



Survey Report on Hardship & Violations of Employment Contract Terms Encountered by Foreign Domestic Workers in Hong Kong

August 2006

PHILIPPINES
Foreign Domestic Workers

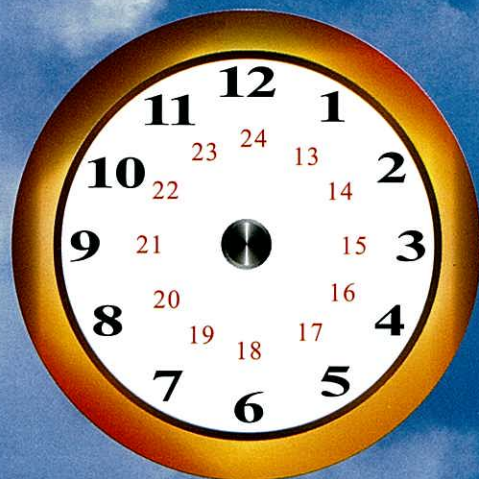
S	M	T	W	T	F	S
1	2	3	香港渣打銀行	4	5	6 7
8	9	10	Standard Chartered Bank	11	12	13 14
15	16	17	港幣一千元	18	19	20 21
22	23	24	One thousand	25	26	27 28
29	30	31				

THAILAND
Foreign Domestic Workers

S	M	T	W	T	F	S
1	2	3	香港渣打銀行	4	5	6 7
8	9	10	Standard Chartered Bank	11	12	13 14
15	16	17	港幣一千元	18	19	20 21
22	23	24	One thousand	25	26	27 28
29	30	31				

INDONESIA
Foreign Domestic Workers

S	M	T	W	T	F	S
1	2	3	香港	4	5	6 7
8	9	10	Standard Chartered Bank	11	12	13 14
15	16	17		18	19	20 21
22	23	24		25	26	27 28
29	30	31				



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(1). Introduction

Foreign Domestic Workers in Hong Kong are granted with all the employment benefits and protection as stipulated in the standard employment contract. But in recent years, it is not difficult to hear many foreign domestic workers (FDW) are suffering from underpayment and exploitation.

From 1980's onwards, Caritas Community Development Service has been concerned about the plight of the imported migrant domestic workers. Under the sponsorship of Oxfam-Hong Kong, we have conducted a survey on the hardship and violations of employment contract terms encountered by foreign domestic workers in HK. From March to June 2006, Caritas has interviewed 161 respondents.

(2). Objectives of the Study

- To explore the violations of employment contract terms encountered by foreign domestic workers

(3). Methodology

As the foreign domestic helpers widely spread all over Hong Kong, we employed the convenient sampling method and interviewed all those foreign domestic helpers that we could contact. We reached the respondents through the following networks:-

- Cases referred by our Community Watch Ambassadors Team
- Cases referred by units of Caritas Community Development Service
- Mobile exhibition counters at Causeway Bay, North Point, Sai Wan Ho and Kowloon City
- Service users of our Caritas Centres at Fortress Hill, Sai Wan Ho and Wong Tai Sin

(4). Important Findings

4.1 Background Information of Respondents:

4.1.1 Nationality

Table 1:

Nationality	N	%
Indonesian	100	62.1%
Filipino	14	8.7%
Thai	47	29.2%
Total	161	100.0%

The study had successfully interviewed 161 domestic workers from Southeast Asian countries. All of them were female. 61.2% were Indonesian, 29.2% were Thai and around 9% were Filipino (Table 1).

4.1.2 Age & Nationality Distribution

Table 2:

Age Group	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
30 or below	70	70%	6	42.9%	4	8.5%	80	49.7%
31 to 40	27	27%	4	28.6%	21	44.7%	52	32.3%
41 or above	2	2%	4	28.6%	22	46.8%	28	17.4%
No response	1	1%	0	0%	0	0%	1	0.6%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

Almost half of the respondents (49.7%) were young women under 30 years old. In comparison, Indonesian workers were younger than Filipino and Thai workers. Almost 70% Indonesian respondents were below 30 in age while over 50% Filipino and 90% Thai were over 31. (Table 2)

4.1.3 Educational Level & Nationality Distribution

Table 3:

Educational Level	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
Primary	13	13%	0	0%	24	51.1%	37	23.0%
Secondary	44	44%	0	0%	7	14.9%	51	31.7%
High school	33	33%	3	21.4%	7	14.9%	43	26.7%
College/university	4	4%	10	71.4%	9	19.1%	23	14.3%
Others	2	2%	0	0%	0	0%	2	1.2%
No response	4	4%	1	7.1%	0	0%	5	3.1%
Total	100	100.0%	13	100.0%	47	100.0%	161	100.0%

The educational level of the respondents varied amongst different nationalities. In general, 23% received primary education, 31.7% received secondary education, 26.7% were high school level and 14.3% were College or University level.

Comparatively, the Filipinos were more well educated, none of them were primary or secondary graduates. Whereas 57% Indonesian and 66% Thai workers were secondary or below. The Filipinos respondents were mainly College or University graduates (71.4%), only 4% Indonesian and 19.1% Thai respondents were post secondary in education.

4.1.4 Length of Stay in Hong Kong & Nationality Distribution

Table 4:

Length of Stay in HK	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
less than 1 year	8	8%	3	21.4%	9	19.1%	20	12.4%
1 year	17	17%	1	7.1%	3	6.4%	21	13.0%
2 years	17	17%	2	14.3%	3	6.4%	22	13.7%
3 years	16	16%	1	7.1%	7	14.9%	24	14.9%
4 or more years	33	33%	6	42.9%	23	48.9%	62	38.5%
No response	9	9%	1	7.1%	2	4.3%	12	7.5%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

Almost 40% of the respondents were new comers with less than 2 years stay in Hong Kong. While another 38.5% were experienced workers who stayed and worked in Hong Kong for more than 4 years.

