

## ABUSED AND ALONE : LEGAL REDRESS FOR MIGRANT DOMESTIC WORKERS IN MALAYSIA\*

Jennifer Whelan,<sup>\*1</sup> Rohaida Nordin,<sup>\*2</sup> Ma Kalthum Ishak,<sup>\*2</sup> Nursyuhada Matwi,<sup>\*2</sup> Siti Nurimani Zahari,<sup>\*2</sup> Nicole Mekler<sup>\*1</sup> and Amritha Thiyagarajan<sup>\*1</sup>

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<sup>\*1</sup> Faculty of Law, University of New South Wales, Australia, <sup>\*2</sup> Faculty of Law, Universiti Kebangsaan Malaysia

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**Corresponding author's e-mail :** j.whelan@unsw.edu.au

### Abstract

*Malaysia's rapid economic development has relied on Malaysian workers as well as on migrant workers, especially from ASEAN countries and South Asia. The sustained high economic growth rates in Malaysia over approximately three decades caused the increase in migrant workers, who were to meet the rising demand in certain sectors of the Malaysian labour market. The objective of the article is to identify potential opportunities for policy and legislative reform in relation to Malaysia's implementation of its obligations as a Migrant Domestic Worker (MDW) receiving country specifically in relation to the barriers to MDW bringing claims where their rights have been breached. This article has identified the relevant policy, legislative and support mechanism (NGO and government) landscape in Malaysia regarding the realisation of the rights of migrant domestic workers in Malaysia to bring claims where their rights have been breached; best practice examples of the relevant policy, legislative and support mechanism landscapes in at least 2 'best practice' MDW receiving countries regarding the realisation of the rights of MDW to bring claims where their rights have been breached; and potential opportunities for policy, legislative and support mechanism reform in Malaysia to further enhance the realisation of the rights of MDW in Malaysia specifically in relation to redress mechanisms for breaches of the rights of MDW.*

**Keywords:** *migrant domestic worker, breach of rights, policy and legislation, redress mechanisms.*

### Abstrak

*Pertumbuhan ekonomi Malaysia yang pesat bergantung pada tenaga kerja Malaysia dan tenaga migran, khususnya dari negara-negara ASEAN, dan dari Asia Selatan. Pertumbuhan berkelanjutan yang tinggi dari ekonomi di Malaysia selama lebih dari tiga dekade telah mengakibatkan meningkatnya tenaga migran, karena kebutuhan untuk memenuhi permintaan yang meningkat di beberapa sektor dalam pasar jasa Malaysia. Tujuan artikel ini adalah untuk mengidentifikasi peluang reformasi kebijakan dan legislasi dalam kaitannya dengan implementasi Malaysia akan kewajibannya sebagai Negara penerima migrant domestic worker (MDW) khususnya terkait hambatan MDW dalam melakukan gugatan ketika hak mereka dilanggar. Artikel ini telah mengidentifikasi tataran kebijakan, legislasi dan mekanisme dukungan (terkait realisasi hak-hak MDW di Malaysia dalam melakukan gugatan; contoh praktik terbaik (best practice) tataran kebijakan, legislasi dan mekanisme dukungan yang terkait di setidaknya dua Negara penerima MDW yang memiliki "best practice" dalam merealisasikan hak MDW dalam melakukan gugatan; serta potensi peluang reformasi kebijakan, legislasi dan mekanisme dukungan di Malaysia untuk semakin meningkatkan realisasi hak-hak MDW di Malaysia khususnya dalam mekanisme ganti rugi atas pelanggaran hak-hak MDW.*

**Kata Kunci:** *migrant domestic worker, pelanggaran hak, kebijakan dan pengaturan, mekanisme ganti rugi*

## I. Introduction

Domestic work is amongst the lowest paid, most marginalised, least valued, and least organised work in the Asia-Pacific region.<sup>1</sup> While domestic workers are not a homogeneous group, their defining feature is that they are employed by a private household.<sup>2</sup> Their work may range from cooking and cleaning, to taking care of children and elderly or disabled persons. Indeed, their responsibilities canvas ‘tasks that may seem boundless’.<sup>3</sup> In 2010, there were 253,000 domestic workers in Malaysia, according to the ILO.<sup>4</sup> Approximately half of these were migrant domestic workers (MDWs). A migrant worker is ‘a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national’.<sup>5</sup> In Malaysia, MDWs are an important part of society and yet they remain largely unprotected by the statutory provisions that protect the rights of other workers in Malaysia. MDWs are highly vulnerable due to their migrant status which is compounded by gendered vulnerabilities. This intersectionality leaves them highly susceptible to human rights abuses.

The issues regarding MDWs in the Asia-Pacific region require a comprehensive regional approach, involving collaboration among countries of origin and destination. The abuse and exploitation of MDWs can create tensions between these countries and potentially lead to regional instability. This was evident in 2010, when the ill-treatment of Indonesian MDWs sparked protests that were imbued with strong nationalism and outrage.<sup>6</sup>

It is within this broader context that this article was developed. It is a joint collaboration between the Faculty of Law at Universiti Kebangsaan Malaysia and the Human Rights Clinic at the University of New South Wales School of Law. The purpose of this collaboration is to identify potential opportunities for policy and legislative reform, especially in relation to the barriers MDWs face when seeking redress for violations of their human rights. The article is divided into 10 sections, each focusing on a key issue relating to the treatment of MDWs in Malaysia:

1. Minimum Working Conditions
2. Monitoring Working Conditions
3. Workmen’s Compensation Act

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<sup>1</sup> PKK Hangzo and ADB Cook, “The Domestic Workers Convention 2011: Implications for migrant domestic workers in Southeast Asia,” *Centre for Non-Traditional Security Studies Insight* (April 2012), <http://www.rsis.edu.sg/nts/HTML-Newsletter/Insight/NTS-Insight-apr-1201.html>, accessed 30 March 2013.

<sup>2</sup> Yamila Simonovsky and Malte Luebker, *Global and Regional Estimates on Domestic Workers* (International Labor Organisation, 2011), p. 2, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_155951.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155951.pdf), accessed 29 March 2013; International Labour Organisation (1), *International Labour Conference 99th Session Report IV(1): Decent Work for Domestic Workers* (Geneva: International Labour Organization, 2010), p. 28, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_104700.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf), accessed 31 March 2013.

<sup>3</sup> *Ibid.*

<sup>4</sup> International Labour Organisation (2), *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection*, (ILO, 2013), p. 30, [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf), accessed 31 March 2013.

<sup>5</sup> UN General Assembly (1), *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158, art. 2, <http://www.refworld.org/docid/3ae6b3980.html>

<sup>6</sup> Hangzo and Cook, *loc.cit.*

4. Trade Unions
5. Immigration Status
6. Complaints Processing
7. Irregular Migration
8. MDWs are Unaware of their Rights
9. Memoranda of Understanding
10. Legal Obligation to Implement International Law

To identify issues, the author analyse legal framework governing workers such as legislation, policy and practice. The author also referred to international law to identify basic issues. In order to develop recommendation, the comparative approach is utilised by analysing labour law in several countries such as Hong Kong, Indonesia, the Philippines and Australia.

## **II. Overview of relevant law**

### **A. International Laws: Generally**

The protection of migrant workers has been the subject of increasing concern in international law. The following international instruments regulate and provide parameters for the protection of the rights of MDWs, but they have either not been signed or ratified by Malaysia:

1. Slavery Convention 1927
2. ILO Convention No. 105 - Abolition of Forced Labour 1957
3. ILO Convention No. 111 - Discrimination (Employment and Occupation) 1958
4. The International Convention on the Elimination of All Forms of Racial Discrimination 1969 (ICERD)
5. ILO Convention No. 131 - Minimum Wage Fixing 1970
6. ILO Convention No. 143 – Migrant Workers (Supplementary Provisions) 1975  
Convention concerning Migrants in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers
7. International Covenant on Economic, Social and Cultural Rights 1976 (ICESCR) and its Optional Protocol
8. International Convention on Civil and Political Rights 1976 (ICCPR)
9. International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT)
10. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 2003 (CMW)
11. ILO Convention No. 189 – Convention Concerning Decent Work for Domestic Workers – 2011
12. C181 - Private Employment Agencies Convention, 1997 (No. 181).

### **B. International Laws: Signed by Malaysia**

The following instruments have been signed or ratified by Malaysia, and govern Malaysia's treatment of MDWs:

1. ILO Convention No. 29 – Forced Labour 1930
2. ILO Convention No. 98 – Right to Organise and Collective Bargaining 1949

3. ILO Convention No. 100 – Equal Remuneration 1951
4. ILO Convention No. 138 – Minimum Age 1973
5. Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)
6. Convention on the Rights of the Child 1989 (CROC)
7. ILO Convention No. 182 – Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 2000
8. ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers 2007
9. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000<sup>7</sup>.

The Universal Declaration of Human Rights 1948 (UDHR) also sets out relevant basic rights that have universal application.

### 1. CEDAW

CEDAW consolidates provisions of the ICCPR and ICESCR concerning discrimination on the basis of sex and applies to citizens and non-citizens. Malaysia acceded to CEDAW in 1995. The relevant provisions are:

1. Article 4: special measures to accelerate equality between men and women;
2. Article 6: measures to suppress all forms of trafficking; and
3. Article 11: eliminate discrimination in employment.

