

A REFERENCE WAGE FOR MIGRANT DOMESTIC WORKERS



BACKGROUND

Migrant Forum in Asia (MFA) has been advocating for the introduction of a Reference Wage, as an alternative to the minimum wage, to protect and promote migrant domestic workers' right to fair, decent and equal wages.

A reference wage is a skills related wage-spectrum for migrant workers for different occupations established by agreement between sending countries. It seeks to address:

1. Competition over the minimum wage between sending countries.
2. Discrimination of workers based on national origin in receiving countries.

Given that both undermine attempts to establish fundamental rights and labour standards for migrant workers.

The reference wage is an 'answer' to the proverbial 'Race is to the bottom' of wages and living standards for migrant workers between sending countries as they compete to provide labour and gain remittances from destination countries. Countries of origin may have poor labour standards or be prepared to strip their own citizens of their rights in order to secure overseas employment for their nationals. If one country offers oppressively cheap labor, other countries may be compelled to do the same to merely remain competitive. This global race to the bottom subsequently undermines the rights of all workers by creating unfair pressure in the global economy.

Sending countries seeking to secure maximum remittances for economic development are negotiating minimum wages for their nationals in bilateral agreements with destination countries. For example the Philippines declared \$400 US/month as the base salary for migrant domestic workers

whilst India's minimum salary requirement is around \$200 US/month (depending on the country). This has resulted in a divergence of wages paid to workers for the same job based on nationality. This inequality in wages has been mirrored in the labor recruitment industry with set pay scales according to nationality rather than the qualifications and work experience of the migrant worker.

The reference wage would offset competition that leads to the undercutting of wages for migrant domestic workers. For example: If one sending country sets a minimum wage standard at US\$400/month and another undercuts by setting the rate at US\$175/month, a reference wage of US\$250-\$400/month for all sending countries could be established instead. (The specifics of how the reference wage would be calculated, requires further discussion between all stakeholders to establish a universal wage setting mechanism). Migrant workers' salaries would no longer be linked to nationality, as the wage would be the same irrespective of their country of origin. The amount paid to a migrant worker within the wage spectrum of the reference wage would be dependent on their level of skill and experience. A migrant worker with greater work skills, qualifications, linguistic skills and experience, would receive a salary closer to US\$400/month in recognition of their expertise.

A reference wage would thus require multilateral negotiations between sending countries to reach consensus on:

- Replacing the minimum wage structure for migrant domestic workers.
- A set wage-spectrum for domestic work with consideration to existing minimum wages.
- A standardised skills recognition framework for domestic work.

The ILO has defined minimum wages as "the lowest level of remuneration permitted ... which in each country has the force of law and which is enforceable under threat of penal or other appropriate sanctions. Minimum wages fixed by collective agreements made binding by public authorities are included in this definition". (Source: ILO, Minimum Wages: Wage-Fixing Machinery. Application and Supervision. 1992.)

The Development of the Concept of a Reference Wage

MFA has been advocating for the introduction of a reference wage as an alternative to the minimum wage for migrant domestic workers since the 2008 Abu Dhabi Dialogue. The idea of a reference wage was first coined by the Indian Consul General of Abu Dhabi and since then has been gaining currency.

The concept of the reference wage (particularly in relation to the migrant domestic worker employment category) was first discussed at the Workshop on Recruitment of Workers for Overseas Employment in Dubai in January 2011. Discussions focused on possible and practical ways to avoid the “mismatch of skills qualifications,” given that it is the most common reason for worker and employer dissatisfaction in the overseas recruitment process.

Solutions focused on the need to develop job descriptions that outline the particular skills required for a position which could then be stated clearly in job offers and employment contracts. The skills recognition framework contained in the ILO Maritime Convention was suggested as a possible model for identifying workers’ skills. This framework could thus be utilised as one indicator to establish reference wages for specific occupations.

The Indian Government representatives at the workshop highlighted the applicability of the reference wage for certain occupational categories such as [migrant] domestic work. This idea currently informs India’s proposal to the UAE to revise the minimum monthly wages for various categories of Indian workers employed in the Emirates.