The percentage of new comers & experienced workers were evenly distributed amongst different nationalities. 42% Indonesian, 42.8% Filipino and 31.9% Thai were new comers, while 33%, 42.9% and 48.9% were experienced workers who had worked here for over 4 years respectively (Table 4).

4.1.5 Living District & Nationality Distribution

Table 5:

Living district	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
HK & Islands	41	41%	9	64.3%	19	40.4%	69	42.9%
Kowloon	19	19%	1	7.1%	10	21.3%	30	18.6%
New Territories	24	24%	2	14.3%	12	25.5%	38	23.6%
No response	16	16%	2	14.3%	6	12.8%	24	14.9%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

The respondents resided mainly on HK Island/outlying Islands (42.9%) and New Territories (23.6%). Only 18.6% resided on Kowloon side.

4.2 Hardship & Violations of Contract Terms Encountered by FDW:

4.2.1 Minimum Allowable Wage (MAW)

4.2.1.1 Underpayment

The HKSAR Government had set a minimum allowable wage (MAW) for foreign domestic workers (FDW). During the period we carried out the study, the MAW of FDW was mostly \$3,270 (effective on 1 April 2003) or \$3,320 (effective on 19 May 2005).

An employer should not unilaterally impose or mutually reach a private agreement with his/ her FDW on a lower wage rate.

Table 6:

How much is your wage in the contract?	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
MAW	98	98.0%	10	71.4%	42	89.4%	150	93.2%
More than MAW	2	2.0%	4	28.6%	5	10.6%	11	6.8%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

According to Immigration policy, all the employment contracts should comply with the MAW requirement. As shown in Table 6, all the contracts (100%) signed according to MAW (93.2%) or more than MAW (6.8%).

98% Indonesian, 71.4% Filipino and 89.4% Thai respondents' were promised MAW. And 2%, 28.6% and 10.6% respondents' contract promised higher than MAW. Disregard the length of stay in Hong Kong were no significant difference amongst the 3 nations, just a few Indonesians respondents received higher MAW in compare to the other nationalities.

Table 7: Actual Amount of Wage Received by FDW

How much do you receive every month?	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
MAW	77	77	10	71.4	35	74.5	122	75.8
Less than MAW	14	14	0	.0	0	.0	14	8.7
More than MAW	7	7	4	28.6	11	23.4	22	13.7
No response	2	2	0	.0	1	2.1	3	1.9
Total	100	100.0	14	100.0	47	100.0	161	100.0

Even though all the employers should comply with the MAW requirement, there were still 8.7% foreign domestic workers suffered from underpayment.

Exploitation of wage was the most serious amongst Indonesian domestic workers in compare with the other nationalities. Table 7 showed that only Indonesian respondents suffered from the problem of underpayment, 14% of them received wage lower than the MAW, but there was none for both Filipino & Thai workers. Those underpaid Indonesian respondents received wages mainly ranged from HK\$1,800 to HK\$2,000, which was only 54% - 60% of the MAW. 8 out of 14 Indonesian domestic workers received wages only HK\$1,800 per month while 4 received HK\$2,000 and 2 received HK\$3,000 per month.

Table 8: Methods of Payment

Methods	Indonesian	
	N	%
Cheque payment of full salary but DH has to return the money back to employer & acknowledge full payment	9	64.3%
Cash payment and forced to acknowledge full payment	4	28.6%
No response	1	7.1%
Total	14	100.0%

For those underpaid Indonesian respondents, no matter their monthly wage were paid in cheque (64.3%) or in cash (28.6%), all of them were asked to acknowledge receipt of full amount same as minimum allowable wage, even though it was not true. They were either paid lesser amount in cash, or demanded to pay back part of their wage after cashing their cheque by their employers. These employers maneuvered to cover up their offence.

Although the FDW had received lesser amount than the MAW, the respondents still signed it for the fear of losing their jobs. The followings were their words:-

- If I do not acknowledge the receipt, the employer will send me back to Indonesia.
- If I refuse to sign, the employer will get angry and send me back to Indonesia.
- If I don't sign it, they will return me to Indonesia.
- If I don't sign it, they will fire me.
- Because I am afraid and new in HK. I don't know much about HK law.
- Because I have no choice and afraid of losing the job.

4.2.1.2 Late Payment

With reference to the Employment Ordinance, the employer should fix a monthly payday to the worker. And the wage should be paid not later than 7 days from the due day.

Table 9: Regularity of FDW to get monthly wage

Do you receive the salary regularly on the pay day	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	n	%	N	%
Yes	55	67.1%	10	71.4%	38	90.5%	103	74.6%
No	27	32.9%	4	28.6%	4	9.5%	35	25.4%
Total	82	100.0%	14	100.0%	42	100.0%	138	100.0%

Table 10: Situation of Delay in Payment of FDW

How many days have been delayed for the salary in average?	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
7 days or below	21	77.8%	3	75%	3	75%	27	77.1%
More than 7 days	4	14.8%	1	25%	1	25%	6	17.1%
No response	2	7.4%	0	0%	0	0%	2	5.7%
Total	27	100.0%	4	100.0%	4	100.0%	35	100.0%

Table 9 & 10 revealed the problem of late payment. Table 9 showed that 25.4% of the respondents did not have a fixed payday and received the wage irregularly. 32.9% Indonesian, 28.6% Filipino and 9.5% Thai were affected.

Amongst those 35 affected FDW, 6 of them received their wage later than 7 days, it breached the Employment Ordinance. 4 are Indonesians, 1 is Filipino and 1 is Thai.