The Committee on the Elimination of Discrimination against Women has issued a General Recommendation explicitly addressing CEDAW's protection of the human rights of MDWs.<sup>8</sup>The Committee called for:

1. Lifting of discriminatory bans or restrictions on immigration - article 2(f);
2. Legal protection for the rights of women migrant workers - articles 2(a), (f) and 11;
3. Access to legal remedies and complaints mechanisms - articles 2(c), (f) and 3;
4. Legal protection for the freedom of movement - article 2(e);
5. Training and awareness-raising - article 3; and
6. Monitoring systems - article 2(e).<sup>9</sup>

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<sup>7</sup> Ratified by Malaysia on 26 February 2009 subject to the following reservations: "1. (a) Pursuant to Article 15, paragraph 3 of the Protocol, the Government of Malaysia declares that it does not consider itself bound by Article 15, paragraph 2 of the Protocol; and (b) the Government of Malaysia reserves the right specifically to agree in a particular case to follow the arbitration procedure set forth in Article 15, paragraph 2 of the Protocol or any other procedure for arbitration."

<sup>8</sup> United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 26 on Women Migrant Workers*, C/2009/WP.1/R (5 December 2008), p. 2, [http://www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf).

<sup>9</sup> Note that CEDAW does not contain an individual complaints mechanism in its articles which would enable individuals or groups to complain about violations by a state party of any of the rights set forth in the Convention. However, on 6 October 1999 the UN General Assembly adopted the Optional Protocol to CEDAW which entered into force on 22 December 2000. The Optional Protocol is a treaty in its own right (and therefore only binds states parties that have separately ratified it). The Optional Protocol establishes, among other things, an individual complaints procedure and states who ratify the Optional Protocol recognizes the competence of the Committee on the Elimination of Discrimination Against Women

## 2. CROC

The relevant provisions are:

1. Article 34: protection from all forms of sexual exploitation and sexual abuse; and
2. Article 35: prevention of trafficking.

## 3. UDHR

In 1948, the General Assembly of the United Nations set out fundamental human civil, political, economic, social and cultural rights in the Universal Declaration of Human Rights (UDHR) and stated that they were to be globally and comprehensively protected.<sup>10</sup> The freedoms and rights stipulated in the UDHR apply equally to all persons. The relevant UDHR rights for MDWs are:

1. Article 22: right to social security;
2. Article 23: right to work, free choice of employment, just conditions of work, equal pay for equal work, just and favourable remuneration, form and join trade unions;
3. Article 24: right to rest and leisure; and
4. Article 25: standard of living, special protection and assistance for motherhood and childhood.

### C. Malaysia's Domestic Laws

The relevant Malaysian legislation includes the *Employment Act 1955*, the *Industrial Relations Act 1967*, the *Trade Unions Act 1959*, the *Workmen's Compensation Act 1952*, the *Immigration Act 1959/63*, the *Anti-Trafficking in Persons Act 2007*<sup>11</sup>, and the *Penal Code (Act No. 574) 1997*.<sup>12</sup> Where relevant for the purposes of this article, the provisions from these statutes are discussed.

## III. Issues and Recommendation

The following paragraphs discuss the 10 issues and recommendation as had been mentioned under **Section I**.

### A. Minimum Working Conditions

to receive and consider written communications.

<sup>10</sup> UN General Assembly (2), *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <http://www.refworld.org/docid/3ae6b3712c.htm>

<sup>11</sup> The act "clearly states that servitude, long working hours and debt bondage are all elements of labour trafficking." See Irene Fernandez (1), "Malaysia-Indonesia MOU: Complicity In Violence, Abuse and Trafficking," *Malaysia Today* (1 June 2011), <http://www.malaysia-today.net/mtcolumns/letterssurat/40802-malaysia-indonesia-mou-complicity-in-violence-abuse-and-trafficking->, accessed 10 April 2013. Amendments in 2010 broadened Malaysia's definition of trafficking to include 'all actions involved in acquiring or maintaining the labour or services of a person through coercion.' See United States Department of State, *Trafficking in Persons Report*, (United States Government, 2013), p 235, <http://www.state.gov/documents/organization/192596.pdf>.

<sup>12</sup> Under this law, there is no distinction between local or foreign individuals. Everyone is subjected to the same law, with equal treatment and equal punishment if they commit the same offence. The code provides for a range of offences such as; rape (s375-376), sexual assault (s354), criminal force (s351-358) and causing hurt (s319-338).

The *Employment Act 1955* provides statutory minimum protections for workers that are enforceable in court, such as entitlements to annual and sick leave and minimum working hours and wages. However, under the Act, domestic workers are not legally recognized as 'workers' but as 'servants'. Section 2(1) states that a 'domestic servant' means 'a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house'. Accordingly, MDWs are not granted the minimum working conditions that apply to other workers in Malaysia. Schedule I of the Act categorically excludes domestic workers from key labour protections, stipulating that ss 12, 14, 16, 22, 61, and 64, and Parts IX, XII and XIII are not applicable to domestic workers. In brief, they are denied access to provisions that regulate: minimum days of work per month;<sup>13</sup> maternity protection;<sup>14</sup> hours of work; days off;<sup>15</sup> termination;<sup>16</sup> and overtime pay. Moreover, the Minimum Wages Order 2012 does not apply to domestic servants.<sup>17</sup>

The Standard Contract provided by the Immigration Department introduces a limited range of employer responsibilities.<sup>18</sup> It states that employers must provide MDWs with reasonable accommodation, basic amenities, sufficient daily meals and adequate rest.<sup>19</sup> While not regulated specifically under any Act, provisions within the Standard Contract are legally enforceable under Malaysian Contract Act 1950 (Act 136). Accordingly, if a breach occurs either party may take their case to any civil court (though in practice, courts are rarely accessible to MDWs). While the Standard Contract does not specify the minimum wages, these are provided in a guideline from the Immigration Department.<sup>20</sup> As this is only a policy document, it is not binding on employers. A footnote at the end of the contract requires a copy to be provided to the nearest Labour Department.<sup>21</sup> Crucially, many recruitment agencies 'do not allow the workers to keep a copy of their contract', which means that MDWs lack information about their contractual rights.<sup>22</sup>

Since MDWs cannot access the majority of legislative protections, they do not have the same access to the courts as other workers have when their employment rights are breached. This means that many employers enjoy impunity for rights violations inflicted upon MDWs. Such impunity is reflected in the sheer number of reported instances of abuse (noting, of course, that much abuse remains unreported). Between 2004 and 2007, Tenaganita<sup>23</sup> recorded "1,050 violations of human rights, such as non-payment of wages and sexual and physical abuse."<sup>24</sup> Each MDW that approached

<sup>13</sup> *Employment Act 1955* (Malaysia), Part XVI.

<sup>14</sup> *Ibid.*, Part IX.

<sup>15</sup> *Ibid.*, Part XII.

<sup>16</sup> *Ibid.*, Part XI.

<sup>17</sup> *Minimum Wages Order 2012* (Malaysia), paragraph 3.

<sup>18</sup> See Appendix 1.

<sup>19</sup> Immigration Department of Malaysia (1), *Contract of Employment*, Government of Malaysia, <http://www.imi.gov.my/images/borang/pra/kontrak.pdf>, accessed 26 May 2013.

<sup>20</sup> Immigration Department of Malaysia (2), "Pembantu Rumah Asing," <http://www.imi.gov.my/index.php/ms/perkhidmatan-utama/pembantu-rumah-asing>, accessed 26 May 2013.

<sup>21</sup> Immigration Department of Malaysia (1), *loc.cit.*

<sup>22</sup> Renita Moniaga, "Indonesian Migrant Domestic Workers: A Case Study on Human Rights, Gender and Migration," (The New School Graduate Program in International Affairs, 2008), p. 16.

<sup>23</sup> Tenaganita is a non governmental organisation. The objective of it's establishment are to promote and protect women's and worker's right; and to help women to achieve their full potential in society through education, training, counselling, services and legal support.

<sup>24</sup> *Ibid.*, p. 14.



Tenaganita for assistance during this period had suffered an average of six to seven violations of her rights.<sup>25</sup>

In other jurisdictions, legislation protecting labour rights extends to MDWs. For example, Hong Kong's Employment Ordinance applies equally to MDWs and other employees.<sup>26</sup> Breaching the Ordinance gives rise to criminal prosecution. As such, it offers a legal basis upon which MDWs can seek redress for poor working conditions.<sup>27</sup> In addition, the provisions under standard contracts are broader in scope. Hong Kong's standard employment contract states that employers must pay MDWs the Minimum Allowable Wage.<sup>28</sup> If an employer breaches this contractual provision, MDWs can report underpayment of wages to the Labour Department.<sup>29</sup> Before entering into an employment arrangement, in Hong Kong, the employer and the MDW must both sign a written undertaking to the Government, agreeing to abide by the legislative requirements surrounding the MDWs' working conditions.<sup>30</sup> This is similar to the Malaysian practice of signing a bond to abide by the Immigration Act.<sup>31</sup> However, this personal bond is only an undertaking to abide by *immigration laws* - it does not apply to labour conditions in the way that Hong Kong's undertaking does.

Based on the problem above, it seems that in order for the MDWs to enjoy the same protection as other workers, the definition of 'worker' should be extended to also include MDWs. The application of Minimum Wages Order should also include MDWs. Further recommendations are as below.