The Indian Embassy to the UAE seeks to fix the new salaries of its workers after studying the wages proposed by employers and the actual wages settled between employers and employees after the contract is made. Impetus for the revision of wages was recognition that a core reason for problems with workers was insufficient money given a rise in the cost of living. Whilst wages in their country of origin, India had increased, the minimum wages in the UAE have not been revised for many years, making it a strong case for review. India plans to consult all stakeholders involved in the employment process to arrive at realistic reference wages.

The workshop discussion also considered the implications of a reference wage in the international relations between countries of origin and destination. Negotiations related to the minimum wage for migrant workers have often been tense with prolonged stalemates; with the country of origin imposing a selective deployment ban, as workers would earn less than the specified minimum wage. Whereas countries of origin have no jurisdiction to enforce the minimum wage within the countries of destination, a reference wage appears to offer middle ground for both parties. It was envisaged that if the reference wage proposal was adopted that the reference wage should be subject to reassessment every two years, in consideration of economic factors such as inflation and purchasing power parity (PPP).

MFA recommended that the sending country governments should continue discussions stemming from the workshop with regard to a reference wage for migrant domestic workers.

Building Consensus for the Introduction of a Reference Wage for Migrant

Since the workshop in Dubai some countries of origin and labor rights advocates have adopted the reference wage as a standard of a fair wage for migrant domestic workers. The Philippines and Bangladesh assumed a similar stance on the wage proposal to that of India. Migrant Forum in Asia continued to lobby the case of the reference wage at the fourth Colombo Process Ministerial Conference held in Dhaka, Bangladesh on April 2011. MFA included it as part of its statement read at the plenary of the Colombo Process.

The reference wage was discussed again in the periphery of the meeting of the EU Consultation on Global Approach to Migration in Bangkok, in Thailand on 20-21 June 2011. MFA argued the benefits of a reference wage over a minimum wage structure for migrant workers. Indonesia reached an understanding that the alternative for the minimum wage is a fair wage structure based on categories of work and skills of workers.

There was also debate over the reference wage at the Workshop on Strengthening Dialogue between ESCWA and ESCAP Countries on International Migration and Development in Beirut, Lebanon on 28-30 June 2011. MFA advocated that only when the reference wage is established, would parity in employment and salaries take place. India and the Philippines again supported the concept and acknowledged the necessity of further deliberations amongst their respective governments to develop action plans to champion the reference wage.

The Regional Consultation of Civil Society Organizations from Sri Lanka, the Philippines and Nepal to Discuss Common Strategies for Advocacy in the West Asia Region held in Colombo, Sri Lanka on 5-6 July 2011, organized by MFA and Solidarity Centre, focused on the reference wage amongst a number of areas for advocacy. Migrant worker groups and government representatives from the three countries pondered the case of the reference wage as an

alternative to the minimum wage structure. They recognised the competition that exists amongst the countries of origin and the need to eradicate this in order to meet the common goal of protecting the rights of migrant workers irrespective of nationality. Sri Lanka and Nepal are the latest countries coming forward in support of continued discussions on the reference wage for migrant domestic workers.

MFA consultations over the introduction of the reference wage with the Philippines government over 3-4 years met with initial resistance due to concerns that it might lower the standards had been established for its overseas workers. Recently there has been a shift in position with the government more willing to support the introduction of a reference wage if US\$400/month was incorporated as the ceiling of the wage spectrum.

ANALYSIS

Migrant domestic workers' right to fair, decent and equal remuneration for work of equal value is not being upheld under the current minimum wage structure. Situated in the context of competition between sending countries to provide labour to destination countries and the subsequent inequality of wages based on nationality; the ability of the minimum wage structure to secure decent wages for migrant domestic workers is being undermined. Migrant domestic workers continue to experience an erosion of wages. The reference wage presents an alternative wage structure that can offer migrant domestic workers: equality in employment and salary; and a career structure with opportunities for promotion with an associated increase in salary.

The reference wage would improve the wages of migrant domestic workers by addressing several problems prevalent under the minimum wage structure:

Competition between sending countries drives down migrant workers minimum wages.

Since 2006, there has been a trend in labour sending countries making unilateral decisions to establish a minimum wage standard for their migrant workers (often domestic workers) and then seeking an agreement with the destination country during bilateral negotiations. Competition between sending countries has undermined the success of these negotiations in securing a fair minimum wage for migrant domestic workers.