4.2.2 Maximum Commission of Employment Agency

4.2.2.1 Overcharges of Commission

According to the Employment Agency Regulations, the maximum commission allowed from a job seeker should not exceed 10% of the first month's wage she received.

Table 11: Do you need to pay agency fee for finding the existing employer

Do you need to pay agency fee for finding the existing employer	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
Yes	86	86%	6	42.9%	19	40.4%	111	68.9%
No	11	11%	7	50%	23	48.9%	41	25.5%
No answer	3	3%	1	7.1%	5	10.6%	9	5.6%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

In general, 68.9% respondents had sought assistance from employment agency in looking for existing employers, they had to pay agency fee. Another 25.5% domestic workers found their employers through their own networks.

Comparatively speaking, it was more common for the Indonesian respondents looking for employers through the employment agency than Filipino and Thai respondents. Over 86% Indonesian found their employers through the agency and paid the fee while only 42.9% Filipino and 40.4% Thai domestic workers sought assistance from agency (Table 11).

Table 12: No. of Times / Months that FDW need to pay the agency fee

How many months/ times do you need to pay	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
1	22	22.0%	4	28.6%	11	23.4%	37	23.0%
2	5	5.0%	0	.0%	3	6.4%	8	5.0%
3	3	3.0%	0	.0%	1	2.1%	4	2.5%
4	4	4.0%	0	.0%	1	2.1%	5	3.1%
5	9	9.0%	1	7.1%	0	.0%	10	6.2%
6	3	3.0%	0	.0%	1	2.1%	4	2.5%
7	31	31.0%	0	.0%	0	.0%	31	19.3%
10	1	1.0%	0	.0%	0	.0%	1	.6%
No response	8	8.0%	1	7.1%	2	4.3%	11	6.8%
Not Applicable	14	14.0%	8	57.1%	28	59.6%	50	31.0%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

Table 13: Total Agency Fees

Total Agency Fees (monthly salary)	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
10% of or below	2	2.0%	0	0%	3	6.4%	5	3.1%
0.11 – 8 times	25	25.0%	2	14.3%	3	6.4%	30	18.6%
14 – 58 times	24	24.0%	4	28.6%	11	23.4%	39	24.2%
62 – 68 times	27	27.0%	0	0%	0	0%	27	16.8%
No response	8	8.0%	0	0%	2	4.3%	10	6.2%
Not Applicable	14	14.0%	8	57.1%	28	59.7%	50	31.1%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

As revealed in Table 12 & 13, disregarding to their nationality, 59.6% (96/161) respondents were affected by the overcharges of the employment agency.

In comparison, the commission paid by Indonesian respondents were much more than the other nationalities. Nearly 76% of the Indonesian respondents paid agency fee more than the statutory level. 25% paid 0.11 to 8 times more, 24% paid 14-58 times more. 27% needed to pay up to 62-68 times much more than the statutory level, i.e. HK\$22,890 (more than 7 months' wage).

For the affected Filipino, 14.3% paid the agency fees 0.11-8 times more and 28.6% paid 14-58 times higher than the maximum commission allowed.

For the affected Thai workers, 6.4% paid within the maximum commission allowed while almost 23.4% of them needed to pay 14-58 times higher than the statutory level.

On the other hand, Indonesian respondents needed to pay more instalments on agency fee than the other nationalities. 43% of Indonesian respondents needed to pay from 5 to 7 months, whereas only 1 Filipino and 1 Thai respondents paid that long. (Table 12 & 13).

4.2.2.2 Unlawful Wage Deduction for Commission of Employment Agency

It is unlawful for an employer of the foreign domestic worker to deduct wages and pass the sum to an employment agency for repaying debts owed by the worker.

Table 14: Ways to pay Agency fee

How do you pay Agency fee	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
By DH herself	49	57.0%	5	83.3%	18	94.7%	72	64.9%
By employer through deduction of wage	30	34.9%	1	16.7%	0	0%	31	27.9%
No response	7	8.1%	0	0%	1	5.3%	8	7.2%
Total	86	100.0%	6	100.0%	19	100.0%	111	100.0%

Table 14 indicated that other than 1 Filipino respondent, the remaining are all Indonesians DW who had to 'pay the agency commission through deduction wage by the employer'. Amongst the 86 Indonesians DW who had to pay the agency commission, 57% paid by themselves, 34.9% paid through wage deduction by employers. 7% (6/86) Indonesians had been deducted wage for the agency by their employers without their permission (see table 15), and 8.1% (7/86) received no receipt from their employers (see table 16). Only 1 Filipino had been deducting wage for the agency by their employer without their permission.

Table 15: Prior Permission got from FDW before passing the salary to the Agency

Has your employer got your permission before passing your salary to the Agency	Nationality	
	Indonesian	Filipino
	N	N
Yes	23	1
No	6	0
No response	1	0
Not applicable	56	5
Total	86	6

Table 16: Has the employer shown you any receipts or proof for the above payment?

Has the employer shown you any receipts or proof for the above payment	Nationality	
	Indonesian	Filipino
	N	N
Yes	22	0
No	7	1
No response	1	0
Not applicable	56	5
Total	86	6

4.2.3 Facilities

According to the employment contract, the employer should provide free basic facilities for the foreign domestic worker. They are 1) air, light & water supply; 2) bed; 3) toilet and bathing facilities; 4) pillows; 5) blankets or quilt; 6) wardrobe. Otherwise, the Immigration Department would not approve the contract.