## 1. Recommendation

- 1.1 Change the definition of MDWs in s 2(1) of the *Employment Act 1955* from 'servant' to 'worker'.
- 1.2 Campaign to the Minister of Human Resources to amend the First Schedule to the *Employment Act 1955* to explicitly extend minimum working conditions under the Act to MDWs.<sup>32</sup>
- 1.3 Amend the Minimum Wages Order 2012 to extend the application of minimum wages to domestic workers.
- 1.4 Amend the Standard Employment Contract to introduce additional responsibilities for employers, particularly in relation to remuneration and protection from abuse.<sup>33</sup>
- 1.5 Require the use of the Standard Employment Contract under domestic

<sup>25</sup> *Ibid.*

<sup>26</sup> *Employment Ordinance 1968* (Hong Kong) s 4; Philippa Smales, *The Right to Unite: A Handbook on Domestic Worker Rights across Asia*, (Asia Pacific Forum on Women, Law and Development, 2008), <http://apwld.org/pdf/Advance%20Domestic%20Workers%20Rights%2065-85.pdf>, accessed 26 March 2013.

<sup>27</sup> Hong Kong Labour Department, *Practical Guide for Employment of Foreign Domestic Helpers – What Foreign Domestic Helpers and their Employers Should Know*, (Government of the Hong Kong Special Administrative Region, 2013), <http://www.labour.gov.hk/eng/public/wcp/FDHguide.pdf>, accessed 26 March 2013.

<sup>28</sup> See Appendix 3.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> Immigration Department of Malaysia (2), *Personal Bond*, <http://www.imi.gov.my/images/borang/pra/PersonalBond.pdf>, accessed 4 June 2013.

<sup>32</sup> Alice Huling, "Domestic Workers in Malaysia: Hidden Victims of Abuse and Forced Labor," *International Law and Politics Vol. 44*, (2012): 664, [http://www.law.nyu.edu/ecm\\_dlv3/groups/public/@nyu\\_law\\_website\\_journals\\_journal\\_of\\_international\\_law\\_and\\_politics/documents/documents/ecm\\_pro\\_072115.pdf](http://www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_website_journals_journal_of_international_law_and_politics/documents/documents/ecm_pro_072115.pdf), accessed 20 March 2013.

<sup>33</sup> See Appendices 2 and 3 for examples of other countries' Standard Form Contracts.

legislation for all MDWs in Malaysia.<sup>34</sup>

- 1.6 Increase sanctions for failure to register MDWs' contracts with the Labour Department prior to commencing employment, and require a copy to be provided to the worker in a language that she understands.
- 1.7 Once MDWs are included in the labour laws, alter the nature of the personal bond to include a guarantee to abide by labour laws, and not only immigration laws.
- 1.8 Develop accessible mechanisms through which MDWs may seek redress for breaches of employment contracts and raise awareness among MDWs about how to seek redress.

## B. Monitoring Working Conditions

Since domestic workers operate in the private sphere, out of the public eye, it is more difficult to monitor their working conditions. Although the Malaysian Domestic Violence Act 1994 legislates against domestic violence, MDWs are not protected under the Act.<sup>35</sup> Given the value placed upon non-intervention in the private sphere in Malaysia, it is promising that Malaysian authorities conducted 12 private household inspections in 2008,<sup>36</sup> demonstrating willingness and a commitment by the Malaysian Government to uphold MDWs' rights. Moreover, where these inspections are conducted pursuant to complaint made by third parties, such as neighbours, they demonstrate an increasing level of awareness of MDW rights amongst the Malaysian public generally.

The Committee on Migrant Workers recommends that State Parties 'should include provisions for monitoring mechanisms of the working conditions of MDWs in national legislation and strengthen labour inspection services to carry out such monitoring and to receive, investigate and address complaints of alleged violations'.<sup>37</sup> While the Migrant Workers Convention has not been ratified by Malaysia, it nonetheless offers a benchmark of international best practice and reflects state obligations under other core human rights treaties.

Even though it is difficult to monitor working condition of MDWs, with the increasing case of abuse, Malaysian government should develop mechanism on how they can be monitored. The Director General power to enter a premise without notice should be exercised and the employer should agree for labour inspection upon hiring.

## 2. Recommendation

- 2.1 Establish in national legislation mechanisms to monitor the working conditions of MDWs, including a mechanism through which a worker or civil society representative can lodge a complaint.
- 2.2 Increase the resources and personnel available to the Labour Department,

<sup>34</sup> See Appendix 1 for Malaysia's Standard Form Contract.

<sup>35</sup> *Domestic Violence Act 1994* (Malaysia).

<sup>36</sup> Amnesty International, *Trapped: Migrant Workers in Malaysia*, (Amnesty International Publications, 2010), p. 66, [http://www.amnesty.org.au/images/uploads/ref/trapped-migrant\\_workers\\_in\\_malaysia.pdf](http://www.amnesty.org.au/images/uploads/ref/trapped-migrant_workers_in_malaysia.pdf), accessed 16 April 2013.

<sup>37</sup> Committee on Migrant Workers, "General Comment No. 1 on Migrant Domestic Workers," Committee on Migrant Workers CMW/C/GC/1 (23 February 2011), [http://www2.ohchr.org/english/bodies/cmw/cmw\\_migrant\\_domestic\\_workers.htm](http://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm), accessed 27 March 2013.



so that it is able to conduct more private household inspections where MDWs are employed.

- 2.3 Exercise the Director General's power under s 65 of the *Employment Act 1955* 'to enter without previous notice at all times any place of employment'.<sup>38</sup>
- 2.4 Require employers to comply with these labour inspections in their private residences upon hiring MDWs.<sup>39</sup>
- 2.5 Introduce a policy in the Ministry of Human Resources that prioritises inspecting workplaces that employ MDWs.
- 2.6 Establish an authority dedicated to processing complaints from MDWs and civil society regarding working conditions.

### C. Workmen's Compensation Act

The *Workmen's Compensation Act 1955* protects foreign or non-citizen workers with respect to compensation for injuries suffered in the course of employment and section 26 of the Act imposes an obligation on employers to insure their foreign workers. However, this Act does not apply to domestic servants.<sup>40</sup> Amnesty International has recommended that coverage of s 26 should be extended to MDWs.<sup>41</sup>

In 2007, insurance protection was made mandatory for domestic workers hired through the Malaysian Association of Foreign Housemaids (PAPA) pursuant to the 2006 Malaysia-Indonesia MoU.<sup>42</sup> However the MoU has no binding effect since there is no law that provides for its domestic implementation and the insurance protection arises from the contractual relationship between the employer and recruitment agency. Most recently, in June 2012, the Malaysian government introduced the Foreign Workers Health Insurance Protection Scheme, which compulsorily applies to all foreign workers (including MDWs). However, again, there is no law to enforce this 'mandatory scheme'. Rather, it is addressed administratively by the Immigration Department.<sup>43</sup> In addition, since 1 January 2011, foreign workers are also required to take up mandatory medical coverage under the Hospitalisation and Surgical Scheme for Foreign Workers, however this scheme is optional for MDWs.<sup>44</sup> These policies and practices need grounding in domestic law and not only in non-binding MoUs.

Since the Workmen Compensation Act provides protection for any injuries suffered at the workplace, this Act should also be extended to MDWs. Further, the 2006 Malaysia-Indonesia MoU should be legislated to create binding effect. Without legislation, the 2006 Malaysia-Indonesia MoU is only soft law and will not bind the parties concerned.

### 3. Recommendation

<sup>38</sup> Amnesty International, *op.cit.*, p. 86.

<sup>39</sup> *Ibid.*, pp. 86-87.

<sup>40</sup> The Act also covers non-employment related injuries under the Workmen's Compensation (Foreign Workers' Scheme) (Insurance) Order.

<sup>41</sup> Amnesty International, *op.cit.*, p 85.

<sup>42</sup> *Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers*, Appendix A (ix), <http://www.caramasia.org/docs/MoU%20My-Indonesia%202006.pdf>, accessed 20 May 2013.

<sup>43</sup> AXA Affin General Insurance, "Hospitalisation & Surgical Scheme for Foreign Workers," <http://www.axa.com.my/861/en/health-insurance/group-health/spikpa>, accessed 2 May 2013.

<sup>44</sup> "Coverage For Foreign Workers in Malaysia," [http://www.mywingsonline.com.my/news\\_listing.php?news\\_id=117&action=full](http://www.mywingsonline.com.my/news_listing.php?news_id=117&action=full), accessed 2 May 2013.

- 3.1 Extend the protections of s 26 of the *Workmen's Compensation Act* to MDWs.
- 3.2 Legislate the insurance provisions of the 2006 Malaysia-Indonesia MoU in order to create binding domestic laws requiring insurance coverage for MDWs hired through the Malaysian Association of Foreign Housemaids,<sup>45</sup> including penalties and enforcement mechanisms for non-compliant employers, accessible to MDWs.

#### D. Trade Unions

Work permits issued by the Immigration Department include a condition denying MDWs the right to join trade unions.<sup>46</sup> Article 10 of the Malaysian Federal Constitution also states that rights to assemble peaceably and to form an association are granted only to citizens of Malaysia.<sup>47</sup> However, the *Trade Union Act* does not expressly prohibit the formation of a MDW union. Rather, s 28(1)(a) prohibits migrant workers from holding an executive position on trade unions. Union leaders must be Malaysian citizens. The difficulty to date has been finding a Malaysian citizen who is willing to do so for a migrant worker union. Moreover, with the short-term nature of work permits, there is a high turnover of MDWs. As such, there are issues around finding MDWs to establish the Committee, and creating the commitment and continuity that is required in the early stages.<sup>48</sup> As the ultimate goal would be in creating a trade union for MDWs, it would be beneficial to investigate if members of existing civil society could act as the Malaysian citizen on the Higher Committee of the trade union.

