**Submission by Asia Pacific Forum on Women, Law and Development (APWLD)**

**To the UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights**

**November 2019**

**Background**

Asia Pacific Forum on Women, Law and Development (APWLD) is a feminist, membership-driven network. Our member represents 248 diverse women’s rights organisations and advocates from 27 countries in Asia and the Pacific. This submission is made with the contribution from our member (Asia Pacific Mission for Migrants (APMM), Hong Kong) and our Feminist Participatory Action Research partners (KABAR BUMI, Indonesia; Indonesian Migrant Workers Union (IMWU-HK), Hong Kong).

1. **Overview of Women Migrant Workers in Asia and the Pacific**

Asia is the source of the largest number of international migrants - over 98.4 million migrants worldwide originated from countries of the region. Four Asia Pacific countries feature in the top 10 countries of origin for international migrants: China (10 million), Bangladesh (7.5 million), Pakistan (6 million) and the Philippines (5.7 million). The region also hosts the largest number of international migrants, constituting 80 million migrants or 31 per cent of total international migrants.[[1]](#footnote-1) Overall, women make up about half (48 per cent) of the 2017 global estimate of 258 million international migrants, and domestic work constitute the single largest employment option for women migrant workers.

In Asia and the Pacific, migrant workers in low-skill and low-status sectors such as agriculture, construction and domestic work makes up the largest migration type.[[2]](#footnote-2) Temporary labour migration is usually regulated by governments but carried out by private recruitment and employment agencies. As migrant labour recruitment and remittances-related financial transaction has become a multi-million-dollar business, the culture of migration (for development) is promoted by governments.

While many countries in the region are promoting labour export policies, they have outsourced various functions to private actors such as middle men, labour brokers, money lenders or recruitment agencies, leaving migrant workers vulnerable to exploitation and lack of accountability on these actors. For instance, migrants having to pay exorbitant fees to the recruitment agencies leave them and families in high amount of debts even before their migration. Upon arrival at the destination, often their documents are confiscated by the agencies or employers as bargaining chips to ensure that workers do not leave before the contract period ends; or until the workers complete paying back the ‘agency fees’ - often by deductions out of migrant workers’ wage for certain period of time. In this submission, we wish to highlight the debt bondage situation of women migrant workers, who particularly work as foreign domestic workers.

1. **Debt Bondage and Migrant Domestic Workers**

Labour migration in several countries in Asia and the Pacific is closely related to debt bondage practices which ultimately place migrant workers, especially women working as domestic workers, in abusive and exploitative working conditions. Women from developing countries choose to migrate and work as domestic workers to earn money that they are unable to earn at home, and most often they do not have the savings or ready money in the bank to pay off the expenses associated with their labour migration process. Women, unlike men, also commonly do not have assets such as land or vehicles, which can be used to secure a loan from bank or other credit facility; subsequently leaving them with their labour only as a guarantee for paying off the ‘debt’ they enter into.

In order to work as a domestic worker, women often sign up with a recruitment agency[[3]](#footnote-3) that will organise their migration to another wealthier country and will set them up with an employer. Instead of paying the agency fees and the costs of going overseas upfront, as the recruitment fee may range up to US$7,000,[[4]](#footnote-4) the worker may often agree to work under the terms stipulated by the agency and pay off the debt over time through their labour. Furthermore, women in the region faces various legal, cultural and economic barriers to take out formal loans, forcing them to take loans arranged by recruitment agencies with vague and unfair condition. The report of the Asia Pacific Mission for Migrant Workers also confirms that those who went through recruitment agencies had a higher rate of debt, with 75 percent of those listed in debt coming from agencies.[[5]](#footnote-5) The situation of debt of women migrant workers are often overlooked due to the fact that they often freely choose to enter contracts, in the often mistaken belief that it will lift them and their families out of poverty, and the contracts are for a limited time, such as the three years stipulated in their visas.

The fact that domestic work is not recognised in most of the countries also mean the workers lack labour rights, protection or access to justice and remedies. Without basic labour protection such as working hours, rest day, minimum wage or right to organise, domestic workers who work in isolation are even more vulnerable to various forms of exploitation. The compulsory live-in in many countries such as Hong Kong, Macau and Taiwan have resulted in excessive overtime for the workers, often up to 20 hours a day. Their identity and other personal documents are often retained by the employers until the debt is paid off, limiting their right to freely leave the employment and seek new employment opportunity. There are also reports that once domestic workers have paid off their fees and costs and the workers begin to receive their full salary, their employer suddenly end their contract under the influence of the recruitment agencies; accumulating another ‘fees’ for workers to pay the agencies for a new employment opportunity. These agencies earn money from fees charged to employers and migrants, although charging migrants is prohibited under the ILO Private Employment Agencies Convention, 1997 (No. 181). And the debt cycle repeats.

