as the local workers'. In Hong Kong, at the moment, FDWs are the only group of employees who are guaranteed a minimum monthly salary by the labour law. (Table 26) Interestingly, about 20% of the employers either strongly disagree or disagree that FDWs should only work at the home of its employers, which may indicate some exploitative attitude of asking FDWs to work in more than one household.

	Strongly disagree	Disagree	Agree	Strongly agree	Don't know
An FDW should only work at the home of its employer					
<i>No. of respondents</i>	10	42	155	53	2
<i>(%)</i>	(3.8)	(16.0)	(59.2)	(20.2)	(0.8)
Aside from monthly salary, the FDW should also be paid or given allowances if working more than 14 hours a day					
<i>No. of respondents</i>	22	94	123	7	16
<i>(%)</i>	(8.4)	(35.9)	(46.9)	(2.7)	(6.1)
FDW be provided by 1 off-day each week					
<i>No. of respondents</i>		4	166	90	2
<i>(%)</i>		(1.5)	(63.4)	(34.4)	(0.8)
FDW be provided with at least 8 days paid annual leave each year					
<i>No. of respondents</i>	14	43	165	31	9
<i>(%)</i>	(5.3)	(16.4)	(63.0)	(11.8)	(3.4)
The worker must be provided with proper accommodation facility					
<i>No. of respondents</i>		1	206	53	2
<i>(%)</i>		(0.4)	(78.6)	(20.2)	(0.8)
The employer must provide insurance for the domestic worker					
<i>No. of respondents</i>	1	3	179	75	4
<i>(%)</i>	(0.4)	(1.1)	(68.3)	(28.6)	(1.5)
The domestic worker should be given one copy of the contract in her native language					
<i>No. of respondents</i>	7	64	144	38	9
<i>(%)</i>	(2.7)	(24.4)	(55.0)	(14.5)	(3.4)
Domestic workers should be included in the proposed statutory minimum wage as the local workers					
<i>No. of respondents</i>	50	114	76	10	12
<i>(%)</i>	(19.1)	(43.5)	(29.0)	(3.8)	(4.6)

Table 26: Attitude towards the labour laws in Hong Kong that regulates employers of FDW?

A6. Opinions towards the government taking actions when employers committed misbehaviour actions

On a five point scales: strongly disagree, disagree, agree, strongly agree and don't know, the respondents were asked to state their opinions about 'government should take action if they commit these action?' for five actions. The highest proportion of respondents agreed (agree + strongly agree) that government should take action if the employers 'Fails to pay the FDWs salary on time' (83%). The proportions of respondents -in descending proportion- agreed that government should take action if the employers 'Late in renewing FDWs' contract' (56%), Asking the FDW to perform work other than what they were originally hired for (56%), 'Verbally abuse their FDW' (44%), and 'Asking the FDW to work for more than 8 hours without rest in one day' (28%). (Table 27)

Comparing to Table 26, it is found that not all employers who held positive attitudes towards a law agreed with the government taking actions when employers committed that misbehaviour actions. If the government does not take actions, most misbehaved employers will not obey to the laws.

	Strongly disagree	Disagree	Agree	Strongly agree	Don't know
Fails to pay the FDWs salary on time					
<i>No. of respondents</i>	3	33	172	45	9
<i>(%)</i>	(1.1)	(12.6)	(65.6)	(17.2)	(3.4)
Verbally abuse their FDW					
	21	100	101	13	27
	(8.0)	(38.2)	(38.5)	(5.0)	(10.3)
Late in renewing FDWs' contract					
	17	64	125	23	33
	(6.5)	(24.4)	(47.7)	(8.8)	(12.6)
Asking the FDW to work for more than 8 hours without rest in one day					
	38	126	65	10	23
	(14.5)	(48.1)	(24.8)	(3.8)	(8.8)
Asking the FDW to perform work other than what they were originally hired for					
	16	74	124	22	26
	(6.1)	(28.2)	(47.3)	(8.4)	(9.9)

Table 27: How strongly you agree or disagree that government should take action if they commit these actions?

A7. Where did the employers learn about labour laws?

With multiple responses allowed, the respondents were asked where they learned about labour laws. The highest proportion of employers learning about the labour laws was from the agent (50% of the respondents), followed by the labour department (40%), mass media (32%), and friends and acquaintances (17%). (Table 27)

	n	%
<i>Labour Department</i>	104	39.7%
<i>Agent</i>	131	50.0%
<i>Mass Media such as TV, radio</i>	83	31.7%
<i>Friends and acquaintances</i>	45	17.2%
<i>Internet</i>	22	8.4%
<i>Home Affairs Department</i>	3	1.1%
<i>Immigration Department</i>	17	6.5%
<i>Leaflet</i>	3	1.1%
<i>Employment contract</i>	3	1.1%
<i>Information Services Department</i>	1	0.4%
<i>Foreign domestic worker</i>	3	1.1%
<i>Lawyer</i>	2	0.8%
<i>Workplace</i>	6	2.3%
<i>Family members</i>	2	0.8%
<i>Not familiar with the labour laws</i>	9	3.4%
<i>Do not remember</i>	2	0.8%

Table 27. Where did the employers learn about labour laws? (multiple responses allowed)

B. *Results Of The Hong Kong Focus Group Discussions*

In order to obtain more detailed perceptions, attitudes and experiences of the employers of FDWs, two focus group discussions were conducted by using semi-structured discussion guide. The opinions voiced in the focus group discussions are consistent with the response of the telephone survey. The respondents also explained the reasons behind their attitudes and practice.

Additional information reported by these two focus groups was the abuses for FDWs which were based on their real knowledge from friends and relatives or from other direct sources such as neighbours. Most respondents reported some cases of abusive behaviours from their own knowledge. This shows that abusive behaviours are commonly known. However, none of the participants mentioned that they had taken action to stop these behaviours.

Observations

The results of the survey showed that while about 49% of respondents viewed the labour laws in Hong Kong provide equal protection to employers and FDWs, 44% viewed that the labour laws in Hong Kong provide more protection to FDWs. That may mean that about 44% of employers are not entirely happy with the current labour laws in Hong Kong. More discussions about the reasons and rationales behind laws are needed to make the laws more acceptable to the employers.