Case study: Saudi Arabia and the Philippines

Saudi Arabia Labour Ministry announced in June 2011 that it would stop issuing work permits for domestic workers from Indonesia and the Philippines. Both countries had a history of demanding protection for their migrant workers. Philippines had been arguing for months that Saudi needed to increase the minimum wage to US\$400/month for migrant domestic workers, and give a guarantee of humane working conditions. Indonesia was placing a moratorium on sending workers, following the execution of an Indonesian domestic worker that occurred without notification of the Embassy.

The Saudi statement added: "The [labour] ministry's decision coincides with its great efforts to open new channels to bring domestic workers from other sources." (BBC: June 2011) Saudi officials have previously announced their plans to employ more domestic workers from: Bangladesh, Ethiopia, India, Nepal, Eritrea, Sri Lanka, Bangladesh, Mali and Kenya.

Thus Saudi Arabia was able to derive bargaining power in the negotiations to keep the prevailing wage for migrants low by implying that other countries could supply labour for less salary with reduced demands for protection. The Saudi side unwilling to agree to the set minimum wage, proposed US\$260/month instead.

The Philippines responded with a selective deployment ban given workers who would earn less than the minimum wage. The Philippines is faced with the dilemma of securing decent wages and conditions for its migrant workers without risking the overall loss of substantial remittances. At this stage, there is potential that the agreed minimum wage will be US\$300/month. However Saudi Arabia has also recently announced plans to import 45,000 Ethiopian nationals into the kingdom every month in order to meet its requirement for domestic workers.

The reference wage would offset competition amongst sending countries to supply labour that drives down the wages of migrant domestic workers.

Increasing competition between sending countries is exacerbating the negative impact on migrant domestic workers salary.

An increasing number of countries, lured by the economic benefits of workers' remittances, are encouraging low-income women to migrate for domestic work. This is creating more competition and has the potential for destination countries to bargain for even lower minimum wages in bilateral relations or display a preference for recruiting from countries that agree to lower wages for their nationals.

Bilateral negotiations are often not successful in securing the best minimum wage for migrant workers.

In recent years efforts to secure better wages for migrant domestic workers have occurred in bilateral negotiations between countries of origin and destination. The result has been a variety of minimum wages agreed in Memorandum of Understandings (MOUs) between countries, which are non-binding; often do not refer to international instruments that are central to the protection of human and labour rights; and lack effective mechanisms for implementation and monitoring. A significant obstacle to securing the best wage for migrant domestic workers through this bilateral process is that “the terms can be dictated by the dominant party which in most cases is the destination country”. (Wickramasekara 2012)

A reference wage being based on the consensus between sending countries enhances the bargaining power of countries, optimising their position to establish fair wages for domestic workers. “Multilateral cooperation and agreements are better suited to create a more equitable balance of bargaining power among governments and to avoid market pressures to minimise protections”. (MFA, CARAM Asia et al 2011:3).

However as Wickramasekara (2012) acknowledges “It has been difficult to arrive at multilateral frameworks in Asia on a controversial issue such as migration and bilateral approaches have become the norm”.

Recruitment agents lobby sending country governments to keep the minimum wage low.

Recruitment agents in sending countries often lobby against proposals to increase wages offered to domestic workers, citing the fear that competition between sending countries will lead to destination countries selecting cheaper labour elsewhere resulting in reduction in their profits.

Case: Sri Lankan Migrant Domestic Workers.

In response to international competition, Sri Lankan labor agents bargained down Sri Lankan workers’ salaries in 2007. The Association of Licensed Foreign Employment Agencies (ALFEA) protested against the proposal by the Sri Lankan President for a minimum salary for domestic workers at 25,000 rupees [US\$222] a month, with an increase to 50,000 rupees [US\$444] within the next three years. They were successful and it was abandoned. (HRW 2007: 52)