Table 17

Free Facilities	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
All the listed facilities	65	65%	8	57.1%	33	70.2%	106	65.8%
1 item left	24	24%	4	28.6%	8	17.0%	36	22.4%
2 items left	5	5%	0	0%	2	4.3%	7	4.3%
3 items left	0	0%	1	7.1%	2	4.3%	3	1.9%
4 items left	2	2%	1	7.1%	0	0%	3	1.9%
No response	4	4%	0	0%	2	4.3%	6	3.7%
Total	100	100%	14	100%	47	100%	161	100%

30.5% of the interviewed workers failed to enjoy all the required facilities freely. 22.4% lacked 1 facility, 4.3% lacked 2 facilities, and 1.9% lacked 3 to 4 facilities.

The facility that more foreign domestic workers needed to buy on their own was toilet and bathing facilities. Some provided no bed and just slept on floor with mattress only.

Amongst different FDW groups, 31% Indonesian workers were not provided with full facilities as stated in the employment contract. 24% affected Indonesian lacked 1 item, 5% lacked 2 items and 2% lacked 4 items.

42.8% Filipino workers were not provided with full facilities, 28.6% lacked 1 item, and 7.1% lacked 3 to 4 items. 25.6% Thai workers were affected and did not enjoy all the facilities. 17% of them lacked 1 item, 4.3% lacked 2-3 items.

4.2.4 Illegal Work

With reference to the employment contract (3) & (4), the condition of stay of foreign domestic workers has been imposed by the Immigration Department that the worker shall work and reside in the Employer's residence, only perform duties as per the attached Schedule of Accommodation and Domestic Duties for the Employer, and shall not take up and shall not be required by the Employer to take up, any other employment with any other person.

Table 18: Do you have to work in other places, which have not written in the contract?

Do you have to work in other places which have not written in the contract	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
Yes	23	23%	2	14.3%	9	19.1%	34	21.1%
No	69	69%	11	78.6%	35	74.5%	115	71.4%
No response	8	8%	1	7.1%	3	6.4%	12	7.5%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

Table 18 revealed that apart from the employer's residence, over 21.1% respondents were instructed to work in places other than the contract address which seriously violated the employment contract terms and breach of condition of stay imposed by the Immigration Department.

Within different groups of respondents, 23% Indonesian, 19.1% Thai and 14.3% Filipinos suffered from the problem of illegal work.

Table 19:

Which place do you need to work apart from the employer's residence?	N=34	%
Employer's office	6	17.6%
Employer's other house	11	32.4%
Employer's relative's house	16	47.1%
Place outside HK	2	5.9%

For the 34 respondents who had to work besides the employer's house, they worked mainly on employer's relative's house and employer's other house (see table 19). Nearly half of the 34 worked everyday or 3 times a week in some other places (see table 20).

Table 20:

How often do you need to work in other places not mentioned in the contract?	N=34	%
Every day	9	26.5%
Three times a week	7	20.6%
Once a week	3	8.8%
Sometimes	9	26.5%
No response	6	17.6%

4.2.5 Holiday Problem

With reference to the Employment Contract, FDW is entitled to different kinds of holidays like rest day and statutory holidays.

4.2.5.1 Rest Day

According to the Employment Ordinance, a rest day is defined as a continuous period of not less than 24 hours during which an employee can abstain from working for her employer.

Table 21: No. of Hours enjoyed for Rest Day

	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
Less than 12 hours	27	27%	2	14.3%	5	10.6%	34	21.1%
12 – 17 hours	59	59%	11	78.6%	39	83.0%	109	67.7%
24 hours	1	1%	0	0%	0	0%	1	0.6%
No response	13	13%	1	7.1%	3	6.4%	17	10.6%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

Table 21 showed that less than 1% interviewed domestic worker could take 24 hours rest day as stated in ordinance.

Comparing different groups of respondents, Thai workers had the longest rest day while the Indonesian workers had the shortest rest day. 83% Thai workers could get 12-17 hours rest day but only 59% Indonesian workers could take it. While only 10.6% Thai workers', and 14.3% Filipinos got less than 12 hours rest day, but it was almost 30% for Indonesian workers.

Throughout the interviews, we found that many interviewed workers had curfew hours to follow. Actually, they complained that they needed to work & prepare everything for the employer before going out for holiday. They were also asked to come back early and continued to serve the employers again. Thus, it was hardly for them to rest.

Table 22: Frequency of Taking Rest Day

	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
Once a week	52	52%	12	85.7%	44	93.6%	108	67.1%
Less than once a week	46	46%	2	14.3%	2	4.3%	50	31.1%
No response	2	2%	0	0%	1	2.1%	3	1.9%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

On the other hand, though FDW should have one rest day in every period of 7 days, exceeding 30% could not enjoy the benefit. Among the respondents, almost all Thai workers (93.6%) could take the rest day once a week, 85.7% for Filipino and only 52% for Indonesian workers. Nearly half of the Indonesian respondents failed to take weekly rest day. Their rest day ranged from twice a month to a few days a year.

Table 21 & 22 revealed that Indonesian workers could hardly have rest day while working in Hong Kong. Comparing with other foreign domestic workers, they took the least number of rest days with the shortest length of hours.

Table 23: Compensation of Wage for Rest Day Work

Did you get salary in your rest day work	Nationality						Total	
	Indonesian		Filipino		Thai		N	%
	N	%	N	%	N	%		
Yes	7	15.2%	2	100.0%	2	100.0%	11	22%
No	31	67.4%	0	0%	0	0%	31	62%
No response	8	17.4%	0	0%	0	0%	8	16%
Total	46	100.0%	2	100.0%	2	100.0%	50	100.0%

If the employees are willing to work on rest day, it should be compensated either by payment or an alternative holiday.

Amongst the 50 FDW who needed to work on rest day, 46 of them are Indonesians. While all Filipinos and Thais received compensation for the rest day work. Only 7 out of 46 Indonesians received compensation. 25 out of the 46 Indonesians received no salary or no compensatory holiday at all.