It is also found that 13% of employers were dissatisfied or strongly dissatisfied with their present FDWs. It is expected that the risk of having conflict between these dissatisfied employers and their FDWs are high. Some of these employers may need to be provided with help to handle their dissatisfactions properly.

The results showed that about 5-13% respondents considered one of the four illegal treatments to FDWs as not misusing power of employers in their own standard. It causes concern that these 5-13% respondents may have high chances of applying illegal treatments to their own FDWs.

From another angle, about 90% of employers do not apply illegal treatment to their FDWs. Among them, while some of them do not do so because of their own good virtues, some of them do not do so because they do not dare to do so. While the possibility of legal punishment is one fear, the possibility of revenge is another fear. It is reported by the employers that most of them need the FDWs to take care of their children or elderly. For those employers who rely on the FDWs to take care of children or elderly under no supervision for a certain period of time, they may have the fear of FDWs' revenge on their vulnerable family members if they treat the FDWs badly. Yet, satisfactory of the performance and valuing the services of the FDWs may be the major reason that most employers do not treat the FDWs badly.

On the other hand, it is found that more than half of the respondents were aware a little or none of the labour laws in Hong Kong that regulate employers of FDWs, i.e. their responsibility as the employers. More education for the employers is needed.

It is also found that some employers who held positive attitudes towards a particular regulation within the law ended up did not agreeing with the government taking actions when employers transgress against them. If the government does not take action, a wrong signal would be sent to the public and may result in errant employers continuing to disobey the laws. The results of the focus group discussions showed that abusive behaviours were commonly witnessed but people seldom take action.

The studies of underpaid Indonesian FDWs in the previous decades showed that the situation was improving. In early 2005, a survey showed that 53 percent of Indonesian migrants surveyed were paid less than the minimum wages³⁰. In another survey conducted in 2007, the figure had dropped to 15%³¹, and the figure was 12% in a 2009 survey³². While 12% is of course not a desirable figure, the trend shows that improvements can take place with effort.

30 Source: South China morning Post July 30, 2010

<http://www.scmp.com/portal/site/SCMP/menuitem.06f0b401397a029733492d9253a0a0a0/?vgnextoid=0f924c130b1b2110VgnVCM100000360a0a0aRCRD&s=Archive>

31 Source: Radio & Television Hong Kong Sept 1, 2007

http://www.rthk.org.hk/rthk/news/englishnews/20071001/news_20071001_56_435556.htm

32 Deutsche Presse-Agentur Feb 15 2009

http://www.monstersandcritics.com/news/business/news/article_1459647.php/Thousands_of_Indonesian_maids_in_Hong_Kong_illegally_underpaid

4

Comparison Between Hong Kong and Malaysia Survey Results



Comparison Between Hong Kong & Malaysia Survey Results

The results of the surveys conducted in Malaysia and Hong Kong provide some insights into the general attitudes of employers towards FDWs as Hong Kong has enacted laws that recognize FDWs as workers while their rights under Malaysian laws remain rudimentary. In this section we compare the results of the surveys conducted in both places.

Attitudes towards FDWs

The surveys found that large majorities of employers in Hong Kong and Malaysia were satisfied with their FDWs at 83% and 77%, respectively. However when the survey probed further among the Malaysian employers on what they characterized as positive qualities in an FDW, a significant number, 10% reported that it also meant “not mixing with friends outside”. While a similar question was not fielded to Hong Kong employers in the survey it was however asked in the two focus groups. From there it could be noted that Hong Kong employers tended to reflect more on the work performance of the FDWs such as efficiency and awareness about hygiene. Unlike Malaysian employers there were no comments made about preventing FDWs from meeting other people or having a personal life, concerns about restricting the freedom of movement of FDWs did not surface as there appears to be real acceptance of the FDWs rights as stipulated under the Hong Kong labour laws.

The more restrictive attitudes possessed by Malaysian employers may stem from the fact that Malaysian labour laws classify domestic workers as ‘servants’ with few fundamental rights besides stipulating that they be paid their wages regularly. The attitude is also reflected in the public discourse concerning FDWs in Malaysia where they are called ‘maids’ in official press reports as opposed to ‘helpers’ in Hong Kong.

Awareness of the Law

43% of respondents in Hong Kong reported that they were aware or very aware of the labour laws in Hong Kong as it relates to FDWs. The relatively low numbers of those that were aware of the Hong Kong regulations point out to the possible attitude that many employers do not take the time to fully understand what the law provides for them and the FDWs. On the contrary, some 65% of the Malaysian employers reported being either somewhat or very aware of the regulations concerning about the employment of FDWs. However, further probing of Malaysian employers found that only 6% were actually able to relate with some detail of the actual regulation - indicates that real knowledge about the law is minimal at best amongst them.

Nearly one-third (32.1%) of Hong Kong employers reported learning about the labour laws from the labour department while 34.7% reported getting information from the employment agency. Among the Malaysian employers, those who reported learning about it from employment agents number only 29.7% - indicative of the likelihood that many agents do not spend time to adequately walk through the regulations and requirements with employers. While 20.5% reported getting some information from the Immigration Department - indicating perhaps a sub-set of the regulations where it pertains to the application for and renewal of work permits for FDWs.

Similar to Hong Kong employers, Malaysian employers would come into contact with the regulations when they entered into the contract with the employment agencies. While initial findings showed that significantly higher numbers of Hong Kong employers reported or displayed awareness of the law, those who did so belong to a minority.

92% of Hong Kong employers felt that the labour laws of the region provide adequate protection to FDWs, this stands in contrast to the 68% of Malaysian employers who reported the same for their country. The surveys also found that nearly one-half (49%) of Hong Kong employers view that the region’s labour laws provide equal protection to both employers and workers while 44% felt it provided more protection to FDWs. Despite the paucity of laws that protects’ the basic rights of FDWs, the survey found slightly over half (53%) of Malaysian employers felt it protected both parties while nearly 22% said it protected the FDWs.