The minimum wage structure has not incorporated potential economic changes

Migrant workers’ minimum wages have been stagnant, whilst their actual salary has decreased over time due to changes in the cost of living in both destination and origin countries. This was one of the main reasons cited by the Philippines Overseas Administration Authority (POEA) for raising the minimum wage of domestic workers given that minimum salary had been US\$200/month since the start of the overseas employment program almost forty years ago. Sri Lankan migrant domestic workers have also experienced a decrease in the real value of their salaries i.e. purchasing power of their wages, as the cost of living in Sri Lanka has risen due to rampant inflation and the price of consumer goods has increased. Fifteen years ago, Sri Lankan domestic workers earned 400 riyals per month in Saudi Arabia, and workers interviewed by Human Rights Watch (HRW) reported that they now earn only 300-400 riyals [US\$80-107] per month. The inflation-adjusted value of this salary of 400 riyals is now about half of what it was worth in 1992. (HRW 2007:50)

A reference wage being flexible would benefit workers as they could increase their salary within the wage-spectrum given increased experience or new skills. A review of the reference wage could take place every two years.

Discrimination based on the national origin of a migrant domestic worker in receiving countries leads to wage inequality.

The competition between sending countries has resulted in a range of minimum wages for migrant domestic workers based on their country of origin, including countries that have not negotiated a minimum wage at all. Subsequently, migrant domestic workers’ wages typically reflect discrimination based on the woman worker’s national origin (and religion) evidenced by differences in the amount of salary received.

For example: a Sri Lankan respondent in a HRW report complained “In Saudi Arabia we get only 400 riyals [US\$107], not enough... The Filipinos get 800 riyals [US\$213], the Indonesians get 600 [US\$160]. We do the same work as them.”(HRW 2007:55) The discriminatory practice of hiring domestic workers based on nationality has also been reinforced by the marketing strategies of sending countries. For example in a Handbook for Overseas Filipino Workers in Malaysia in a section entitled the “Competitive Position of Filipino DH’s [Domestic Helper] in Malaysia” the ‘going rates’ for employment based on nationality are listed.

At the time an Indonesian [domestic worker] received US\$ 125/month, Sri Lanka and Thailand US\$130/month, Cambodia US\$150/month and Philippines US \$200-400/month (POLO-KL et al 2006: 7) This is often reflected in employers' language when expressing a preferred nationality of the migrant worker for employment as if they were a commodity i.e. "I want a Filipino"; rather than requesting an employee with specific skills.

A reference wage would provide a level of pay that applies irrespective of nationality and improve the position of all but the highest paid domestic workers. The reference wage would lead to equality in employment and salaries.

Discrimination on the basis of sex and gender, women migrant workers may receive lower wages than do men

The negotiated minimum wage for migrant domestic workers may be lower than male migrant dominated professions. As domestic work is real work, domestic workers salary entitlements should be treated equally to that of other categories of workers.

The salary paid to women migrant domestic workers may reflect gender discrimination. For example:

In Italy where men are also employed in domestic jobs, there was a "48.7% gender pay gap for migrants from Sri Lanka with men earning on average €9,996 and women just €5,125 a year, and a 36.1% gender pay gap for migrants from the Philippines with men earning on average €9,041 and women €5,780 a year." (INPS, 2004)

Domestic workers are paid according to an employment category rather than their specific competencies, qualifications and experience.

Conflict in the employer-employee relationship is often due to different expectations of the skills of the domestic worker. A migrant domestic worker may be unable to perform tasks at a certain level or communicate well with the employer due to limited linguistic skills despite the recruiter matching her to the position. The domestic worker becomes vulnerable to violation of her rights in this situation. Abuse of workers is a common response by employers frustrated with the migrant worker's quality of work. Often employers faced with this situation subjectively decide what remuneration the domestic worker will then be entitled to often resulting in reduced wages. A reference wage with a standardised skills recognition framework would lead to standardised job descriptions and thus better matching of workers with employers, hopefully contributing to less abuse. A clear job description included in a contract would formalise the scope of the domestic work and thus prohibit the employer from

exploiting the worker by asking them to perform services beyond this.

Domestic workers make a significant contribution to the households in which they are employed and to the economies of the destination countries yet their work is often undervalued largely due to gender discrimination. They generally have no career structure and no prospect of promotion. Payment of wages is arbitrary. If a worker has a decent employer then she maybe given year on year pay increase, but then, if she has to go to another employer, she may begin with a pay cut. Introduction of a standardised skills recognition framework would act to reinforce domestic work as an employment category challenging the construction of domestic workers as a family member that often facilitates the violation of their human and labour rights. It would reinforce the argument for inclusion of domestic work under the labour code and the importance of a weekly day off which a domestic worker may choose to spend gaining additional skills e.g. attending a cooking or language class.