4.2.5.2 Statutory Holiday

The employment contract also grants all the foreign domestic workers with 12 statutory holidays in a year. Referring to Employment Ordinance, statutory holidays cannot be bought and should be compensated with only an alternative holiday.

Table 24: Has FDW given all the statutory holiday?

Have you given all the statutory holiday	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
Yes	50	50%	8	57.1%	38	80.9%	96	59.6%
No	42	42%	5	35.7%	5	10.6%	52	32.3%
No response	8	8%	1	7.1%	4	8.5%	13	8.1%
Total	100	100.0%	14	100.0%	47	100.0%	161	100.0%

Table 25: Compensation of Statutory Holiday

How does your employer compensate the statutory holiday for you	Nationality						Total	
	Indonesian		Filipino		Thai			
	N	%	N	%	N	%	N	%
by wage	7	16.7%	3	60%	3	60%	13	25%
by an alternative holiday	9	21.4%	1	20%	2	40%	12	23.1%
Nothing at all	20	47.6%	0	0%	0	0%	20	38.5%
No response	6	14.3%	1	20%	0	0%	7	13.5%
Total	42	100.0%	5	100.0%	5	100.0%	52	100.0%

Over 30% FDW failed to enjoy all the statutory holidays. Amongst different nationalities, 42% Indonesian, 35.7% Filipino and 10.6% Thai respondents could not enjoy all the 12 statutory holidays within a year (Table 24).

Overall speaking, 48.1% of the affected workers received compensation for their statutory holiday work either in payment or an alternative holiday. 23.1% employers of the affected respondents chose to compensate their worker with an alternative holiday. 25% compensated the holiday by wage (note: such arrangement is illegal according to ordinance). But worse of all, 20 (47.6%) out of 42 Indonesian respondents received no compensation in any form.

Table 24-25 showed that among all the interviewed domestic workers who needed to work on statutory holidays. Indonesian workers worked with least compensation.

(5). Summary:

5.1 Background Information of Respondents:

- The study had successfully interviewed 161 domestic workers from Southeast Asian countries. All of them were female. 61.2% were Indonesian, 29.2% were Thai and around 9% were Filipino (Table 1).
- Almost half of the respondents (49.7%) were young women under 30 years old. In comparison, Indonesian workers were younger than Filipino and Thai workers. Almost 70% Indonesian respondents were below 30 in age while over 50% Filipino and 90% Thai were over of 31 (Table 2).
- The educational level of the respondents varied amongst different nationalities. In general, 23% received primary education, 31.7% received secondary education, 26.7% were high school level and 14.3% were College or University level.
- Comparatively, the Filipinos were more well educated, none of them were primary or secondary graduates. Whereas 57% Indonesian and 66% Thai workers were secondary or below. The Filipinos respondents were mainly College or University graduates (71.4%), only 4% Indonesian and 19.1% for Thai respondents were post secondary in education.
- Almost 40% of the respondents were new comers with less than 2 years stay in Hong Kong. While another 38.5% were experienced workers who stayed and worked in Hong Kong for more than 4 years.
- The percentage of new comers & experienced workers were evenly distributed amongst different nationalities. 42% Indonesian, 42.8% Filipino and 31.9% Thai were new comers, while 33%, 42.9% and 48.9% were experienced workers who had worked here for over 4 years respectively (Table 4).
- The respondents resided mainly on HK Island/outlying Islands (42.9%) and New Territories (23.6%). Only 18.6% resided in Kowloon side.

5.2 Hardship & Violations of Contract Terms Encountered by FDW:

5.2.1 Underpayment

- The HKSAR Government had set a minimum allowable wage (MAW) for foreign domestic workers (FDW). During the period we carried out the study, the MAW of FDW was mostly \$3,270 (effective on 1 April 2003) or \$3,320 (effective on 19 May 2005).
- An employer should not unilaterally impose or mutually reach a private agreement with his/her FDW on a lower wage rate.
- According to Immigration policy, all the employment contracts should comply with the MAW requirement. As shown in Table 6, all the contracts (100%) signed according to MAW (93.2%) or more than MAW (6.8%).
- 98% Indonesian, 71.4% Filipino and 89.4% Thai respondents' were promised MAW. And 2%, 28.6% and 10.6% respondents' contract promised higher than MAW. Disregard the length of stay in Hong Kong were no significant difference amongst the 3 nations, just a few

Indonesians respondents received higher MAW in compare to the other nationalities.

- Even though all the employers should comply with the MAW requirement, there were still 8.7% foreign domestic workers suffered from underpayment.
- Exploitation of wage was the most serious amongst Indonesian domestic workers in compare with the other nationalities. Table 7 showed that only Indonesian respondents suffered from the problem of underpayment, 14% of them received wage lower than the MAW, but there was none for both Filipino & Thai workers. Those underpaid Indonesian respondents received wages mainly ranged from HK\$1,800 to HK\$2,000, which was only 54% - 60% of the MAW. 8 out of 14 Indonesian domestic workers received wages only HK\$1,800 per month while 4 received HK\$2,000 and 2 received HK\$3,000 per month.
- For those underpaid Indonesian respondents, no matter their monthly wage were paid in cheque (64.3%) or in cash (28.6%), all of them were asked to acknowledge receipt of full amount same as minimum allowable wage, even though it was not true. They were demanded to pay back part of their wage by their employers after receiving cash or cashed their cheque. These employers maneuvered to cover up their offence.
- Although the FDW had received lesser amount than the MAW, the respondents still signed it for fear of losing their jobs. The followings were their words:-
 - If I do not acknowledge the receipt, the employer will send me back to Indonesia.
 - If I refuse to sign, the employer will get angry and send me back to Indonesia.
 - If I don't sign it, they will return me to Indonesia.
 - If I don't sign it, they will fire me.
 - Because I am afraid and new in HK. I don't know much about HK law.
 - Because I have no choice and afraid of losing the job.

