UNFAIR WAGE CUT and LEVY

The Hong Kong foreign Domestic Workers (FDW) are paid a minimum allowable wage (MAW). Each year, the Hong Kong government reviews the MAW. The MAW is again up for review and decision in 2005. The MAW was first implemented in 1987 at HK$2,900 per month; since then and until 1998, it consistently rose due to the strong HK economy and the effective advocacy of migrant and local workers’ groups.

The MAW was implemented as one of the ways of protecting the wage and situation of FDWs in Hong Kong, who are among the lowest paid sectors of Hong Kong society. A majority of FDWs come from the Philippines, Indonesia and Thailand, and are also mostly women. FDWs contribute over HK$13.7 billion annually to the Hong Kong economy - (almost 1% of HK’s GNP), [study made by AMC in September 2004] . In spite of this significant contribution FDWs remain one of the groups most vulnerable to abuse, contract violation, discrimination, and reduction in their wages/benefits. These vulnerabilities are due to a combination of structural, policy, gender, racial and class-related factors.

In the aftermath of the 1997 financial crisis that swept Asia and plunged HK and several countries into recession or economic difficulties and record high unemployment, the HK government first cut the MAW of FDWs in 1998 “because FDWs need to share the burden of the economic difficulties.” This was met by strong protests spearheaded by CMR, local labor and women’s groups, churches and advocates. In 1999, the government imposed the first ever cut on the MAW (5%), bringing it down to HK$3,670/month. The employers originally lobbed for a 35% wage cut.

In 2003, the government, despite strong protests and lobbying by migrants, advocates and sending governments, imposed a second wage cut of 11% or HK$400. In addition, the government also introduced a levy on employers for hiring FDWs (HK$9,600 per FDW contract). A class action suit filed by migrants against the levy and wage cut was decided in December 2004 in favor of the HK government, declaring the wage cut and the levy as legal. Migrant trade union members of CMR, and trade union groups in HK and the Philippines, have a pending complaint since November 2004 with the ILO against the wage cut and lack of migrant union consultation.

Underpayment and Heavy Recruitment Agency Fees

Underpayment is one of the most widespread forms of abuse against FDWs in Hong Kong. A baseline study conducted by CMR and AMC in 2001 revealed that 15%, or approximately 30,000 of FDWs are underpaid. The extent and degree of the violation differ by nationality. For example, according to the baseline study conducted by IMWu and AMC in 2005 almost half of all Indonesian FDWs (97,980) are underpaid, receiving only an average of HK$1,500-2,000 per month.

In many cases, especially among Indonesians, the severe underpayment is linked to the excessive fees charged by recruitment agencies. HK laws allow only 10% fees (HK$327) to be charged by recruiters; however, many agencies charge upwards of HK$9,000, explaining why many FDWs are underpaid or totally not paid for several months while paying off the excessive fees.

In view of the above, CMR hereby calls on the HK government to:

1. Stamp out underpayment of FDWs, and overcharging by recruitment agencies
For many underpaid FDWs, any statutory wage hike only serves to intensify the underpayment that they suffer. Although the sustained campaign of the Indonesian Migrant Workers Union (IMWU), The Hong Kong Coalition of Indonesian Migrant Workers Organization (KOTKHO) and CMR in more than 5 years have helped reduce the underpayment incidence (from around 90% in 1999, down to 48% by 2001 and become 42% in 2005 and the fees charged by recruiters (from an average of HK$21,000– in 1999 down to an average of HK$16,000- in 2005), the problem remains serious.

Therefore, one of the first and most immediate steps needed to raise the actual wages of FDWs is to stamp out underpayment of FDWs and overcharging by recruiters. With HK’s efficient police force and immigration and labour authorities, it is a wonder why these blatantly illegal activities persist. The problem is less serious among Filipino and Thai FDWs, indicating that the problem can be effectively addressed.

CMR calls on the HK government to:
- Take strong action against guilty employers, and agencies charging illegal/high fees.
- Improve cooperation among the HK and sending governments, FDW unions/organizations and NGOs to crackdown on the problem.
- Recognize FDW unions as legal representatives who can file complaints on behalf of their FDW union members.
- Blacklist/disallow employers from hiring FDWs and severely punish recruitment agencies found guilty of underpaying or overcharging FDWs.
- Use the employers’ levy to speedily compensate underpaid FDWs.