The reference wage would secure salary benefits based on skills, competencies and recognition of experience rather than a category of a worker being paid the same wage regardless of capability and performance. For example: a domestic worker after three years could do a basic test of her skills with the possibility of becoming a 'domestic worker-higher grade' or specialised as a 'child care domestic employee'.

If specialist areas were included in the framework it would be important to ensure that this did not lead to a reduced role and thus part-time hours for a domestic worker. The framework would enable migrant domestic workers to have a choice about what type of work or training they would like to do. Assessment procedures would need to: recognise competencies gained informally; not place undue psychological pressure on the domestic worker because of the format; and not be paid for by domestic workers. The development of the framework would need to involve migrant domestic workers with the possibility that they would become involved in the training and assessment of their occupation.

The Philippine policy on migrant domestic workers recognises domestic workers skills. The POEA Governing Board made a policy decision to enable domestic workers to move to the higher end of the market, not only in terms of salary but also in terms of skills proficiency, language and culture orientation. This linkage between salary and skills / competency standards has led to limited success in securing better wages for domestic workers. It has however led to increased demand for domestic workers from the Philippines such as in the case of Malaysia where they are preferred due to being "Highly trained in doing household chores and conversant in English". (Au 2012: 1)

Thus the workers' skills act as an incentive for employers to pay higher wages but must be coupled with enforcement mechanisms to ensure they receive the agreed wage.

Many labour sending countries have limited capacities in providing skills training through formal training programmes and even more importantly, skill acquisition through work experience. This leaves domestic workers with limited opportunity for official acknowledgement of their competencies. Development of a skills training programme in countries of origin would be required for implementation of the reference wage.

The reference wage by incorporating a skills recognition framework would contribute to greater protection of the migrant domestic worker and the recognition and salary reward for their specific skills and experience.

CRITIQUE

Migrant domestic workers rarely receive their official minimum wage. Evidence has shown that in most cases, the migrant domestic worker has not been able to receive the minimum wage nor have the states been able to ensure the payment of these wages. Migrant workers face several obstacles to receiving a decent wage related to practices of unscrupulous recruitment agents and employers: non-payment or delayed payment of wages for months ranging to years is a frequent complaint; underpayment is common; contract substitution is rife thus the salary can be changed; excessive recruitment fees substantially reduce the actual wage; unlawful deductions from their wages; transfer of wages into accounts that are inaccessible to them; payments that are delayed until departure; and employer abuse if they assert their right to be paid. Successful payment of a reference wage to workers is likely to be violated by the same exploitative practices. In the absence of enforcement mechanisms the introduction of a reference wage could serve to legitimise the existing unfair payment practices.

The reference wage is based on the assumption that the destination countries response to competition between labour sending countries to supply labour, is to choose the 'cheapest option' for labour. However the introduction of the Philippines minimum wage for domestic workers at US\$400/month did not necessarily lead to destination countries recruiting from another sending country that offered a lower minimum wage. The POEA introduced the minimum wage for entry-level domestic workers in the Household Service Workers (HSW) Policy Reform Package in 2006. Initially in the first year of implementation there was a substantial decline in the number of deployed household workers, however it began to recover the following year and the deployment trend has been increasing since then. (CMA & Migrant Rights Policy Monitor, 2011:4) The reason it did not impact significantly on deployment appears to be that largely employers underpaid the migrant domestic workers, as it was a non-binding migration governance regulation. "Almost half of the domestic workers (44%) do not receive the salary stated in their contract. In Hong Kong a third of the respondents received the US\$400/month or above stated in their contract.

Half said that the stated salary in their contract was below the prescribed minimum wage of US\$400. The average salary received by these domestic workers was US\$305/month." (CMA & Migrant Rights Policy Monitor, 2011:15-16).