Under Hong Kong's Employment Ordinance, MDWs cannot be dismissed for being a member of, or participating in the activities of, trade unions.<sup>49</sup> Using these platforms, MDWs in Hong Kong have relatively greater opportunities to publicise breaches of rights and communicate their grievances.<sup>50</sup> Moreover, the right to a weekly day off under the Employment Ordinance has been important in allowing the time for MDWs to self-organise and protest.<sup>51</sup>

Applying the same practice in Hong Kong to Malaysia, for the MDWs to be protected, they should be allowed to create trade union. Through union, they can share their problems and communicate any abuse. In case of abuse, trade union can help MDWs to report. There should be no prohibition for them to join trade union and if the government of Malaysia still insists on putting the prohibition in place, Malaysia should provide adequate justification.

#### 4. Recommendation

- 4.1 Remove the condition of employment in work permits issued by the

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<sup>45</sup> *Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers*, Appendix A (ix), <http://www.caramasia.org/docs/MoU%20My-Idonesia%202006.pdf>, accessed 20 May 2013.

<sup>46</sup> International Labour Organization, *Report in which the Committee Requests to be Kept informed of Development - Report No 353*, (2009) [http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:2911366](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO::P50002_COMPLAINT_TEXT_ID:2911366).

<sup>47</sup> *Federal Constitution 1957* (Malaysia), Art 10.

<sup>48</sup> Ministry of Human Resources Government of Malaysia, *Guideline for Establishment and Registration of Trade Union*, [http://www.mohr.gov.my/jheks/images/guidelines/Guideline\\_Establishment\\_Registration.pdf](http://www.mohr.gov.my/jheks/images/guidelines/Guideline_Establishment_Registration.pdf).

<sup>49</sup> Hong Kong Labour Department, *loc.cit.*

<sup>50</sup> Smales, *loc.cit.*

<sup>51</sup> *Ibid.*

Immigration Department that stipulate that migrant workers cannot join a 'persatuan' (association).

- 4.2 Introduce laws against dismissing MDWs for engaging in trade union activities.
- 4.3 Establish a working group in civil society to facilitate the creation of a MDW trade union.
- 4.4 Assist trade unions to communicate information about migrant rights.

## E. Immigration Status

Linking the migration status of MDWs to their employer exacerbates their vulnerability under Malaysia's legal framework. Sections 4(a), 9 and 15 of the *Immigration Act 1959/63* stipulate that individuals may not remain in Malaysia if they are not in possession of a valid pass or permit.<sup>52</sup> A person's pass is immediately invalid upon the expiration of the period of work that it is covers (as stated in the employment contract between the MDW and the employer) or if any of the terms or conditions of the pass are deemed to be contravened. As such, if MDWs try to escape an abusive household, they risk being arrested and deported for leaving their place of employment.<sup>53</sup> Moreover, the *Immigration Act of 1959/63* permits employers to unilaterally terminate the work permit of a migrant worker after lodging a police report and paying a RM 200 fine. This is almost always done whenever a migrant worker lodges an official complaint with the Malaysian authorities, resulting in deportation even before the case is heard in court. Over the years, NGOs have documented numerous cases where pending court cases are derailed solely because the Immigration Department arbitrarily denied permission for migrant workers to stay in Malaysia and complete the trial.<sup>54</sup> However, consulates such as the Indonesian Consulate can intervene and offer support to abused MDWs, facilitating their stay in Malaysia while cases are pending. The Consulate provides 'temporary shelter if necessary, helps them [MDWs] to get their passports back from employers or labour agents, issues new travel documents, pays for medical treatment, and provides legal aid'.<sup>55</sup>

In the United Kingdom (from 1998 up until 2012 when legal protections were revoked), MDWs were free to change employers at any stage during their employment.<sup>56</sup> This independent migration status offered valuable protection for MDWs. They were free to leave abusive employers, find new work, and report abuse to the police without fear of deportation.<sup>57</sup>

Employer should not be allowed to cancel work permit when cases are still pending. If MDWs are arrested, they should not be detained and deported. They

<sup>52</sup> *Immigration Act 1959/63* (Malaysia), ss 4(a), 9, 15.

<sup>53</sup> Huling, *op.cit.*, p. 652.

<sup>54</sup> Joachim Francis Xavier, "Domestic Worker to Enjoy Greater Protection," [http://www.majodi.org/emi/index.php?option=com\\_k2&view=item&id=26:domestic-workers-to-enjoy-greater-protection&Itemid=34](http://www.majodi.org/emi/index.php?option=com_k2&view=item&id=26:domestic-workers-to-enjoy-greater-protection&Itemid=34), accessed 26 March 2013.

<sup>55</sup> Human Rights Watch (1), "Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia," *Human Rights Watch Vol. 16 No. 9* (2004), <http://www.hrw.org/sites/default/files/reports/indonesia0704full.pdf>, accessed 26 March 2013.

<sup>56</sup> *Immigration Rules 2013* (UK), para 159EA, <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part5/>, accessed 5 June 2013.

<sup>57</sup> Jenny Moss, "Life on a Knife Edge: Migrant Domestic Workers in the UK," *Open Democracy* (17 March 2010), <http://www.opendemocracy.net/5050/jenny-moss/life-on-knife-edge-migrant-domestic-workers-in-uk>, accessed 10 March 2013.

should, by extension, be allowed to stay in Malaysia until the case is solved.

## 5. Recommendation

- 5.1 Repeal rules allowing employers to cancel work permits when cases are pending before the Labour Department or the Industrial Relations Department.
- 5.2 Allow MDWs to apply to extend their stay when cases are pending. The Ministry of Home Affairs should '[a]utomatically extend six-month special passes and employment authorisation for the same field of work as their original permit without charge to workers who make representations to the Labour Department or the Industrial Relations Department, and renew such passes without charge for at least three months at a time upon a showing that the workers' labour or industrial relations cases are still pending'.<sup>58</sup>
- 5.3 Abolish the practice of detaining MDWs while they await deportation.

## F. Complaints Processing

Official support mechanisms (for MDWs to lodge complaints against their employer or to seek assistance when being abused) are limited. The Labour Department and the Immigration Department both host hotlines for foreign or domestic workers to get help during any emergency. While civil society offers valuable support, the scope of assistance that can be offered by NGOs is restricted by their lack of personnel and funding. Cases of abuse are sometimes resolved informally by recruitment agencies or consulates. As there is a deficit in services for complaint handling, consulates can be a viable alternative. However, many consulates in Malaysia are also understaffed and underfunded. At times, consulates have redirected MDWs back to recruitment agencies. There is an imbalance of power when MDWs seek to negotiate a just outcome with their recruitment agency and there is always a risk of abuse due to their vulnerability and lack of agency.<sup>59</sup> Moreover, MDWs have faced physical and mental abuse upon return to their recruitment agency for their 'misbehaviour' in leaving their employer.<sup>60</sup> Recruitment agencies have also been known to return MDWs to their previous employment, regardless of the abusive situation that awaits the worker. This has been the case, even where there have been claims of rape.<sup>61</sup> In cases of rape, recruitment agencies also sometimes seek informal compensation from the employer rather than going through the judicial process.<sup>62</sup>

However, legal aid is available for migrant workers. Two legal aid programs exist - one funded by the Malaysian Government (Biro Bantuan Guaman - BBG), and the other administered by the Bar Council (Bar Council Legal Aid Centre - BCLAC).<sup>63</sup> BBG can provide representation to migrants.<sup>64</sup> Similarly, BCLAC has a Migrant and Refugee Clinic that provides free legal advice to migrant workers.<sup>65</sup> In Hong Kong, the

<sup>58</sup> Amnesty International, *op.cit.*, p. 88.

<sup>59</sup> Human Rights Watch (2), *They Deceived Us at Every Step: Abuse of Cambodian Domestic Workers Migrating to Malaysia*, (United States of America: Human Rights Watch, 2011), p. 68, <http://www.hrw.org/sites/default/files/reports/cambodia1111webwcover.pdf>, accessed 16 May 2013.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, p. 69.

<sup>62</sup> *Ibid.*

<sup>63</sup> Haji Khutubul Zaman Bukhari, "Legal Aid," [http://www.malaysianbar.org.my/press\\_statements/legal\\_aid.html](http://www.malaysianbar.org.my/press_statements/legal_aid.html), accessed 20 May 2013.

<sup>64</sup> Kuala Lumpur Legal Aid Center, "Legal Aid Help," <http://www.kllac.com/LegalAidHelp.html>, accessed 20 May 2013.

<sup>65</sup> Fahamu Refugee Program, "Malaysia Pro Bono Directory," <http://www.refugelegalaidinformation>.

Department of Labour runs a free conciliation service that aims to resolve disputes between employers and MDWs. If the dispute is not settled, the MDWs can request that the issue be referred for adjudication by an adjudication board (for smaller claims) or the Labour Tribunal.<sup>66</sup>

MDWs, as we all know, do not have enough money to pay the legal fees to a lawyer in order to bring their case to the court. Therefore, free legal services should be provided. Local lawyers should be trained to help MDWs and consulates of the origin countries should be able to process the complaints or help reporting the same.

## 6. Recommendation

- 6.1 Encourage migrant worker countries of origin to build the capacity of consulates to respond to complaints through increased funding and staff trained in local law and institutions (including counsellors and trauma workers).
- 6.2 Increase awareness around access to international complaints mechanisms (for example CEDAW) and train local lawyers in assisting MDWs to make such complaints.
- 6.3 Compel recruitment agencies to report all cases of abuse to the relevant government departments, the Police or Consulates.
- 6.4 Increase funding for legal aid, targeted at improving access to such services for MDWs.
- 6.5 Extend access to MDWs for existing government-run conciliation services for trade disputes, and ensure that these services are free for MDWs.<sup>67</sup>
- 6.6 Establish and equip a MDW trade union with the resources and personnel to represent MDWs in claims.