5.2.2 Late Payment

- With reference to the Employment Ordinance, the employer should fix a monthly payday to the worker. And the wage should be paid not later than 7 days from the due day.
- Table 9 & 10 revealed the problem of late payment. Table 9 showed that 25.4% of the respondents did not have a fixed payday and received the wage irregularly. 32.9% Indonesian, 28.6% Filipino and 9.5% Thai were affected.
- Amongst those 35 affected FDW, 6 of them received their wage later than 7 days, it breached the Employment Ordinance. 4 are Indonesians, 1 is Filipino and 1 is Thai.

5.2.3 Overcharges of Commission

- According to the Employment Agency Regulations, the maximum commission allowed from a job seeker should not exceed 10% of the first month's wage she received.
- In general, 68.9% respondents had sought assistance from employment agency in looking for existing employers, they had to pay agency fee. Another 25.5% domestic workers found their employers through their own networks.
- Comparatively speaking, it was more common for the Indonesian respondents looking for employers through the employment agency than Filipino and Thai respondents. Over 86% Indonesian found their employers through the agency and paid the fee while only 42.9%

Filipino and 40.4% Thai domestic workers sought assistance from agency (Table 11).

- As revealed in Table 12 & 13, disregarding to their nationality, 59.6% (96/161) respondents were affected by the overcharges of the employment agency.
- In comparison, the commission paid by Indonesian respondents were much more than the other nationalities. Nearly 76% of the Indonesian respondents paid agency fee more than the statutory level. 25% paid 0.11 to 8 times more, 24% paid 14-58 times more. 27% needed to pay up to 62-68 times much more than the statutory level, i.e. HK\$22,890 (more than 7 months' wage).
- For the affected Filipino, 14.3% paid the agency fees 0.11-8 times more and 28.6% paid 14-58 times higher than the maximum commission allowed.
- For the affected Thai workers, 6.4% paid within the maximum commission allowed while almost 23.4% of them needed to pay 14-58 times higher than the statutory level.
- On the other hand, Indonesian respondents needed to pay more instalments on agency fee than the other nationalities. 43% of Indonesian respondents needed to pay from 5 to 7 months, whereas only 1 Filipino and 1 Thai respondents paid that long. (Table 12 & 13).

5.2.4 Unlawful Wage Deduction for Commission of Employment Agency

- It is unlawful for an employer of the foreign domestic worker to deduct wages and pass the sum to an employment agency for repaying debts owed by the worker.
- Table 14 indicated that other than 1 Filipino respondent, the remaining are all Indonesians DW who had to 'pay the agency commission through deduction wage by the employer'. Amongst the 86 Indonesians DW who had to pay the agency commission, 57% paid by themselves, 34.9% paid through wage deduction by employers. 7% (6/86) Indonesians had been deducted wage for the agency by their employers without their permission (see table 15), and 8.1% (7/86) received no receipt from their employers (see table 16). Only 1 Filipino had been deducing wage for the agency by their employer without their permission.

5.2.5 Facilities

- According to the employment contract, the employer should provide free basic facilities for the foreign domestic worker. They are 1) air, light & water supply; 2) bed; 3) toilet and bathing facilities; 4) pillows; 5) blankets or quilt; 6) wardrobe. Otherwise, the Immigration Department would not approve the contract.
- 30.5% of the interviewed workers failed to enjoy all the required facilities freely. 22.4% lacked 1 facility, 4.3% lacked 2 facilities, and 1.9% lacked 3 to 4 facilities.
- The facility that more foreign domestic workers needed to buy on their own was toilet and bathing facilities. Some provided no bed and just slept on floor with mattress only.
- Amongst different FDW groups, 31% Indonesian workers were not provided with full facilities as stated in the employment contract. 24% affected Indonesian lacked 1 item, 5% lacked 2 items and 2% lacked 4 items.
- 42.8% Filipino workers were not provided with full facilities, 28.6% lacked 1 item, and 7.1% lacked 3 to 4 items. 25.6% Thai workers were affected and did not enjoy all the

facilities. 17% of them lacked 1 item, 4.3% lacked 2-3 items.

5.2.6 Illegal Work

- With reference to the employment contract (3) & (4), the condition of stay of foreign domestic workers has been imposed by the Immigration Department that the worker shall work and reside in the Employer's residence, only perform duties as per the attached Schedule of Accommodation and Domestic Duties for the Employer, and shall not take up and shall not be required by the Employer to take up, any other employment with any other person.
- Table 18 revealed that apart from the employer's residence, over 20% respondents were instructed to work in places other than the contract address which seriously violated the employment contract terms and breach of condition of stay imposed by the Immigration Department.
- Within different groups of respondents, 23% Indonesian, 19.1% Thai and 14.3% Filipinos suffered from the problem of illegal work.
- For the 34 respondents who had to work besides the employer's house, they worked mainly on employer's relative's house and employer's other house (see table 19). Nearly half of the 34 worked everyday or 3 times a week in some other places (see table 20).