The employers both in Hong Kong and Malaysia were asked how they would react to hypothetical misbehaviour of their FDWs. In these three hypothetical cases, two observations were made - it was found that Malaysian employers were more likely to resort to verbal reprimand and scolding the FDW as a means of disciplining them. However as the severity of the misbehaviour increases, it was found that unlike Hong Kong employers, Malaysian employers were less likely to resort to termination of the worker, instead many would refer the case to the third parties, in this case either the police or the employment agency to resolve the situation. It is likely that given the high upfront costs and the length of time it takes to hire an FDW, many employers would perhaps be reluctant to immediately terminate the employment of their worker and instead look to refer to the employment agents to resolve the situation for them - which involves these agents to ‘counsel’ these workers or seek a replacement worker.

Hypothetical Misbehaviour by FDW	Hong Kong			Malaysia			Additional Remarks
	Terminate	Verbal reprimand	Inform Employment Agent/ Authorities	Terminate	Verbal reprimand	Inform Employment Agent/ authorities	
<i>FDWs slaps a child or elderly household member</i>	52.7%	23.3%	10.3% (Police)	13.4%	38.5%	40.6% (authorities & employment agent)	In Malaysia, 1.1% may physically punish the FDW
<i>FDW brings a stranger to the employer’s home</i>	18.3%	58.0%	1.5%	12.0%	52.7%	30.4%	
<i>FDW forgets to perform a household chore</i>	0.4%	27.9%	-	0.7%	84.8%	3.9%	

Table 28: Employers’ reaction to misbehaviours of FDWs

Treatment of FDWs

Respondents in Hong Kong and Malaysia were asked what they felt to be abusing the powers of employers. In five hypothetical cases, four were illegal and one was not illegal. Not surprisingly the survey found that Malaysian employers were by far more tolerant of potential abuses by employers. Although the exact wordings and hypothetical statements put to employers were modified to suit local discourse, the statements used on Malaysian employers were by far harsher and yet elicited a fairly strong response condoning such potential behaviour.

The findings here while hypothetical in nature points to the mindset of employers in Malaysia and the vulnerable and potentially abusive situation that many FDWs may find themselves in.

Hypothetical Misbehaviour by Employer in Hong Kong Survey	% among Hong Kong Employers	% among Malaysian Employers	Hypothetical Misbehaviour by Employer in Malaysia Survey
<i>“Give no food or allowance”</i>	5.3%		NA
<i>“Makes FDW work on their rest day without allowance”</i>	6.1%	51.2%	“Making the maid work for more than 8 hours without rest in one day continuously”
<i>“Makes FDW work in places other than originally agreed household”</i>	13.0%	42.7%	“Making the maid perform work other than what was originally hired for”
<i>“Deducting FDW’s salary”</i>	10.3%	21.9%	“Does not pay the maid’s full salary”
<i>“Verbally reprimanding/scolding FDW”</i>	83.6%	42.1%	“Verbally abuse the maid everyday using vulgar language”

Table 29

- In the Hong Kong survey the question was worded as follows: “According to your standard, do you consider the following to the FDWs to be misusing the power of employers?”
- In Malaysia, the question was worded as follows: “How strongly do you agree or disagree that the Government take action on employers if they commit the following?”

The questions were worded differently based on the different context of each place, for Hong Kong there is no question of whether the government should take actions or not as it is already regulations in place with punitive measure.

While there are as yet no data available on cases of abuse or breach of employment contract by Hong Kong employers, there exists some evidence of abuse cases in Malaysia as documented by NGOs working in this field. The cases recorded by organizations such as Tenaganita as well as embassies of countries of FDW origin form a very small fraction (less than 1%) when compared to the number of FDWs engaged in Malaysia but given a strong likelihood of under-reporting and constraints on enforcement, the potential for abuses may be large in aggregate terms when one considers that there are on average up to 300,000 FDWs serving in Malaysia in any given year.

Attitudes towards Improvement of Regulations and Compliance

Comparisons between employers from Hong Kong and Malaysia continued to find marked differences in attitudes towards law enforcement. A number of regulatory proposals in Malaysia have already been implemented in Hong Kong. From the results of the survey, we are able to draw some direct observations:

- Malaysian employers to date are only unanimously acceptable towards basic obligations such as providing proper accommodation
- The survey showed that a very large majority, nearly 73% of Malaysian employers were positive on providing insurance to FDWs. Currently, insurance premium is a cost included in the calculation of recruitment agency fees which implies that FDWs are already provided with insurance coverage. However as with many such initiatives, there is a perceived lack of monitoring and strong likelihood that FDWs may not actually be provided with the knowledge of how to process their claims.
- While Hong Kong employers accept that FDWs need their day of rest, Malaysian employers are adamant that workers not be allowed a day off (although surprisingly a majority can accept providing an annual leave). It is suspected that this attitude is systemic - in that employers are afraid of their FDWs absconding and forcing them to begin a long and expensive process of hiring a new worker. This observation ties in with the finding that only one out of eight Malaysian employers would allow the FDW to keep her own passport.

Actual Regulations in Hong Kong / Regulations proposed by NGOs and international convention but yet to be enacted in Malaysia	% Acceptance by Hong Kong Employers	% Acceptance by Malaysian Employers	Remarks
FDW should only work in the home of her employer	79.4%	66.8%	
Aside from monthly salary, FDW be paid allowances if working more than 14 hours a day	49.6%	43.4%	<i>In the Malaysia survey, the statement was worded: "Aside from monthly salary, the maid should also be paid overtime and allowances"</i>
FDW be provided with 1 day-off each week	97.8%	34.3%	<i>A subject of recent public discussion in Malaysia with strong disapproval among employers.</i>
FDW be provided with at least 8 days' paid annual leave each year	74.8%	51.6%	
Provided with proper accommodation facility	98.8%	91.9%	
Employer must provide insurance for the FDW	96.9%	72.8%	
FDW be given a copy of contract in her native language	69.5%	83.0%	
FDWs be included in the proposed statutory minimum wage as that of local workers	32.8%	NA	<i>Not applicable in Malaysia as there is no minimum wage laws at present</i>
The maid's passport should remain in her own possession.	NA	12.3%	<i>Not applicable in Hong Kong as immigration procedures are such that FDWs can obtain copies of their passports easily. See footnote below.³³</i>

Table 30

33 In Hong Kong the FDW is required to apply for the HKID card from the Immigration Department. At which point the information from the FDW's passport is recorded and finger prints are taken and recorded. Should an FDW loses her passport she would be able to get replacement copies of their passport by presenting their fingerprints to the Immigration Department. The Immigration Department will not inform employers nor employment agencies that a replacement has been issued.