A reference wage would require a context of strict enforcement mechanisms to guarantee the payment of wages with severe penalties for employers who violate the provision on salary. The risk would be that without salary monitoring and enforcement mechanisms that: migrant domestic workers skills would not be recognised in salary benefits and employers would gain better quality workers without an additional cost.

The concept of the reference wage is limited as it would be less relevant in countries (such as Europe and North America), where migrant domestic workers salaries are likely to be much higher than the ceiling of the wage spectrum. The reference wage would thus not affect more favourable provisions applicable to domestic workers.

The reference wage would need to conform with several human and labour rights international instruments on migrant domestic workers entitlement to fair and decent wages.

Listed below are some of the relevant ILO and UN Conventions pertaining to the protection and entitlement of migrant domestic workers' to a decent wage that can be invoked:

ILO Convention concerning the Decent Work for Domestic Workers (C189, 2011) Article 12 (1) reinforces that " Domestic workers shall be paid directly in cash at regular intervals at least once a month" and that (2) their wages are "not less favourable than those generally applicable to other categories of workers" and are "fair and reasonable."

The Universal Declaration of Human Rights (UDHR, 1948) provides that everyone, without any discrimination, has a right to equal pay for equal work, and to just and favorable remuneration, to ensure "an existence worthy of human dignity."

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) provides for female domestic workers’ “right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value.”

ILO Convention concerning the Protection of Wages (C95, 1949) Article 8(1): “Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.”

Article 9 specifies that wage deductions to cover recruitment costs, are prohibited under international law:

“Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.” Article 12(1) specifies that: “wages shall be paid regularly”.

ILO Private Employment Agencies Convention (C181, 1997) addresses the right to justice through dispute resolution mechanisms to ensure the protection of migrant domestic workers. Article 10 stipulates that “The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.”

RECOMMENDATIONS

- Capacity training must take place so migrant domestic workers are: aware of the developing policy; to ensure they support a reference wage; contribute to its development and to alleviate any concerns regarding a change in wage structure. In the future this would also include an introduction to the specifics of the skills recognition framework and related salary i.e. the reference wage for their occupation.
- The reference wage should be gender-sensitive to ensure equality and non-discrimination of wages for women migrant domestic workers; by drawing on the applicable international instruments, particularly the UN Convention CEDAW (1979).
- To ensure that there is a transparent broad based consultative process with all stakeholders during all stages of the development of a reference wage for migrant domestic workers.
- To establish a coordinating body that includes all stakeholders to be responsible for the drafting and development of the reference wage for migrant domestic workers.
- To institute a defined system of procedures to monitor and evaluate the implementation and compliance with the reference wage and report results to all stakeholders for policy review and development.
- Labour sending countries to develop a skills recognition framework for migrant domestic workers to facilitate mutual recognition across countries of workers’ skills, competencies, work experience and qualifications. This could be achieved with the technical assistance of the ILO possibly drawing on the Regional Model of Competency Standards (RMCS) and the ILO Maritime Convention.
- Receiving countries, recruiters and employers should clearly specify: the competencies, work experience, qualifications and skills training that are desired of potential migrant domestic workers. As this develops a migrant domestic worker’s skill level should be matched to a job description and incorporated into their employment contracts.
- The introduction of the reference wage for migrant domestic workers must take place in the context of ongoing advocacy for: inclusion of domestic workers under the labour code and law of destination countries; and the right to justice for violation of the salary provision with accessible, credible dispute resolution mechanisms and the opportunity for fair and impartial redress.
- To continue to advocate for the supervision and regulation of private recruitment agencies to ensure the reference wage is successful in its objective to provide fair, decent and equal wages for migrant domestic workers.
- Both sending and receiving countries should ratify and apply the following Conventions to ensure migrant domestic workers receive protection from abusive practices and their entitled right to decent and equal remuneration under international law: ILO Convention concerning the Decent Work for Domestic Workers (C189, 2011); UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) ; ILO Convention concerning the Protection of Wages (C95, 1949); ILO Private Employment Agencies Convention (C181, 1997)

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MIGRANT FORUM IN ASIA SECRETARIAT

85-C Masikap Extension, Central District
Diliman, Quezon City 1100 Philippines

Tel: (63-2) 928-2740
Fax: (63-2) 433-3508
E-mail: mfa@pacific.net.hk
Web: www.mfasia.org