5.2.7 Rest Day Problem

- With reference to the Employment Contract, FDW is entitled to different kinds of holidays like rest day and statutory holidays.
- According to the Employment Ordinance, a rest day is defined as a continuous period of not less than 24 hours during which an employee can abstain from working for her employer.
- Table 21 showed that less than 1% interviewed domestic worker could take 24 hours rest day as stated in ordinance.
- Comparing different groups of respondents, Thai workers had the longest rest day while the Indonesian workers had the shortest rest day. Over 80% Thai workers could get 12-17 hours rest day but less than 60% Indonesian worker could take it. Nearly, 10% Thai workers' rest day was only half day or less while it was almost 30% for Indonesian workers.
- Throughout the interviews, we found that many interviewed workers had curfew hours to follow. Actually, they complained that they needed to work & prepare everything for the employer before going out for holiday. They were also asked to come back early and continued to serve the employers again. Thus, it was hardly for them to rest.
- On the other hand, though FDW should have one rest day in every period of 7 days, exceeding 30% could not enjoy the benefit. Among the respondents, almost all Thai workers (93.6%) could take the rest day once a week, 85.7% for Filipino and only 52% for Indonesian workers. Nearly half of the Indonesian respondents failed to take weekly rest day. Their rest day ranged from twice a month to a few days a year.
- Table 21 & 22 revealed that Indonesian workers could hardly have rest day while working in Hong Kong. Comparing with other foreign domestic workers, they took the least number of rest days with the shortest length of hours.

- If the employees are willing to work on rest day, it should be compensated either by payment or an alternative holiday.
- Amongst the 50 FDW who needed to work on rest day, 46 of them are Indonesians. While all Filipinos and Thais received compensation for the rest day work. Only 7 out of 46 Indonesians received compensation. 25 out of the 46 Indonesians received no salary or no compensatory holiday at all.

5.2.8 Statutory Holiday Problem

- The employment contract also grants all the foreign domestic workers with 12 statutory holidays in a year. Referring to Employment Ordinance, statutory holidays cannot be bought and should be compensated with only an alternative holiday.
- Over 30% FDH failed to enjoy all the statutory holidays. Amongst different nationalities, 42% Indonesian, 35.7% Filipino and 10.6% Thai respondents could not enjoy all the 12 statutory holidays within a year (Table 24).
- Overall speaking, 48.1% of the affected workers received compensation for their statutory holiday work either in payment or an alternative holiday. 23.1% employers of the affected respondents chose to compensate their worker with an alternative holiday. 25% compensated the holiday by wage (note: such arrangement is illegal according to ordinance). But worse of all, 20 (47.6%) out of 42 Indonesian respondents received no compensation in any form.
- Table 24-25 showed that among all the interviewed domestic workers who needed to work on statutory holidays. Indonesian workers worked with least compensation.

(6). Conclusion & Analysis:

PROBLEMS		FILIPINOS	INDONESIANS	THAIS
Underpayment		✗	✓ (14)	✗
Late-payment		✓ (1)	✓ (4)	✓ (1)
Overcharge of agency fees (Overcharge amount exceeds 62 times)		✓ (0)	✓ (27)	✓ (0)
Unlawful transferral of wage to agency		✗	✓ (6)	✗
Sub-standard facilities		✓	✓	✓
Illegal work		✓ (2)	✓ (23)	✓ (9)
Sub standard rest days entitlement	Less than 24 hours	✓	✓	✓
	Less than once a week	✓ (2)	✓ (46)	✓ (2)
	No salary & alternative day	✗	✓ (25)	✗
Sub-standard statutory holiday entitlement	No salary & alternative day	✗	✓ (20)	✗

- Underpayment existed only in the Indonesian group. 14% received wage lower than the MAW.
- Late payment existed in all 3 groups, but there was no significant difference amongst them.
- Overcharge of agency fees existed in 3 groups, but it was most serious in the Indonesian group. 27% of them were overcharged for over 62 times more than the statutory level.
- Unlawful transferral of wage to agency existed only in the Indonesian group, 6% experienced such unlawful transferral.
- Provision of sub-standards facilities existed in 3 groups
- Requested to work in places not specified in the contract existed in all 3 groups.
- Breaches of rest day entitlement existed only in the Indonesian group. The Filipino and Thai groups received wage compensation or alternative holiday in return. Breaches included working in rest day without wage compensation or alternative holiday. Nearly half Indonesian DW had rest day for only twice or less in a month.
- Breaches of statutory holiday entitlement existed in 3 groups. The Filipino and Thai groups all received compensation either in form of wage or holiday, even though wage compensation was still against the law. While 20% in the Indonesian groups received nothing at all.

- The study revealed that the Indonesian DW faced the most serious exploitation. Even though the employment contract and the immigration ordinances had provided full set of provisions to safeguard the rights of the FDW, the Indonesian DW still encountered various forms of exploitation.
- From the words of the Indonesian DW, it revealed that some employers intentionally underpaid them. They even maneuvered to produce evidence of acknowledgement of full payment but pay lesser amount than the MAW. It could hardly be detected.
- Transferral of wage without the authorisation of Indonesian DW to the agency was also common. It was a sign of joint actions of both the employers and agencies which was certainly unfavourable to the FDW. This was especially a problem when the agency fee was much higher than the statutory level. It called our attention on this kind of exploitation especially amongst the Indonesian DW.
- Underpayment of wage, overcharge of agency fees, joint actions of employers and agency in collecting extra high agency fees, infringement of rest day and statutory holiday entitlement amongst the Indonesian DW, but not within the Filipino and Thai groups, unveiled that there existed certain kind of systematic exploitation. It called for further exploration for concerning parties on such problems.

(7). Recommendations:

In order to uphold the rights of foreign domestic workers, we have the following suggestions.

7.1 Labour Department should strictly monitor the employment agency in HK and make sure that employers should comply with the law by:

- Setting up "Hotline" with Indonesian interpreter to handle complaints against employment agency
- Raise penalty: a) imprisonment rather than fines
 b) revocation of licence forever
- The Department should take strict assessment over agency's performance before approval

7.2 The government should strictly control and monitor the advertisement of the employment agency in Indonesian newspapers published in Hong Kong. They spread incorrect information and mislead the migrant domestic workers.