The governments of both Hong Kong and Malaysia have the same stated goals of reducing the dependency on FDWs but the former has taken the step of increasing the threshold placed on employers seeking to employ them not only from the standpoint of qualifying household incomes but also compliance with a set of regulations that go further in their attempt to meet the basic human rights of the FDWs. Although the minimum wage accorded to FDWs is calculated on a different basis when compared to regular workers, the system provides some level of protection and wage competition (although reality shows that the FDW attract much lower real wages compared to the average Hong Kong worker) for the FDW. Some of the procedural elements of the immigration documentation process and regulations in Hong Kong had also be found to help to reduce potential for abuse, for example, in the cases of employers' withholding the workers' passports.

Despite these improvements, some problems remain, as in Malaysia, the duration of time taken to resolve labour disputes is lengthy. Additionally, the FDWs face some constraints in seeking legal redress in such disputes as they are not permitted to be employed pending conclusion of their cases. The high cost of pursuing their disputes mean that a significant number of FDWs end up returning to their countries of origin without the issues being resolved.

5

Conclusions



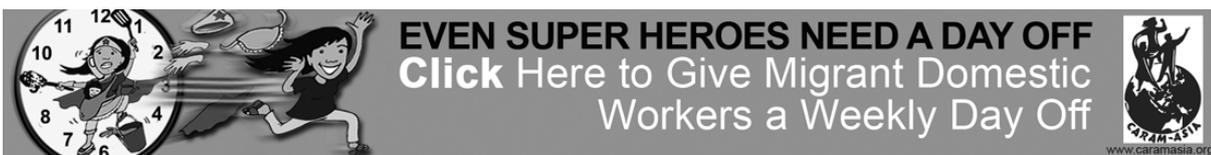
From the survey results and the comparisons in responses from employers in Hong Kong and Malaysia, several concluding points could be reached:

1. There is a stark difference in the way employers in Malaysia and Hong Kong view FDWs. Malaysians tended to see them as 'servants' with few fundamental rights while those in Hong Kong saw them mostly as regular workers with rights and entitlements. This difference in mindset of employers appears to be one of the most fundamental attributes from which attitudes towards regulation and compliance of the law could be derived. This perception is also developed from regulatory definition which had been institutionalized in societal practice.
2. FDWs in Malaysia and Hong Kong work in generally isolated and individualized conditions in private domain and thus remain vulnerable to abuse. Differences in the regulatory framework and procedures in Hong Kong afford them better protection and more avenues to seek assistance, legal redress, or means to escape abuse. Two main important conditions are the fact that in Hong Kong, FDWs are given weekly day off and hold on to their travel documents such as their passports. However current regulations and procedures in Malaysia provide minimal protection of rights to FDWs thus leading to abusive employment practices and restriction of movement, where FDWs are forced to accept substandard living conditions are deprived of their human rights, unrecognized and excluded from labour laws.
3. The survey results showed that FDWs generally perform to the satisfaction of their employers and fulfill the employers' needs to balance work and life requirements. For the most part, employers in both Malaysia and Hong Kong were satisfied with the roles played by FDWs but there were marked differences in the way this satisfaction was expressed. A significant number of Malaysian employers' satisfaction on the FDWs was founded on the obedience of the FDW and their acceptance of restrictions placed on their freedom of movement and social interaction. This is in stark contrast with the work performance orientation of Hong Kong employers.
4. Due to higher obligations to comply and perhaps better public education on these matters, employers in Hong Kong were more aware of the laws and regulations that cover the rights and entitlements of FDWs. In contrast, only a handful (6%) of Malaysian employers showed some awareness of the law that affects the employment of FDWs. In contrast Malaysian employers were generally ignorant of the laws and the protection of the rights of FDWs and not held accountable for their violations. This is in part aided by an absence of a monitoring regime whereas Hong Kong has a stricter enforcement environment.
5. Employers in Malaysia and Hong Kong felt that FDWs were protected under the laws of their respective places. However such views on the part of Malaysian employers were largely influenced by their lack of knowledge of the law and general attitudes towards viewing FDWs as servants. This finding is in line with the regulatory definition of such workers in Malaysia, bringing about the public notion a 'master-servant' relationship. Nonetheless, the survey did reveal that nearly one out of every five Malaysian employers does acknowledge that present regulations in Malaysia do not go far enough to protect FDWs.

6. There were also some marked differences in approaches towards disciplining FDW, Malaysian employers tended to resort to more verbal reprimand or scolding as a form of expressing dissatisfaction with their FDWs on most infractions while Hong Kong employers were less likely to do so for minor infractions. Malaysian employers are less likely to resort to legal channels or to directly terminate their FDWs in case of a more serious infraction, for example, when an FDW slaps a child, they would instead refer the FDW to the employment agent for punishment. While more than one-half of Hong Kong employers were ready to terminate the services of the FDW. Comparatively, Malaysian employers are more likely to use verbal abuse for their poor performance whereas in Hong Kong, such infractions will be met with reminders to improve their responsibility.
7. The general attitude displayed by employers towards regulatory and proposed requirements in Hong Kong and Malaysia showed that enactment of laws with enforcements generally leads to better compliance. Most employers in Hong Kong generally accept regulations that provide for the basic and secondary needs of the FDW such as timely payment of wages and shelter, and freedom of movement and social interaction. Malaysian employers were, however, are only agreeable to employment terms such as payment of wages and providing reasonable living conditions but were not open towards allowing FDWs freedom to move or even to enjoy a weekly day off.