## G. Irregular Migration

An irregular migrant is a person who ‘enters or remains in a country in breach of that country’s immigration laws.’<sup>68</sup> The term encompasses a wide variety of circumstantial factors.<sup>69</sup> In Malaysia some MDWs become irregular migrants due to a hostile working environment or because their rights are violated. If a MDW decides to leave her employer, the employer will ordinarily cancel their legal migration status and they then become an irregular migrant and potentially subject to harsh penalties. This occurs even when the worker leaves her employer to escape abuse. There is a wealth of evidence about the links between criminalisation of irregular migration status, trafficking and exploitation of MDWs.<sup>70</sup>

[org/malaysia-pro-bono-directory](http://malaysia-pro-bono-directory), accessed 20 May 2013.

<sup>66</sup> Hong Kong Labour Department, *loc.cit.*

<sup>67</sup> *Industrial Relations 1967* (Malaysia) s 18. For general procedures related to labour conciliations, see also, The Malaysian Bar, “FAQ on Employment Law by ICPC,” [http://www.aseanhrmech.org/downloads/malaysia-Industrial\\_relations\\_act.pdf](http://www.aseanhrmech.org/downloads/malaysia-Industrial_relations_act.pdf), accessed 4 June 2013.

<sup>68</sup> John Von Doussa, “Prevention of human rights abuses against irregular migrants: the role of National Institutions,” <http://www.humanrights.gov.au/news/speeches/prevention-human-rights-abuses-against-irregular-migrants-role-national-institutions>, accessed 28 May 2013.

<sup>69</sup> Bastian Vollmer, “Irregular Migration in the UK: Definitions, Pathways, Scale,” <http://www.migrationobservatory.ox.ac.uk/briefings/irregular-migration-uk-definitions-pathways-and-scale>, accessed 28 May 2013.

<sup>70</sup> International Organisation for Migration (1), *XII Meeting of the Regional Conference on Migration: Declaration*, (IOM, 2007), <http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/rcps/puebla-process/2007-Declaration-New-Orleans.pdf>, accessed 28 May 2013.

Criminalising irregular migration status further jeopardizes the ability of MDWs to access redress mechanisms and obtain justice or a safe passage home. Malaysia commonly detains migrants who have had their visa status invalidated, regardless of their personal circumstances. Mexico, as a country of transit as well as origin, has significant flows of irregular migration. In 2008 it nevertheless decriminalised offences (such as illegal entry) that had typically carried criminal penalties.<sup>71</sup> In 2006, Mexico also implemented an optional repatriation for irregular Central-American migrants in detention.<sup>72</sup> There are still several issues with these policies, however it is a step towards acknowledging the rights of migrant workers irrespective of their legal status.

Decriminalising migration reduces the fear of reporting abuse, and fear of the government, its agencies and police. In turn it provides for better access to legal mechanisms as the worker does not face immediate threat of deportation. Irregular migration should be within the ambit of administrative rather than criminal law, to ensure that it is the perpetrators of human rights abuses who are targeted rather than the victims. Legalisation programs, such as Malaysia's 6P program have the potential to significantly protect migrant workers.<sup>73</sup> The 6P project was intended to allow irregular migrants to register with the Home Ministry and either be legalised or return home.<sup>74</sup> However, critics have asserted that a much clearer legal framework is needed in order to support a legalisation program.<sup>75</sup> Fears that amnesty type projects actually increase irregular migration have proved false, at least in the United States/Mexico experience.<sup>76</sup>

## 7. Recommendation

- 7.1 Provide sensitivity training to the police in order to identify individuals who have transitioned into irregular migration status because they left an abusive employer.
- 7.2 End the practice of large scale public roundups of migrant workers.
- 7.3 Focus workplace inspections on monitoring the employer rather the employee.<sup>77</sup>
- 7.4 Use detention only as an absolute last resort.<sup>78</sup>
- 7.5 Improve detention centres to meet the minimum standards stipulated under

<sup>71</sup> Hernández, KEM, "Mexican Detention Profile, Global Detention Project," <http://www.globaldetentionproject.org/countries/americas/mexico/introduction.html>, accessed 5 June 2013.

<sup>72</sup> Francisco Alba, "Country Profile: Mexico," <http://www.migrationinformation.org/USfocus/display.cfm?id=947>, accessed 5 June 2013.

<sup>73</sup> "6P Programme ends on Jan 10," *The Malaysian Insider* (5 January 2012), <http://www.themalaysianinsider.com/malaysia/article/home-ministry-ends-6p-programme-this-saturday>, accessed 20 May 2013.

<sup>74</sup> Lee Choon Fai, "How effective was 6P?" *Selangor Times* (15 June 2012), <http://www.selangortimes.com/index.php?section=insight&permalink=20120615101712-how-effective-was-6p>, accessed 20 May 2013.

<sup>75</sup> *Ibid.*

<sup>76</sup> Pia Orrenius and Madeline Zavodny, "Do Amnesty Programs Reduce Undocumented Immigration? Evidence From IRCA," *Demography Vol. 40, No. 3* (2003): 437, [http://ecademy.agnesscott.edu/~mzavodny/documents/Demography\\_amnesty.pdf](http://ecademy.agnesscott.edu/~mzavodny/documents/Demography_amnesty.pdf), accessed 27 May 2013.

<sup>77</sup> Amnesty International, *op.cit.*, p. 85.

<sup>78</sup> Jorge Bustamante, "Report of the Special Rapporteur on the Human Rights of Migrants," (Human Rights Council, 17th sess, Agenda Item 3, UN Doc A/HRC/17/33 (21 March 2011)), p. 5, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/167/41/PDF/G1116741.pdf?OpenElement>, accessed 5 June 2013.



international law.<sup>79</sup>

- 7.6 Repeal s 6(3) of the *Immigration Act 1959/63*,<sup>80</sup> removing the criminal provisions.<sup>81</sup>
- 7.7 Encourage efforts to eradicate false documentation being provided to incoming foreign migrants.
- 7.8 Undertake a government review of the 6P (Comprehensive Settlement Workers and Illegal Immigrants) legalisation program, identifying opportunities for improvement and restructure.

## H. MDWs are Unaware of their Rights

The impunity enjoyed by abusive employers is in part due to the fact that many MDWs are not aware of their rights or where they should go to lodge complaints. NGOs are already playing a role in this regard, helping to educate MDWs on their rights as well as creating awareness among the public. Tenaganita has established the Migrants Rights and Health Desk that provides advocacy and support to MDWs. Persatuan Majikan Amah Malaysia (MAMA) has established a project named 'HELPER' which includes training for MDWs, briefings for employers, monitoring of violence against workers and the introduction of a special financial system to ensure consistent payment of wages by the employer.

Furthermore, the HELPER project encourages MDWs to take *takaful* insurance in order to prevent employers from bearing the medical expenses caused by accidents while working. Finally, the Malaysian Association of Foreign Maid Agencies (PAPA) is an organization which brings together all employment agencies licensed by the Department of Manpower, Ministry of Human Resources and registered with the Malaysian Immigration Department to recruit and bring in foreign workers including MDWs. This organization advises and assists complainants to settle their problems with member agencies.

Destination countries, such as Hong Kong, Taiwan and Singapore, use skills-based training to further the rights of MDWs. Some examples are further training in hairdressing, sewing, language and cooking classes.<sup>82</sup> The Indonesia, Hong Kong and Philippines governments provide classes on micro-finance, banking and other areas, in conjunction with banks and consulates.<sup>83</sup> In Hong Kong, information technology classes for migrants are beneficial in not only teaching migrants skills, but also social networking with other MDWs.<sup>84</sup> As well as this, these classes help them keep in contact with their families back home, helping ease their geographical isolation from their origin country.<sup>85</sup> These classes also act as a forum to disseminate information about MDW rights and teach MDWs new skills, thus empowering them and adding

<sup>79</sup> Amnesty International, *loc.cit.*

<sup>80</sup> Section 6(3) states: 'Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit 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.'

<sup>81</sup> Amnesty International, *loc.cit.*

<sup>82</sup> UN Women, *Contribution of Migrant Domestic Workers to Sustainable Development*, (United Nations Entity for Gender Equality and the Empowerment of Women Regional Office for Asia and the Pacific, 2013), p. 25, [http://sydney.edu.au/arts/sociology\\_social\\_policy/docs/news/MDW\\_Final-April\\_12.pdf](http://sydney.edu.au/arts/sociology_social_policy/docs/news/MDW_Final-April_12.pdf), accessed 21 May 2013.

<sup>83</sup> *Ibid*, p 26.

<sup>84</sup> *Ibid*, p 25.

<sup>85</sup> *Ibid*.

value to what they can bring to any new employment.

Other countries such as Thailand<sup>86</sup> and Singapore<sup>87</sup> also use the radio, magazines, flyers and multimedia to promote migrants' rights. The radio is especially useful as often MDWs listen to the radio while working. For instance, a community radio station in Thailand called Migrant Action Program Radio includes segments that 'encourag[e] people to phone in with questions or comments about immigration laws and workers' rights'.<sup>88</sup> It has proven to be valuable to use a variety of languages native to MDWs in these multimedia communications.

Applying the practices implemented in other countries such as Hong Kong, Thailand and Singapore, they use various methods to promote awareness and training to the MDWs. Malaysia should take such practices as an exemplary. It is important for the MDWs to know their rights and acquire more skills for their added value. Further recommendation is as below.

