

SPECIFIC GROUPS AND INDIVIDUALS:
MIGRANT WORKERS

Written statement submitted by the Asia Pacific Forum on Women, Law and Development (APWLD),
a non-government organization on the Roster

[3 February 2003]

New Conditions of Stay (NCS) or the Two-Week Rule and its effect on Migrant Workers in Hong Kong Special
Administrative Region (HKSAR)

1. APWLD in consultation with its Hong Kong partner organisations¹, urge the international community to consider the unfair and unjust effects of the so-called “Two-Week Rule”. This government policy came into force through a Governor-in-Council dictate in 1987, and continues to be implemented by the officials of the HKSAR Immigration Department. For more than a decade, the rigorous enforcement of the Two-Week Rule has exacerbated the harsh and precarious working conditions of women migrant domestic workers (MDWs) in Hong Kong. Whereas foreigners working in professional fields in HKSAR have the liberty to change jobs and are eligible for permanent residency after seven years of continuous work, MDWs under the Two-Week Rule are severely disadvantaged. They are forbidden from changing jobs in the first two years of employment, and if they break their initial contract they cannot apply for a new job from within Hong Kong. They cannot work for multiple employers or outside of the field of domestic work. MDWs do not qualify for permanent residency no matter how long they have been working in HKSAR and those who are terminated must leave within two weeks or at the expiration of their visas (whichever is earlier).
2. The conditions imposed through the Two-Week Rule jeopardize the bargaining position of MDWs by forcing them to accept inhuman treatment and sub-standard living conditions, so that local employers and the national economy can directly benefit from their under-recognised and undervalued work. The inability of MDWs to access legal remedies in cases of exploitation under the Two-Week Rule, is compounded by the fact that government officials often ignore reports of mistreatment because they occur in the “private sphere”. There is a pressing need for the HKSAR Government to bring its actions in line with its international obligations by acknowledging the negative impacts of the Two-Week Rule and by establishing an effective mechanism for the protection of the fundamental rights of MDWs residing and working in Hong Kong.

¹ Asia Pacific Mission for Migrants (APMM), United Filipinos in HK (UNIFIL-HK), Asian Migrants Coordinating Body (AMCB), Mission for Filipino Migrant Workers (MFMW), and Bethune House Migrant Women’s Refuge (BHMWR).

3. In effect, the Two-Week Rule restricts the rights of MDWs to demand fair working conditions, to change employers, and to terminate work contracts in cases of abuse. The most common forms of exploitation reported by MDWs to local partners in HKSAR include:
 - exorbitant recruitment fees; coercion into performing extra tasks outside of the standard employment contract; excessive and irregular hours; denial of rest and holidays; underpayment and illegal salary deductions; confinement to the place of work and unreasonable curfews; confiscation of passports and travel documents; psychological intimidation; denial of the right to privacy; and physical and sexual abuse including rape and forced prostitution.

4. The legal recourses available to MDWs in HKSAR include: filing a claim with the Labour Department; applying for a visa extension at the Immigration Department based on an exception to the Two-Week Rule; and filing a civil case with possible support from legal aid. However, MDWs are prevented from accessing legal remedies due to:
 - excessive costs of visa extensions (i.e. HK \$135) imposed during a time when MDWs are also barred from working;
 - uncertain immigration status because of the wide discretion immigration officers exercise in deciding on whether to grant visa extensions required for the MDW to proceed with the legal process;
 - bias and unwillingness of the police to receive statements or issue memorandums necessary for immigration extensions;
 - inability to meet strict evidentiary standards, which often require unobtainable written documents and witness testimony;
 - inability to qualify for legal aid (despite wages often well below minimum wage) because employers do not provide or release documentation of income; and
 - pressure and intimidation from employers to drop cases.

In one case reported, for example, a MDW who was indecently assaulted five times by her employer had to wait over 20 months and pay over HK\$1,000 in visa extension fees before her case was decided. Even when MDWs receive favourable judgements, their visas generally expire one week after the hearing and they are rarely able to obtain judicially-ordered compensations.