Reflective perhaps of the tensions with the local workforce, the survey in Hong Kong found that the predominant contention was on the matter of allowing FDWs to enjoy the same minimum wage rights as that accorded to citizens. On the other hand, Malaysian employers showed more irresponsible attitudes towards fundamental rights of the FDWs such as getting paid their wages on time, being allowed a day off each week or simply to hold on to their passports.

8. While the survey did not directly measure compliance with regulations, background research on the matter did reveal that efforts of FDWs to seek legal redress in disputes with their employers remained difficult in both Hong Kong and Malaysia. While the nature of disputes and cases differed greatly, i.e. those in Malaysia often included abuses of fundamental human rights while that in Hong Kong were disputes arising from non compliance of employment terms; the average FDW still remained in a disadvantaged position to argue their cases in the legal process due to employment restrictions, high costs involved and the lengthy duration needed to process such cases.

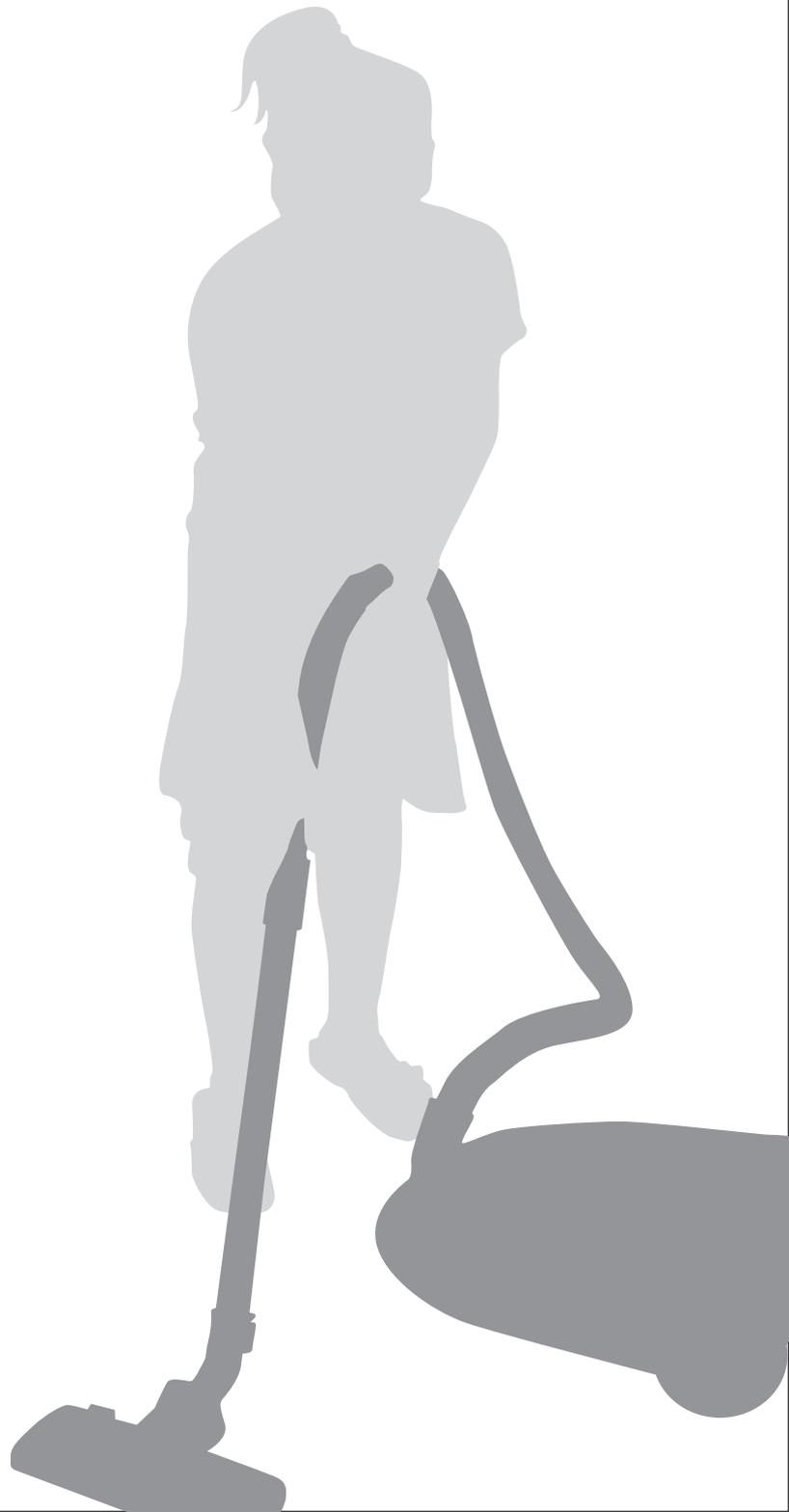


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6

Recommendations



Nation 3
TheStar

Maid, 25, claims rape and abuse by couple

star
21/4/10

PENANG: A 40-year-old goldsmith has been arrested for allegedly raping his maid. His wife was also held for allegedly abusing the woman the past 15 months.

The couple was picked up on Monday night in Pondok Upeh, Balik Pulau, when a police team went to the house to rescue the 25-year-old maid after a neighbour made a report saying that they could not stand the maid's

She said the wife, who is in her late 30s, would also use a bowl to hit her on the head whenever she made the slightest mistake.

The victim, who had bruises and scratches on her face, was sent to the Penang Hospital for a check-up.

Acting Balik Pulau OCPD Deputy Supt Guan Beng Kang said the couple was produced before a magistrate yesterday

connection with the rape of his 14-year-old niece recently.

He was arrested when he turned up at the Jelutong police station at 5.30am to clear himself of the allegations.