## 8. Recommendation

- 8.1 Introduce rights-based education programs in Malaysia (particularly for MDWs at the point of entry into Malaysia), and in countries of origin that send large numbers of workers to Malaysia.
- 8.2 Promote awareness of the services and support offered by NGOs and consulates.
- 8.3 Increase government (and donor) funding of NGO services that support MDWs.
- 8.4 Advise MDWs to have a mobile phone with the numbers of emergency services and their local consulates pre-programmed into the phone.<sup>89</sup>
- 8.5 Employ trained staff in charge of MDWs within each consulate.

## I. Memoranda of Understanding

Malaysia has entered into several MoUs regarding MDWs. The 2006 and 2011 MoUs between Indonesia and Malaysia offer some worker protections. The 2011 MoU requires MDWs to be given a weekly rest day, as well as providing for a separate bank account for MDWs and for passports to be kept in the personal possession of these workers.<sup>90</sup>

However, the content of these MoUs remains controversial and problematic. For example, there is no minimum wage. Also, although the 2011 MoU guarantees

<sup>86</sup> John Watson, "Rights and the Radio," <http://www.usaid.gov.au/HotTopics/Pages/Display.aspx?QID=996>, accessed 20 May 2013.

<sup>87</sup> International Organisation for Migration (2), *Labour Migration From Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*, (IOM, 2010), [http://www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/Final-LM-Report-English.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf), accessed 20 May 2013.

<sup>88</sup> Watson, *loc.cit.*

<sup>89</sup> Australian Domestic and Family Violence Clearinghouse, *Domestic Violence Workplace Rights and Entitlements Project*, (Commonwealth Department of Education, Employment and Workplace Relations Australia, 2011), p. 14 [http://www.dvandwork.unsw.edu.au/sites/www.dvandwork.unsw.edu.au/files/imce/domestic\\_violencethe\\_workplace\\_2012\\_july\\_2.pdf](http://www.dvandwork.unsw.edu.au/sites/www.dvandwork.unsw.edu.au/files/imce/domestic_violencethe_workplace_2012_july_2.pdf), accessed 28 May 2013.

<sup>90</sup> See Irene Fernandez (2), "The Truth about migrants in Malaysia: AND IT'S NOT PRETTY!" *The Malaysia Chronicle* (9 May 2012) [http://www.malaysia-chronicle.com/index.php?option=com\\_k2&view=item&id=33122:clearing-misconceptions-the-truth-about-migrants-in-malaysia&Itemid=2](http://www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=33122:clearing-misconceptions-the-truth-about-migrants-in-malaysia&Itemid=2), accessed 17 May 2013; Human Rights Watch (3), "Indonesia Malaysia: New Pact Shortchanges Domestic Workers," <http://www.hrw.org/news/2011/05/31/indonesiamalaysia-new-pact-shortchanges-domestic-workers>, accessed 17 May 2013. The text of the MOU, as amended in 2011, is not yet publicly available.

a weekly rest day, it states that ‘... one day off can be compensated with overtime pay.’<sup>91</sup> This is problematic as there is no indication as to what constitutes reasonable overtime pay or how this should be calculated.<sup>92</sup> There exists a power imbalance that leaves MDWs open to manipulation and abuse as the MoUs ‘...involve vague language, consequently avoiding the establishment of finite standards with which employers would then have to comply.’<sup>93</sup> While the 2006 MOU requires employers to provide ‘reasonable accommodation’ and ‘adequate rest’, these minimum standards are not defined.<sup>94</sup>

Moreover, the MoUs are not binding on either of the state parties. The MoUs have not been accompanied by the creation of enforcement mechanisms or further monitoring.<sup>95</sup> As MDWs are excluded from the majority of Malaysia’s labour laws, the burden to uphold the content of the MoUs falls on the employer, who often is not even aware of their content, and not subject to any penalties for failure to comply.<sup>96</sup> As a result, there is a significant disconnect between the content of MoUs and what actually occurs within households.

Although it is a positive feature of MoUs that they can be tailored to specific countries’ needs, in reality it provides an unequal bargaining situation in which remittances and manpower are states’ primary concerns, rather than rights. It is also unlikely that an employer would know the contents of specific nations’ MoUs. Working through an intergovernmental, localised body such as the ASEAN High Commission would be a good way forward in developing a standardized approach to MDWs’ rights in the region. The Working Group on Migrant Workers and their Families in the ASEAN region should also be consulted for guidance in developing Malaysia’s domestic situation in regards to MDW.

## 9. Recommendation

- 9.1 Remove safekeeping provision (concerning passports) from 2011 Indonesia-Malaysia MoU and amend the *Immigration Act 1959/63* to make it an offence for employers to withhold passports or work permits.<sup>97</sup>
- 9.2 Amend existing MoUs to include a minimum wage and definitive overtime rates.
- 9.3 Amend existing MoUs to clearly outline that victims of rape or sexual assault should never be returned to a recruitment agency and should be immediately repatriated if they so choose.
- 9.4 Highlight the benefits of requiring basic standards of skills and language (such as basic knowledge of Malay) for incoming MDWs under all MoUs in order to ensure that MDWs are empowered to protect themselves in a foreign country (using the 2006 Indonesian-Malaysia MoU as a model<sup>98</sup>).

<sup>91</sup> Irene Fernandez (1), *loc.cit.*

<sup>92</sup> Huling, *op.cit.*, p. 656.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers*, Appendix A (A) (xvi)-(xvii), <http://www.caramasia.org/docs/MoU%20My-Indonesia%202006.pdf>, accessed 20 May 2013.

<sup>95</sup> Huling, *op.cit.*, p. 668.

<sup>96</sup> *Ibid.*

<sup>97</sup> Amnesty International, *loc.cit.*

<sup>98</sup> *Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers*, art. 6(c) <http://www.caramasia.org/docs/MoU%20My-Indonesia%202006.pdf>, accessed 20 May 2013. The 2006 Indonesian-Malaysia MoU states that MDWs from Indonesia must be able to speak Malay or English.

## J. Legal Obligation to Implement International Laws

Malaysia should sign and ratify core international human rights treaties and comply with international labour standards. Although Malaysia has yet to ratify key international treaties relating to MDWs, MDWs have important rights under the international treaties that Malaysia has already ratified. The Convention on the Elimination of Discrimination against Women (CEDAW) is particularly significant - especially in light of the recommendations of the CEDAW committee in relation to MDWs (see **Section B**). While such general recommendations do not have legally binding force, Malaysia (as a State Party to CEDAW) is 'expected to implement general recommendations in order to fulfil... [its] obligations under the Convention.'<sup>99</sup> Under international law Malaysia is legally obligated to implement CEDAW to protect MDWs. And the High Court of Malaysia ruled in 2010 that CEDAW is binding upon Malaysia<sup>100</sup>. As such, legal precedent exists for creative judicial reasoning that draws upon CEDAW's principles.

Thus, since international law can only be binding if it is ratified and legislated under domestic law, Malaysia should ratify CEDAW and other international law related to MDW in order to safeguard and protect their rights. Other recommendation is as below.

### 10. Recommendation

10.1 Sign and ratify the international laws listed in Section A.

10.2 Further entrench CEDAW in Malaysia's domestic laws and develop strategies around using CEDAW to promote and protect the rights of MDWs in domestic courts, as well as through international mechanisms.

10.3 Promote the provision of information to local lawyers on Malaysia's international obligations and how to apply them in the domestic context.

## IV. Conclusion

*"...[A]ll these realities converge in a hot, bubbling cauldron of human rights abuses that migrants are thrown into. Dismissing these cases as 'isolated incidences' does not change the reality. A State that proclaims to respect human rights would understand that these cases warrant urgent and immediate actions to address the laws, policies and practices by the State that create an environment for these cases."<sup>101</sup>*

This article has focused on access to redress for breaches of the rights of MDWs, and identified opportunities for policy, legislative and support-mechanism reform. On their own, the recommendations listed above will not be enough. To effect a true transformation, reforms will need to be coupled with a push to change community attitudes towards MDWs. It is somewhat of a truism that laws and policies do not operate in a vacuum. Even if protections exist for MDWs on paper, they also need to be supported in principle by many Malaysians in order to be effective. Without a more receptive context (and effective enforcement), the Malaysian community may ignore

<sup>99</sup> Jennifer Hainsfurther, "A Rights-Based Approach: Using CEDAW to Protect the Human Rights of Migrant Workers," *American University International Law Review* Vol. 24 (2009): 843-893.

<sup>100</sup> Women's Link Worldwide, "Noorfadilla Binit Ahmad Saikin v Chayed Bin Basirun & Others Originating Summons No: 21-248-2010," [http://www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id\\_decision=427&lang=en](http://www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id_decision=427&lang=en), accessed 20 May 2013.

<sup>101</sup> Irene Fernandez (2), *loc.cit.*

or violate any new labour standards.

There is no guarantee that formal equality (in the form of legal rights) will automatically translate into substantive equality (with respect to changes on the ground). As such, the success of changing Malaysia's laws and ensuring the long-term success of reforms will in large part depend upon changing community attitudes - an activity in which Malaysian civil society will play a key role. The key hurdle to overcome is the prevailing tendency to undervalue domestic work.<sup>102</sup> The value of the work that MDWs do, and the difficulties they experience, should be acknowledged. It is also important to highlight the crucial role that MDWs play in contributing to Malaysian society and its economy. Moreover, transforming community attitudes can generate the pressure needed to place the issue of MDWs' rights on the political agenda. The Malaysian Government will be more inclined to introduce reforms that are supported by the wider population. It is also important to recognise that attitudes do not only need to be changed at the community level. The suggested reforms will be difficult to implement without the commitment of government at all levels, as well as the police, consulates and recruitment agencies, to uphold and advance MDWs' rights. It is also important that a re-conceptualisation of rights and education campaigns takes place in migrant worker countries of origin.