5. Countries in the Asia-Pacific region have witnessed a steady increase in labour flows over the last decade. Currently, women constitute the largest number of migrant workers in all labour-receiving countries. In particular, women migrant domestic workers struggle against discrimination based on their race, gender, legal status and type of work. Since the 1997 Asian Economic Crisis, this discrimination has increased as a result of bi-lateral and multi-lateral trade and labour policies that clearly focus on regional economic integration rather than the establishment of basic levels of protection for these migrant workers. The Two-Week Rule is a case in point. Despite the importance socially and economically of MDWs work, the Two-Week Rule prevents them from accessing basic legal protection and makes them highly vulnerable to further exploitation and abuse.

6. Recent statistics indicate that there are approximately 237,110 migrant domestic workers in HKSAR. Many of these women have been recruited by Hong Kong families to fill the gap in the day-to-day care of dependant family members, which was created by the economic boom during the mid-1970s and the entry of local women into the labour market.² Rather than responding to the change in Hong Kong's labour needs by increasing social services (such as day-care centres or programmes for the elderly) the HKSAR Government has advocated for the recruitment of MDWs as a solution to the problem and as a source of cheap and flexible labour.
7. APWLD with its partners acknowledge that the HKSAR Government is one of the few governments in the Asia -Pacific region which has taken positive steps towards recognizing domestic work by extending national labour legislation to cover MDWs employment contracts. However, we call on the HKSAR Government to review its migrant-targeted policies such as the Two-Week Rule, to ensure that these type of policies do not diminish recent efforts to improve the situation of MDWs and to ensure that such policies do not contravene its obligations and commitments under the UDHR, ICCPR, ICESCR, CEDAW, CERD, and the various other UN and ILO conventions to which it is a party. APWLD with its partners reiterate the statements made by CERD and ESCR committees during their official visits to Hong Kong that the Two-Week Rule is discriminatory and needs to be abolished.
8. APWLD with its partners call on the Government of the HKSAR:
- *to abolish the Two-Week Rule; and*
 - *to invite the Special Rapporteur on Migrants to independently assess the situation of migrant domestic workers in Hong Kong and to recommend measures to address the human rights violations that migrants face within the region.*
9. APWLD with its partners call on all members states of the UN:
- *to review existing polices and procedures on migrants and to develop new bi-lateral or multi-lateral agreements on labour, based on internationally accepted norms and principles of human rights; and*
 - *to address the issues raised in Resolutions 2002/54, 2002/58, 2002/59, and 2002/62, of the 58th session regarding the protection of the rights of migrants. In particular: the increasing manifestations of racism,*

² Statistics from the HKSAR Immigration Department indicate a constant rise in the number of MDWs employed in Hong Kong:

Year	Population of MDW in HKSAR
1974	881
1986	28,951
1990	70,300
1995	157,000
2000	216,790
2002	237,110

Country of Origin	2002 Population of MDWs in HKSAR
Philippines	148,390
Indonesia	78,170
Thailand	6,670
Other (including Nepal, Sri Lanka, India, Bangladesh)	3,880

xenophobia and other forms of discrimination and inhuman and degrading treatment directed against migrants workers; the need to implement national systems to prosecute perpetrators of violence against women migrant workers which occurs inside and outside of the workplace; the need to provide victims with access to a full range of services so as to be able to protect their rights; and the need for states to review and revise immigration policies to eliminate all discriminatory practices against migrants and to provide specialised training for government policy-making and law enforcement officials and all other concerned authorities.

10. APWLD with its partners appeal to the UNCHR:

- *to reinforce the comments made by the UN Special Rapporteur on the Human Rights of Migrants at the fifty-eighth session on the need for detailed discussion between sending and receiving countries, and migrants' and civil society organizations, on the subject of protection of female migrant domestic workers human rights; and*
- *to urge all migrant sending and receiving countries to uphold the principles of the recently adopted UN Convention on the Rights of Migrants and Members of their Families, which sets the standard for the equal treatment and protection of all migrant workers.*