George Town OCPD Senior Asst Comm II Mohd Ali Mohd Yusuf said the man, in his 40s, was remanded for five days by a magistrate's court on the same day to assist in investigations

In a report prepared for the general discussion on migrant workers, which took place during the 92nd Session of the International Labour Conference (ILC 2004), the International Labour Organisation stressed that FDWs are among the world's most vulnerable workers. Their working conditions foster an environment of dependence and isolation, particularly in situations whereby employers confiscate their documents (travel, work and residence); workers are confined to their work place and not able to leave without escorts or for valid reasons; limited interaction and contact with the outside world and most work seven days in a week without a day off. All these systematic denial of their labour and human rights, dampens their spirit and physical conditions, causing mental instabilities, access to health care and well being and further lead to the denial of their reproductive and sexual rights.

The listed rights violations above contribute towards an environment of bonded labour with intense servitude and debt bondage that constitute trafficking in persons. Moreover, the cycle of abuses that are inflicted on migrant domestic worker will continue until the governments protect the rights of domestic workers by guaranteeing the rights through legally enforceable mechanisms with due oversight and accountability.

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 labour rights as well as produced positive perceptions and attitudes towards their FDWs.

Our recommendations include:

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 labour rights
2. 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.
3. Malaysia should grant freedom of association to FDWs to form their own associations and/or unions. All ILO member countries have, as a result of their membership of the ILO and the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, are committed to the implementation of the ILO Core Conventions in national laws and practices. Malaysia has the obligation to provide for freedom of association and not to have discriminative policies against migrant workers, as prescribed in the ILO Core Conventions. Hong Kong already gave FDWs the rights to form their own trade unions and take collective actions such as demonstrations and marches. Such rights are stipulated in Hong Kong laws.
4. Both governments can facilitate the employment process of foreign domestic workers by providing better orientations to potential employers as well as to FDWs so that both parties can have a clearer understanding of their obligations and rights. The trainings for FDWs should not be outsourced to private agencies who had been charging excessive fees. Instead, governments in collaboration with trade unions or NGOs can jointly conduct these trainings that should not only be focused on skills training but also on rights and obligations of all stakeholders involved.
5. 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 labour bondage.
6. 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.

7. 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.

One of the measures both governments of origin and destination countries should consider is to establish a ceiling on placement fees to avoid the problem of debt bondage and excessive profiteering by recruitment agencies. In the current situation, 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 leaves both employer and worker without much choice but stuck to the employment engagement.

8. A more effective mechanism with strong punitive measures should be developed towards ensuring the accountability and public scrutiny of non-state actors in the FDW employment process such as labour recruitment agencies, employers and brokers for any violations against domestic workers. Strict enforcement of the laws and policies will promote compliance among all parties involved.
9. Since both Malaysia and Hong Kong (China) have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), both governments must therefore ensure the rights stipulated in these conventions are transferred into national law with subsequent monitoring and enforcement. They are duty bound to enforce the CEDAW General Recommendation 26 on Women Migrant Workers which acknowledges that domestic work should be protected by the labour laws. The CEDAW General Recommendation 26 on Women Migrant Workers is available at http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.
10. Malaysia and Hong Kong should begin to take steps to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, 1990). (Full text of the Convention is available at <http://www2.ohchr.org/english/law/cmw.htm>)
11. Governments, trade unions and employer associations in Malaysia and Hong Kong should take steps to support and later ratify the new International Labour Organizations (ILO) Convention for Domestic Workers and its supplementary Recommendation.
12. Over time, more surveys and other studies should be done to strengthen and protect the rights of FDWs in both destination and their home countries.

D. H. Contract No. A 000001

EMPLOYMENT CONTRACT
(For A Domestic Helper recruited from abroad)

This contract is made between
("the Employer", holder of Hong Kong Identity Card/Passport No.*) and
..... ("the Helper") on and
has the following terms:

1. The Helper's place of origin for the purpose of this contract is
2. (A)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Helper arrives in Hong Kong.
(B)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on, which is the date following the expiry of D.H. Contract No. for employment with the same employer.
(C)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Director of Immigration grants the Helper permission to remain in Hong Kong to begin employment under this contract.
3. The Helper shall work and reside in the Employer's residence at
4. (a) The Helper shall only perform domestic duties as per the attached Schedule of Accommodation and Domestic Duties for the Employer.
(b) The Helper shall not take up, and shall not be required by the Employer to take up, any other employment with any other person.
(c) The Employer and the Helper hereby acknowledge that Clause 4 (a) and (b) will form part of the conditions of stay to be imposed on the Helper by the Immigration Department upon the Helper's admission to work in Hong Kong under this contract. A breach of one or both of the said conditions of stay will render the Helper and/or any aider and abettor liable to criminal prosecution.
5. (a) The Employer shall pay the Helper wages of HK\$ per month. The amount of wages shall not be less than the minimum allowable wage announced by the Government of the Hong Kong Special Administrative Region and prevailing at the date of this contract. An employer who fails to pay the wages due under this employment contract shall be liable to criminal prosecution.
(b) The Employer shall provide the Helper with suitable and furnished accommodation as per the attached Schedule of Accommodation and Domestic Duties and food free of charge. If no food is provided, a food allowance of HK\$ a month shall be paid to the Helper.
(c) The Employer shall provide a receipt for payment of wages and food allowance and the Helper shall acknowledge receipt of the amount under his/her* signature.
6. The Helper shall be entitled to all rest days, statutory holidays, and paid annual leave as specified in the Employment Ordinance, Chapter 57.
7. (a) The Employer shall provide the Helper with free passage from his/her* place of origin to Hong Kong and on termination or expiry of this contract, free return passage to his/her* place of origin.
(b) A daily food and travelling allowance of HK\$100 per day shall be paid to the Helper from the date of his/her* departure from his/her* place of origin until the date of his/her* arrival at Hong Kong if the travelling is by the most direct route. The same payment shall be made when the Helper returns to his/her* place of origin upon expiry or termination of this contract.
8. The Employer shall be responsible for the following fees and expenses (if any) for the departure of the Helper from his/her place of origin and entry into Hong Kong:—
 - (i) medical examination fees;
 - (ii) authentication fees by the relevant Consulate;
 - (iii) visa fee;
 - (iv) insurance fee;
 - (v) administration fee or fee such as the Philippines Overseas Employment Administration fee, or other fees of similar nature imposed by the relevant government authorities; and
 - (vi) others:

In the event that the Helper has paid the above costs or fees, the Employer shall fully reimburse the Helper forthwith the amount so paid by the Helper upon demand and production of the corresponding receipts or documentary evidence of payment.