Human rights abuses of MDWs are universal. Globally, '[o]nly 10 percent of all domestic workers are covered by general labour legislation to the same extent as other workers' and '[m]ore than one quarter are completely excluded from national labour legislation.'<sup>103</sup> It is promising that the need to protect MDW rights is attracting increased awareness and attention. In line with this global trend, Malaysia should not only keep up with best practices around the world as they develop, but should seize the opportunity to be a leader in these efforts in the region and beyond.

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<sup>102</sup> Sharan Burrow, *Decent Work, Decent Life, Domestic Workers*, (International Trade Union Confederation, 2010), [http://www.ituc-csi.org/IMG/pdf/ITUC\\_dwd\\_AnglaisWEB.pdf](http://www.ituc-csi.org/IMG/pdf/ITUC_dwd_AnglaisWEB.pdf), accessed 15 May 2013.

<sup>103</sup> Sandy Smith, "Millions of Domestic Workers Worldwide Are Excluded from Workplace Protections," *EHS Today* (9 January 2013), <http://ehstoday.com/safety/millions-domestic-workers-worldwide-are-excluded-workplace-protections?page=3>, accessed 15 May 2013.

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## Appendices

### Appendix 1 - Malaysia's Standard Contract

#### CONTRACT OF EMPLOYMENT

This contract is made on this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between \_\_\_\_\_  
I/C No. \_\_\_\_\_ of \_\_\_\_\_  
(hereinafter referred to as the Employer) of the one part and  
Holder of \_\_\_\_\_ Passport  
No. \_\_\_\_\_ of \_\_\_\_\_ (hereinafter referred to as  
the Domestic Worker) of the other part.

IT IS HEREBY AGREED as follows:

#### 1. Duration of the Contract

- (a) The Employer shall employ the Domestic Worker in accordance with the terms and conditions of this Contract and subject to the provisions of the relevant laws, regulations, rules, policies and directives of Malaysia;
- (b) This Contract shall commence from the date of the arrival of the Domestic Worker at the Employer's home;
- (c) The Domestic Worker shall continue in the employment under the terms and conditions of this Contract for a period of \_\_\_\_\_ ( \_\_\_\_\_ ) years or until such time the Contract is terminated in accordance with the terms and conditions of this Contract.

#### 2. Place of work / residence of Domestic Worker

The Domestic Worker shall work and reside only at \_\_\_\_\_ during the duration of the Contract.

#### 3. Duties and Responsibilities of the Domestic Worker

- (a) The Domestic Worker shall work only with the Employer and shall not seek employment or be employed elsewhere;
- (b) The Domestic Worker shall comply with reasonable instructions of the Employer in the performance of the assigned household duties;

- (c) The Domestic Worker shall perform diligently, faithfully and sincerely all household duties assigned by the Employer which shall not include commercial activities;
- (d) The Domestic Worker shall not use or take advantage of the Employer's possessions without the Employer's permission;
- (e) The Domestic Worker is expected at all times observe proper attire and shall be courteous, polite and respectful to the Employer and family members of the Employer;
- (f) The Domestic Worker shall abide by the laws, rules, regulations, national policies and directive of Malaysia and respect the customs and traditions of Malaysia;
- (g) In the event that the Domestic Worker marries in Malaysia during the period of employment, the Government of Malaysia reserves the right to revoke the Work Pass;
- (h) No member of family or any other person shall be allowed to stay with the Domestic Worker in the place of employment without the consent of the Employer;

#### 4. Duties and responsibilities of the Employer

- (a) The Employer shall provide the Domestic Worker with reasonable accommodation and basic amenities;
- (b) The Employer shall provide the Domestic Worker reasonable and sufficient daily meals;
- (c) The Employer shall not require the Domestic Worker to work or to be engaged in any activities other than that related to household duties;
- (d) The Employer shall insure the Domestic Worker with the Foreign Worker Compensation Scheme in respect of any medical expenses the Domestic Worker may incur in the event of any injury where such injury arises out of and in the course of employment;
- (e) The Employer shall at all times respect and pay due regard to the sensitivity of religious beliefs of the Domestic Worker, including the right to perform prayers and to refuse to handle and consume non-Halal food;



## 5. Payment of Wages

- (a) The Employer shall pay the Domestic Worker a monthly wage of RM \_\_\_\_\_ (RINGGIT MALAYSIA) and the payment shall be in accordance with labour laws of Malaysia.
- (b) No deduction of the monthly wages of the Domestic Worker shall be done save accordance with the law.

## 6. Rest Period

The Domestic Worker shall be allowed adequate rest.

## 7. Termination of Contract by the Employer

The Employer may terminate the service of the Domestic Worker without notice if the Domestic Worker commits any of misconduct inconsistent with the fulfillment of the Domestic Worker's duties or if the Domestic Worker breaches any of the terms and conditions of this contract.

For the purposes of this clause, misconduct includes the following:

- (i) working with another employer;
- (ii) disobeying lawful and reasonable order of the Employer;
- (iii) neglecting the household duties and habitually late for work;
- (iv) is found guilty of fraud and dishonesty;
- (v) is involved in illegal and lawful activities;
- (vi) permitting outsiders to enter the Employer's premises or to use the Employer's possessions without Employer's permission;
- (vii) using the Employer's possessions without the Employer's permission.

Provided always that the Employer terminating the Contract under this clause shall provide proof of existence of such situation upon request of the Domestic Worker.



## 8. Termination of Contract by the Domestic Worker

The Domestic Worker may terminate this contract without notice if:

- (i) The Domestic Worker has reasonable grounds to fear for his or her life or is threatened by violence or disease;
- (ii) The Domestic Worker is subjected to abuse or ill treatment by the Employer; or
- (iii) The Employer has failed to fulfil his obligation under paragraph 5.

Provided always that the Domestic Worker terminating the Contract under this clause shall provide proof of existence of such situation upon request of the Employer.

## 9. General Provisions

- (a) Transportation cost from the Domestic Worker's original exit point in \_\_\_\_\_ to the place of employment shall be borne by the Employer.
- (b) In the event that the Contract is terminated by the Employer on the ground that the Domestic Worker has committed misconduct, the Domestic Worker shall bear the costs of his/her repatriation.
- (c) The repatriation cost of the Domestic Worker from the place of employment to the original exit point in \_\_\_\_\_ shall be borne by the Employer in the following circumstances:
  - (1) at the completion of Contract of Employment;
  - (2) termination of the Contract of Employment by the Employer;  
or
  - (3) termination due to non-compliance of the terms and conditions of the Contract of Employment by the Employer.
- (d) Any dispute arising between the Employer and the Domestic Worker concerning the grounds for termination of the Contract of Employment pursuant to Paragraph 7 or 8 of this Contract shall be dealt with in accordance with the applicable laws in Malaysia.

(e) For the purpose of this Contract, the terms "original exit point" shall mean \_\_\_\_\_, in \_\_\_\_\_.

**10. Extension of the Contract**

Notwithstanding the expiry of the duration of the Contract, the Employer and the Domestic Worker may agree that this Contract may be extended based on similar terms and conditions therein.

**11. Time is Essence**

Time whenever mentioned shall be essence of this Contract in relation to all provisions of this Contract.

**12. Governing Law**

This Contract is governed by, and shall be constructed in accordance with laws of Malaysia.

**IN WITNESS WHEREOF**, the parties to this Contract have here on to affixed their signature this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ .

Employer,

Domestic Worker,

\_\_\_\_\_  
Name :  
Date :

\_\_\_\_\_  
Name :  
Date :

Witnessed by,

Witnessed by,

\_\_\_\_\_  
Name :  
Date :

\_\_\_\_\_  
Name :  
Date :

*\*Note : A copy of this Contract must be submitted to the nearest Labour Department.*

## Appendix 2 - Singapore's Standard Contract

### STANDARD EMPLOYMENT CONTRACT BETWEEN FOREIGN DOMESTIC WORKER AND EMPLOYER

**Employment Agency Name** : \_\_\_\_\_

**License No.** : \_\_\_\_\_

**Reference No.** : \_\_\_\_\_

This employment contract is made between (a) The Employer and (b) The Foreign Domestic Worker (FDW) in *Section A*, based on the terms contained in *Section B*.

A copy of the Contract (with all blanks filled in and options selected) and Job Scope Sheet (Annex A) translated into the FDW's language should be given to the FDW in her home country before she signs the contract.

The Schedules of Salary Payment and Loan (including loan for placement fee) Repayment (Annex B) shall be filled up at the same time the contract is signed.

#### Section A: Particulars of Parties in Contract

(a) The Employer

Full Name : \_\_\_\_\_

NRIC/Passport No. : \_\_\_\_\_

Address : \_\_\_\_\_

(b) The Foreign Domestic Worker (FDW)

Full Name : \_\_\_\_\_

Work Permit No. : \_\_\_\_\_

Passport No. : \_\_\_\_\_

#### Section B: Terms of Contract

##### Part I: Employment Period and Workplace

1. The FDW shall be employed by the Employer as a domestic worker for a period specified in the FDW's work permit.
2. The FDW shall work and reside only in the Employer's residence as specified in the FDW's work permit.

##### Part II: Responsibilities of the FDW

3. The FDW shall undertake to perform her work diligently and honestly at all times.
4. The FDW shall not take up, or be required by the Employer to take up, any other employment with any other person(s).