2. Use the employers’ levy to compensate FDWs for contract violations and abuses

In 2003, when the HK government first imposed the levy on employers (for hiring FDWs), it designated the levy as a “fund for retraining local domestic helpers.” Local DWs and CMR have jointly stated in 2003 that they oppose this move to make FDWs pay for local DW’s retraining needs. Such cost is, and should be, paid for by the HK government, not the migrants.

Therefore, CMR calls on the HK government to:
- Designate the employers’ levy as a guarantee fund to automatically compensate FDWs for underpayment and financial claims arising from violations of FDW employment contract or Employment Ordinance. The government has similar levies (e.g. on travel agents, accidents, etc.) intended for specific purposes, to guarantee protection of consumers, workers’ safety, etc.
- Use the levy to automatically provide for daily living allowance (e.g. HK$50/day) for FDWs who have ongoing court case drag on for more than one month.

Using the levy in the above sense is a matter of justice – since it is money of the employers, which is reserved by the government because they hire FDWs. It will also be an operational advantage for FDWs and the government because the fund will minimize the need, cost and length of arbitration where guilty employers are allowed to only pay part of the FDW’s claims, or the process stretching for several months or years forcing FDWs to forcibly accept under-compensation or give up their claims. In the period of the labour case, FDWs are also not allowed to work or earn! Using the levy to provide daily living allowance will help lessen cases that drag too long, and the injustice of forcing FDWs to starve while pursuing their legitimate claims.

The over 90,000 underpaid Indonesian migrants, would have had benefited from the employers’ levy if this was designated as a fund to pay the underpaid FDWs.

3. Restore the wage cut through a 12% wage hike in 2006;

CMR calls on the HK government to:
- Implement a 12% (HK$415) wage hike in 2006
This will simply recover the 2 wage cuts (1999 and 2003), and bring back FDW MAW to 1998 levels. The two wage cuts were imposed by the government on the argument that FDWs should be among the first to share the burden of the economic recessions since 1997.

Now that the crisis is over and the HK economy is recovering, it is but fair to reverse the first wage cut, and implement a 12% hike in 2006. The FDWs should be one of the first to share the benefits of a resurgent economy, since they were also among the first to suffer the cut in 1999. The 2005 wage hike will restore the first wage cut made in 1999.

4. **Include the FDWs in the coverage of the Mandatory Provident Fund (MPF)**

Provision for Provident Fund, providing social security for workers on retirement, is mandatory in HK. Almost all employees in HK are covered by the MPF, including even part-time workers. The MPF however specifically excludes FDWs.

This is a form of discrimination against FDWs, and also towards women since most of the FDWs are women. MPF is essential for the social security of FDW after employment in Hong Kong, especially for women who are usually displaced from the labor force after they return to their home countries.

MPF can also be a process to detect and stamp out underpayment/illegal employment, since employer and FDW are required to contribute monthly.

CMR therefore calls on the HK government to include FDWs in the coverage of the MPF.

The 5% MPF contribution by employers effectively give a 5% wage hike for FDWs. But above all, this is a social security and gender justice issue because women who spend their prime years working as FDWs need social security protection after they finish working in HK and return to their home countries.

5. **Consult registered FDW trade unions when amending/changing terms and conditions in the standard FDW employment contract**

In line with ILO conventions, migrant unions, especially ADWU, IMWU and FDHGU, have been asserting their right to represent FDWs. CMR calls on the HK government to recognize the right of migrant trade unions to be properly consulted on changes in their employment contract.

6. **Related demands**

The following issues are also strategic and important factors that affect the security of wages, benefits and work of FDWs in Hong Kong. Therefore, CMR and partners reiterate the following long-standing calls on the Hong Kong government to:

- Implement a minimum wage for local domestic workers
- Abolish the “2-week rule”, NCS and other discriminatory policies against FDWs.

**Coalition for Migrants Rights (CMR)**

*Members: Asian Domestic Workers Union (ADWU) / Indonesian Migrant Workers Union (IMWU) / Filipino Domestic Helpers General Union (FDHGU) / Thai Women Association (TWA) / Far East Overseas Nepalese Association (FEONA) / Indian Domestic Workers Association (IDWA)/ The Hong Kong Coalition of Indonesian Migrant Workers Organization (KOTKHO)