* Delete where inappropriate.

† Use either Clause 2A, 2B or 2C whichever is appropriate.

9. (a) In the event that the Helper is ill or suffers personal injury during the period of employment specified in Clause 2, except for the period during which the Helper leaves Hong Kong of his/her* own volition and for his/her* own personal purposes, the Employer shall provide free medical treatment to the Helper. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The Helper shall accept medical treatment provided by any registered medical practitioner.

(b) If the Helper suffers injury by accident or occupational disease arising out of and in the course of employment, the Employer shall make payment of compensation in accordance with the Employees' Compensation Ordinance, Chapter 282.

(c) In the event of a medical practitioner certifying that the Helper is unfit for further service, the Employer may subject to the statutory provisions of the relevant Ordinances terminate the employment and shall immediately take steps to repatriate the Helper to his/her* place of origin in accordance with Clause 7.

10. Either party may terminate this contract by giving one month's notice in writing or one month's wages in lieu of notice.

11. Notwithstanding Clause 10, either party may in writing terminate this contract without notice or payment in lieu in the circumstances permitted by the Employment Ordinance, Chapter 57.

12. In the event of termination of this contract, both the Employer and the Helper shall give the Director of Immigration notice in writing within seven days of the date of termination. A copy of the other party's written acknowledgement of the termination shall also be forwarded to the Director of Immigration.

13. Should both parties agree to enter into new contract upon expiry of the existing contract, the Helper shall, before any such further period commences and at the expense of the Employer, return to his/her* place of origin for a paid/unpaid* vacation of not less than seven days, unless prior approval for extension of stay in Hong Kong is given by the Director of Immigration.

14. In the event of the death of the Helper, the Employer shall pay the cost of transporting the Helper's remains and personal property from Hong Kong to his/her* place of origin.

15. Save for the following variations, any variation or addition to the terms of this contract (including the annexed Schedule of Accommodation and Domestic Duties) during its duration shall be void unless made with the prior consent of the Commissioner for Labour in Hong Kong:

(a) a variation of the period of employment stated in Clause 2 through an extension of the said period of not more than one month by mutual agreement and with prior approval obtained from the Director of Immigration;

(b) a variation of the Employer's residential address stated in Clause 3 upon notification in writing being given to the Director of Immigration, provided that the Helper shall continue to work and reside in the Employer's new residential address;

(c) a variation in the Schedule of Accommodation and Domestic Duties made in such manner as prescribed under item 6 of the Schedule of Accommodation and Domestic Duties; and

(d) a variation of item 4 of the Schedule of Accommodation and Domestic Duties in respect of driving of a motor vehicle, whether or not the vehicle belongs to the Employer, by the helper by mutual agreement in the form of an Addendum to the Schedule and with permission in writing given by the Director of Immigration for the Helper to perform the driving duties.

16. The above terms do not preclude the Helper from other entitlements under the Employment Ordinance, Chapter 57, the Employees' Compensation Ordinance, Chapter 282 and any other relevant Ordinances.

17. The Parties hereby declare that the Helper has been medically examined as to his/her fitness for employment as a domestic helper and his/her medical certificate has been produced for inspection by the Employer.

Signed by the Employer _____
(Signature of Employer)

in the presence of _____
(Name of Witness) (Signature of Witness)

Signed by the Helper _____
(Signature of Helper)

in the presence of _____
(Name of Witness) (Signature of Witness)

* Delete where inappropriate.

SCHEDULE OF ACCOMMODATION AND DOMESTIC DUTIES

1. Both the Employer and the Helper should sign to acknowledge that they have read and agreed to the contents of this Schedule, and to confirm their consent for the Immigration Department and other relevant government authorities to collect and use the information contained in this Schedule in accordance with the provisions of the Personal Data (Privacy) Ordinance.
2. Employer's residence and number of persons to be served
 - A. Approximate size of flat/house square feet/square metres*
 - B. State below the number of persons in the household to be served on a regular basis:
 adult minors (aged between 5 to 18) minors (aged below 5) expecting babies.
 persons in the household requiring constant care or attention (excluding infants).
 (Note: Number of Helpers currently employed by the Employer to serve the household)

3. Accommodation and facilities to be provided to the Helper

A. Accommodation to the Helper

While the average flat size in Hong Kong is relatively small and the availability of separate servant room is not common, the Employer should provide the Helper suitable accommodation and with reasonable privacy. Examples of unsuitable accommodation are: The Helper having to sleep on made-do beds in the corridor with little privacy and sharing a room with an adult/teenager of the opposite sex.

- Yes. Estimated size of the servant room square feet/square metres*
- No. Sleeping arrangement for the Helper:
- Share a room with child/children aged
- Separate partitioned area of square feet/square metres*
- Others. Please describe
-
-

B. Facilities to be provided to the Helper:

(Note: Application for entry visa will normally not be approved if the essential facilities from item (a) to (f) are not provided free.)

- | | | | | |
|---------------------------------------|--------------------------|-----|--------------------------|----|
| (a) Light and water supply | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (b) Toilet and bathing facilities | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (c) Bed | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (d) Blankets or quilt | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (e) Pillows | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (f) Wardrobe | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (g) Refrigerator | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (h) Desk | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| (i) Other facilities (Please specify) | | | | |

Press Release: State Intervention Needed for Domestic Workers

Wednesday, 08 July 2009 04:59PM

The Bar Council commends the Ministry of Human Resources for proposing that domestic workers be given a rest day and for suggesting that all domestic workers have a standard employment contract.

Despite adverse reaction from some individuals, we must proceed to do what is right and uphold human dignity regardless of nationality or class of work.

As a matter of policy we should adopt a standard employment contract to cover all domestic workers irrespective of their country of origin.

The Employment Act should be amended to include as much of this standard contract as possible to ensure uniformity and statutory protection for domestic workers.