Part III : Remuneration and Benefits

5. The Employer shall pay the FDW wages of SGD\_\_\_\_\_ per month.
6. The salary shall be paid on the \_\_\_ day of every month.
7. The FDW shall acknowledge the amount received under her signature in the attached Schedule of Salary Payment (Annex B) as proof of payment. Where applicable, the FDW shall make a monthly loan (including loan for placement fee) repayment with the Employment Agency, through monthly payments to the employer in accordance with the Schedule of Loan (including loan for placement fee) Repayment in Annex B.
8. The salary will be paid by \*cash / crediting into the FDW's bank account (*delete where applicable*).
9. The Employer shall provide the FDW with suitable accommodation in accordance with MOM's guidelines, with a reasonable amount of privacy. Please tick where applicable:
  - Share a room with \_\_\_ child/children
  - Separate room
  - Others (please specify): \_\_\_\_\_
10. The Employer shall provide at least three adequate meals a day to the FDW, over and above the salary paid.
11. The Employer shall provide the FDW with \_\_\_\_\_ hours [**recommended 8 hours**] of continuous rest daily (except for occasional special-care cases), with reasonable rest periods during working hours.
12. The FDW shall be entitled to \*one / two / three / four rest day(s) a month, on a day mutually agreed (*\*delete where applicable*). If the rest day was not taken, the FDW shall be compensated in cash as agreed in writing between the employer and the FDW. If there is no such existing agreement, the accreditation body's prevailing compensation guideline shall apply.
13. Should both parties (Employer and FDW) agree to extend this contract, she (the FDW) shall be entitled to \_\_\_\_\_ days [**recommended 15 days**] of paid home leave (inclusive of a return ticket to her City of origin).
14. If the FDW does not wish to utilize her leave as stated in clause 13, the Employer shall pay the FDW \*a lump sum equivalent to the return ticket to her City of origin / a lump sum of S\$\_\_\_\_\_ (*delete where applicable*).
15. In the event that the FDW falls ill or suffers personal injury during the period of employment, except for the period the FDW leaves Singapore of her own volition and for her own personal purposes, the Employer shall bear all the necessary treatment costs, including medical consultation, medicine, hospitalization and others.
16. External communications shall be made available for the FDW and the employer must allow the FDW seek the advice/help of the relevant bodies/authorities such as the Employment Agency, Ministry of Manpower etc at all times.
17. The employer shall provide safe working conditions for the FDW at all times.

**Part IV : Termination**

18. Either party may terminate this Contract by giving \_\_\_\_ notice [**recommended at least one week**].
19. Either party may terminate the Contract without notice if either party is in breach of the work permit condition(s).
20. In cases where the employer decides to terminate the contract under any circumstances, the employer should ensure the FDW's proper upkeep until she is repatriated or transferred to another employer, whichever is applicable.
21. The employer shall be responsible to bear the cost of repatriation of the FDW at all times.
22. Upon termination or expiry of the contract, the Employer shall bear the cost of repatriating the FDW back to \_\_\_\_\_ [her town/city of origin] in \_\_\_\_\_ [country].
23. Should both parties agree to renew this employment relationship, a new employment contract shall be signed by both the employer and the FDW.

**Part V : Others**

24. Any substantial variation or addition to the terms of this Contract shall be deemed void unless made with the consent of both parties to the Contract and a witness through signatories.
25. In the event of any conflict or inconsistency between any term of this Contract (including the Annexes) in the English language and any translation thereof in any other language, the English language version of this Contract shall prevail.
26. Any dispute arising from this Contract shall be referred to the Employment Agency for mediation. If it cannot be settled, the dispute can be referred at the election of either party to an alternative dispute resolution mechanism.
27. In the case whereby any term of the contract contradicts the existing Work Permit conditions or any Singapore government regulations, the latter two shall supersede.

**Section C: Employer's Declaration**

I have read and understood the contents of this Contract, and hereby agree to abide by it.

The Employer's Signature : \_\_\_\_\_

Witnessed by (Name & Signature) : \_\_\_\_\_

Date : \_\_\_\_\_

**Section D: Foreign Domestic Worker's Declaration**

I have read and understood the contents of this Contract, and hereby agree to abide by it.

The Foreign Domestic Worker's Signature : \_\_\_\_\_

Witnessed by (Name & Signature) : \_\_\_\_\_

Date : \_\_\_\_\_

**Annex A****Job Scope Sheet for Foreign Domestic Worker**

**Employment Agency Name** : \_\_\_\_\_

**License No.** : \_\_\_\_\_ **Reference No.** : \_\_\_\_\_

This job scope sheet pertains to the job offer made by the *Employer* to the *FDW*. It shall be translated into the *FDW*'s language and given to her before she signs the employment contract.

Particulars of Parties

*The Employer*

Full Name : \_\_\_\_\_ NRIC/Passport No. : \_\_\_\_\_

*The Foreign Domestic Worker (FDW)*

Full Name : \_\_\_\_\_ Passport No. : \_\_\_\_\_

Job Scope

28. Persons in household of Employer's family:

- \_\_\_ adults
- \_\_\_ young adults aged 13 to 18
- \_\_\_ children aged 5 to 12
- \_\_\_ children aged between 3 to 5
- \_\_\_ infants/babies below 3
- \_\_\_ person(s) requiring constant care and attention (excluding babies)

29. The *FDW* shall be required to perform domestic duties as follows (to tick where applicable):

- Household chores
- Cooking
- Looking after aged person(s) in the household [constant attention is \*required/not required]
- Baby-sitting
- Child-minding
- Others (please specify): \_\_\_\_\_

30. Place of Work (to tick where applicable):

- a) House Type:
  - Landed Property
  - Condominium/ Private Apartment
  - HDB 5-room or larger
  - HDB \_\_\_-Room Flat (*specify no. of rooms*)
  - Others \_\_\_\_\_ (*specify*)
- b) Number of Bedrooms in the house: \_\_\_\_\_



**Annex B**

**Schedules of Salary Payment and Loan (including loan for placement fee) Repayment**

Name of Employer: _____
Name of FDW: _____
Monthly Salary of FDW: S\$ _____
Total Amount of Loan (including loan for placement fee): S\$ _____

	Schedule of Salary Payment			Schedule of Loan (including loan for placement fee) Repayment			
	Month/Year	Date of Salary Paymt	FDW Acknowledgemt (signature)	Monthly Loan Repaymt*	Date of Repaymt	Employer's Acknowledgemt (Signature)	FDW Acknowledgemt (Signature)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
** Total Amount (S\$)							

\* Delete rows where necessary.

\*\* The total amount should be filled in at the point of acknowledging this schedule, and it shall be the sum total of the monthly loan repayments.

I hereby declare that I understand and agree with the monthly salary and total amount of loan indicated above.

\_\_\_\_\_  
Name/ Signature of FDW

\_\_\_\_\_  
Name/ Signature of Employer

*Witnessed by EA Representative:*

Name/ Signature: \_\_\_\_\_

Appendix 3 - Hong Kong's Standard Contract

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.

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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.

Immigration Department, the Government of the Hong Kong Special Administrative Region

Revised Schedule of Accommodation and Domestic Duties



<b>FOR OFFICIAL USE ONLY</b>
Reference barcode

- Note :**
- (i) This form is issued free of charge.
  - (ii) Please complete this form in BLOCK letters using black or blue pen.
  - (iii) Chinese version is also available for reference.
  - (iv) \* Please delete where inappropriate.
  - (v)  Please tick as appropriate.

Domestic Helper Contract no. \_\_\_\_\_

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 (Chapter 486).

2. Employer's residence and number of persons to be served

A. Address of the residence: \_\_\_\_\_

B. Approximate size of flat/house \_\_\_\_\_\*square feet/square metres

C. State below the number of persons in the household to be served on a regular basis:

\_\_\_\_\_ adult(s) \_\_\_\_\_ minor(s) (aged between 5 to18) \_\_\_\_\_ minor(s) (aged below 5) \_\_\_\_\_ expecting baby(ies).

\_\_\_\_\_ person(s) in the household requiring constant care or attention (excluding infant(s)).

(Note: Number of Helper(s) 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 a 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, sharing a room with an adult/teenager of the opposite sex, etc.

Yes. Estimated size of the servant room \_\_\_\_\_\*square feet/square metres

No. Accommodation 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  Yes  No
- (b) Toilet and bathing facilities  Yes  No
- (c) Bed  Yes  No
- (d) Blankets or quilt  Yes  No
- (e) Pillows  Yes  No
- (f) Wardrobe  Yes  No
- (g) Refrigerator  Yes  No
- (h) Desk  Yes  No
- (i) Other facilities (please specify) \_\_\_\_\_  
\_\_\_\_\_

4. The Helper should only perform domestic duties at the Employer's residence. Domestic duties to be performed by the Helper under the employment contract exclude driving of a motor vehicle of any description for whatever purposes, whether or not the vehicle belongs to the Employer.

5. Domestic duties include the duties listed below.

Major portion of domestic duties:

- 1. Household chores
- 2. Cooking
- 3. Looking after aged persons in the household (constant care or attention is \*required/not required)
- 4. Baby-sitting
- 5. Child-minding
- 6. Others (please specify) \_\_\_\_\_  
\_\_\_\_\_

6. The Employer shall inform the Helper and the Director of Immigration of any substantial changes in item 2, 3 and 5 by serving a copy of the Revised Schedule of Accommodation and Domestic Duties signed by both the Employer and the Helper to the Director of Immigration for record.

Date	Name of Employer	Employer's HK identity card no.	Signature of Employer
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Date	Name of Helper	Helper's HK identity card no.	Signature of Helper
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