7.3 Labour Department & Immigration Department should organize mandatory orientation seminars for both employers and their domestic workers to make sure that the employers and the FDWs understand fully their obligations, rights and liabilities as stipulated in the employment contract.

7.4 Labour Department & Immigration Department should conduct sudden on-site inspections to make sure that both employers & domestic workers do follow the law.

7.5 For renewal of employment contract, Immigration Department should follow up with the domestic workers about the working conditions. The Immigration Department should ensure that the FDW could enjoy all the benefits as stated in the employment contract before approval of the new contract.

7.6 Immigration Department should increase penalty to punish irresponsible employers who breached the law or violated the contract terms. Government should consider blacklisting those employers who have convicted serious offence, and stop them from hiring foreign domestic worker.

7.7 The employers should pay wages to FDW through auto-payment to ensure on time payment.

No.: _____
 Staff/ Volunteer: _____
 Date: _____

Caritas Asian Migrant Workers Social Service Project
Study on Hardship & Violation of Employment Contract Terms
Encountered by Foreign Domestic Workers in HK

Sponsored by Oxfam-Hong Kong

The information collected will be kept in confidential and used for our study only, thank you!!

Underpayment

1. How much is your wage in this contract? \$ _____ per month
 2. What is the exact amount you receive every month? \$ _____ per month

**** If you are not underpaid, please jump to question 3**

2.1 With the employer you are working now, since when you are given the wage less than contract amount?

2.2 Please describe the situation when you receive salary from your employer?

2.3 Have you acknowledged receipts of contract salary even though you received less than it?

- Yes → why do you sign it? _____ No

Late Payment

3 Do you have a fixed payday?

- Yes → please answer question 3.1
 No. → How do you receive your wage? E.g. Payment method, times of payment within a wage period etc.

→ Please jump to question 4

3.1 Do you receive the wage regularly on the payday?

- Yes No. → How many days have been delayed for the salary in average? _____ days

Agency Fee

4 Do you need to pay agency fee for working with the existing employer in HK?

- Yes → please answer question 4.1 No → please jump to question 5

4.1 How much do you need to pay to the recruitment agency? HK\$ _____ per month

4.2 How many months/ times do you need to pay? _____ months / times

4.3 How do you pay such fee?

- by myself → please answer question 5
 through the employer by deduction of my monthly salary → please answer question 4.4
 Others, please jump to question 5 : _____

4.4 If the fee is paid through the employer, has he/ she got your permission before passing your salary to the Agency? Yes No

4.5 Has the employer shown you any receipts or proof for the above payment? Yes No

Facilitates:

5. Has the **employer freely provided** you with the following facilities? (You can ✓ many items)
 air light and water supply toilet and bathing facilities (e.g. shampoo, soap, tissue)
 bed blankets or quilt pillows wardrobe

Duties:

6. Do you have to work in other places which have not written in the contract?
 Yes → please answer 6.1 No → please answer 7

6.1 Where do you need to work? You can ✓ many items below.

Employer's office/ shop Employer's other house Relative's house
 Places outside HK Others, please specify : _____

6.2 How often do you work there? _____

Holiday Arrangement:

7 How often do you take your rest day?
 Once every week → jump to Question 7.2
 Twice a month → please answer Question 7.1
 No holiday at all → jump to Question 7.1
 Others, please specify : _____

7.1 Did you get salary in your rest day work?

Yes
 No, does your employer compensate other holiday for you? Yes No

7.2 During your rest day, you can go out at (time) : _____ and return to the employer's house at (time) : _____

7.3 Have you given all the statutory holiday?

Yes
 No. How does your employer compensate for you?
 By money By another holiday Nothing

~The end ~

Personal Particulars:

Name: _____ Nationality: _____ Religion: _____ Sex: _____ Age: _____

Marital Status: _____ Length of Stay in HK: _____ No. of Children and Age Range: _____

Educational Level: _____ Regular Off Day : _____ (every week / twice a month)

What is your available time to join our future activities?

am : _____ pm : _____

What is your preference district to join our future activities? HK Island Kowloon side

Language spoken : Cantonese English

Contact address in HK/ Living district in HK : _____

Contact tel. No.: _____ (day time) _____ (night time)

Foreign Domestic Helpers (FDHs) Population in Hong Kong

As at the end of month/ year	Philippines	Indonesia	Thailand	Other Nationalities	Total Number
Dec 1990	63,600	1,000	4,300	1,400	70,300
Dec 1991	75,700	1,800	5,600	1,500	84,600
Dec 1992	89,100	3,500	6,700	1,900	101,200
Dec 1993	105,400	6,100	7,000	2,100	120,600
Dec 1994	121,200	10,700	7,100	2,400	141,400
Dec 1995	131,200	16,400	6,700	2,700	157,000
Dec 1996	134,700	21,000	5,800	2,800	164,300
Dec 1997	138,100	24,700	5,100	3,100	171,000
Dec 1998	140,500	31,800	5,300	3,000	180,600
Dec 1999	143,200	41,400	5,760	3,340	193,700
Dec 2000	151,490	55,200	6,450	3,650	216,790
Dec 2001	155,450	68,880	7,000	3,950	235,280
Dec 2002	148,390	78,170	6,670	3,880	237,110
Dec 2003	126,560	81,030	5,500	3,770	216,860
Dec 2004	119,710	90,050	4,920	3,750	218,430
Dec 2005	118,030	96,900	4,510	3,760	223,200
April 2006	119,670	99,160	4,450	3,670	226,950

Source: Department of Immigration, HKSAR