Although domestic workers are not accorded full protection under the Employment Act, there are still many provisions of the Employment Act, which apply:

- * Section 24 – Lawful Deductions (Deductions shall not exceed 50% of the wages earned – 24(8))
- * Section 69 – Director General's power to inquire into complaints (Dispute relating to wages or any other payment in cash due to the employee under the terms of the contract of service or the Employment Act)
- * Section 65 – Powers of inspection and inquiry (Director General shall have power to enter without previous notice any place of employment and to make an inquiry)
- * Section 79 – Powers of Director General to investigate possible offences under the Act
- * Part XVII – Offences and Penalties (Fines not exceeding RM10,000)

We call on the Ministry of Human Resources to carry out more inspections to ensure that employers do not breach the provisions of the Employment Act. Situations in which domestic workers are not paid wages for 3 or 6 months are a violation of the Employment Act.

We would also suggest that an effective mechanism be set up to deal effectively with claims for non-payment of salary and monetary benefits.

It is perhaps important and timely to consider seriously the rights of domestic workers to form their own associations so that they can highlight their rights and concerns.

We propose that the Government incorporate and implement the following terms and conditions in formulating a just and equitable standard employment contract for all domestic workers.

Ragunath Kesavan
President
Malaysian Bar

8 July 2009

Appendix 1

Items That Should Be Part of a Standard Contract

Given below is a list of 24 important items that should be part of the standard contract for domestic workers

1. Place of employment (To ensure that the domestic worker is not taken from one place of employment to another)
2. Duration of the contract and the date of commencement
3. Basic Monthly salary
4. Work Hours – The domestic worker is to be provided rest of at least 12 hours a day; Inclusive of continuous period of rest of at least 7 hours
5. Rest Day – At least one (1) rest day per week should be provided; The contract should also specify the rate of payment if work is done on this rest day

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6. Paid annual leave – The domestic worker is to receive 8 days of paid annual leave per year when employed for less than 2 years and 12 days per year when she is employed between 2 to 5 years. The domestic worker will only become eligible to take this paid annual leave after her 1st year of employment (This is consistent with the provisions of the Employment Act)

7. Medical treatment and paid sick leave – The Employer is to pay for medical treatment and not require the domestic worker to work when she is sick.

8. Bank Account – The Employer should assist the domestic worker to set up a bank account. The bank account should be in the name of the domestic worker.

9. Wages - Wages should be paid directly into the bank account set up in the name of the Domestic Worker; Wages should be paid not later than the 7th day after the end of the previous wage period

10. Fees and Expense – The contract should provide a list of all fees and expenses that have been incurred in the recruitment and employment of the domestic worker. The contract should clearly stipulate which items have to be paid by the employer and which expenses have to be borne by the domestic worker

11. Advances – The total advance that was paid by the employer should be stipulated in the contract together with an explanation of how much the employer intends to deducted each month to recover these advances (The total deductions in any one month cannot exceed 50% in accordance with Section 24 of the Employment Act).

12. Accommodation – The contract should specify the type of arrangements that have been made. Is the Domestic Workers going to be provided a separate room or is she required to share the room with others? What is the size of this room? Arrangements for accommodation must have regard to adequate space, ventilation, privacy and security for the domestic worker

13. Food – The Domestic Worker should be provided 3 reasonable meals a day

14. Size of household – The number of persons that the domestic worker would be required to serve on a regular basis must be specified. The Contract must specify – The number of adults (above the age of 18), The number of children (between 5 and 18) and the number of children (below the age of 5)

15. List of duties of Domestic Worker – The contract should specify the general range of duties that the Domestic Worker is expected to take on i.e. Household chores, cooking, looking after aged persons, baby-sitting and child minding. Other duties that reasonably come under the job scope of a Domestic Worker can be included but these should be specified in the contract

Contract must stipulate that the Domestic Worker will only work for the Employer and his/her immediate household and not be required to work in another residence or be assigned to any commercial, industrial or agricultural enterprise. The domestic worker is to comply with reasonable instructions of the employer

16. List of duties of employer – The contract should specify the general obligations of the employer towards the domestic worker. These obligations should include treating the domestic worker in a just and humane manner and under no condition resorting to physical violence. The employer must also respect the religious beliefs of the domestic worker and not put the domestic worker in a situation where such beliefs can be compromised

17. Termination of contract – The contract should list out the various conditions under which the contract can be terminated by either the Employer or the Domestic Worker

18. Passage – The transportation cost to bring the domestic worker to Malaysia is to be born by the employer. If the fixed term contract comes to its natural end the employer will also be responsible for paying for the cost of repatriation.

If the contract of the domestic worker is terminated because of misconduct or if the domestic worker unreasonably terminates the contract, the cost of repatriation should be born by the domestic worker. Whether the contract was wrongfully terminated by the employer or unreasonably by the domestic worker will be determined by the Labour Department.

19. Wrongful termination – In the event of wrongful dismissal by the employer, the employer will pay the dismissed domestic worker adequate compensation.

20. Foreign workers compensation scheme – The Employer must take out insurance for the domestic worker. The standard contract should specify the minimum quantum payable in the event of death or permanent disability

21. Passport - The Passport should remain in the possession of the domestic worker.
22. Bank Guarantee – Employer should provide a bank guarantee to the Embassy/High Commission of the sending country
23. Amendments – It should be clearly stated that no provision of the contract can be altered, amended or substituted without the written approval of the Ministry of Human Resources and the Embassy/High Commission of the sending country
24. Copy to Domestic Worker – The domestic worker should be given one copy of the contract in her native language

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 of, 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, Hong Kong is one of the few places in the world that grants most of the fundamental labour rights to FDWs. The Employment Ordinance and the Employees’ Compensation Ordinance 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.



CARAM Asia (Coordination of Action Research on AIDS & Mobility) is an NGO in Special Consultative status with the Economic and Social Council of the United Nations. The organisation was set up in response to the growing global phenomenon of migration and emphasises a regional approach in addressing the issues of migration and health.

For more information, please visit
www.caramasia.org

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