1. **Debt Bondage Enablers: Overcharging and Document Confiscation**

Two popular ‘methods’ that push migrant workers into deeper debt bondage are ‘overcharging’ of migrants for migration; and ‘document confiscation’. This issue manifests in repetitive pattern of violence faced by migrant workers, especially women who work in the domestic sector. Government in country of origin like Indonesia and the Philippines requires a person who wants to work abroad as a migrant worker to go through a placement process by a private recruitment agency.

***Indonesia: Sending Country A***

The government of Indonesia formalised the role of private recruitment agency in labour migration through the Law No. 39/2004 (on the Placement and Protection of the Indonesian Migrant Workers) and a new Law No. 18/2017 (on The Protection of Indonesian Migrant Workers). The laws state that the placement process of migrant worker involves two private entities: a) Company of the Placement of Indonesian Migrant Workers in Indonesia; b) and a partner placement agency in destination country, which is mandatory by the law. Both entities must be verified by the government of Indonesia.

Provisions regarding recruitment standard and costs are regulated through a Ministerial Decree for each destination country. For example, under the Law No. 39/2004, Indonesian Ministry of Manpower and Transmigration issued the Ministerial Decree No. 98/2012 concerning the Components and Placement Costs of Prospective Domestic Workers with Hong Kong as the Destination Country. It stipulates that the maximum total recruitment agency fee that can be charged is IDR 14,780,400 or HK $ 13,436 (US$ 1,730) only. While the new law explicitly recognises zero placement fee, the government of Indonesia has not yet issued subsequent regulations to implement these provisions. As a result, the practice of charging the placement fees continue, potentially leading to the overcharging on migrant workers.

***Philippines: Sending Country B***

The Philippines, as one of the biggest sending countries of migrant workers, also has existing policy of ‘no placement fee’ to be collected from Filipinos applying for a job abroad; while there is significant lack of implementation. Most recruitment agencies circumvent the said policy by collecting different fraudulent fees, such as training fees, internet fees, uploading fees, medical fees among others, which are equivalent to the placement fees. Such money-racketeering scheme of recruitment agencies and money lending agencies, as tolerated by the government of the Philippines and other sending governments, literally puts migrant workers into debt bondage.

***Hong Kong: Receiving Country A***

The Government of Hong Kong also stipulates the maximum fee which a placement or employment agency can charge for their services. As outlined in the Employment Ordinance, it is illegal for agencies to collect fees from workers that amount to more than 10 percent of their monthly salary. This means that at the current Minimum Allowable Wage of HK$4,630 (US$590) per month, the maximum fee that agencies in Hong Kong can charge migrant workers is HK$463 (US$59).

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| **[Case Example] Story of Tri** Tri, a woman from a small village named Slambur, East Java, Indonesia migrated to work for the first time in Singapore in 2004. At that time, the agency falsified her identity in the passport, but she managed to finish her contract and returned home. In 2017, she got another opportunity to work in Hong Kong through a broker. However, she had to apply for a new passport as she only had the old passport with falsified personal information. The recruitment agency in Indonesia asked her to pay IDR 2,500,000 (US$177) for the cost of the new passport and medical check-up. The agency also asked her to provide original documents such as identity card, family card, school diploma, and marriage certificate as the requirements for obtaining her work visa. After submitting all the required documents, Tri was given a severance pay of IDR 3,000,000 (US$213) by the agency and had to wait for three months until her visa was ready. Before her departure, the agency promised that they would return all her personal documents following her migration. Tri migrated to Hong Kong in 2018 to work as a babysitter. Three months after her arrival in Hong Kong, her husband visited the agency in Indonesia to have all her personal documents returned. However, he was told by the agency that there was an agreement stating that Tri owed HK$ 15,576 (US$ 1,987) to the agency in Hong Kong, which was due in six months’ instalment. The agency claimed that as a new policy, they would withhold the documents during the instalment period and would return it only after Tri pays off the debt to the agency. Tri claimed she never knew about the agreement with the agency in Hong Kong. All she could remember was signing a placement agreement and a job contract. She was forced to let HKD 2,596 (US$331) deducted from her salary each month. After having a consultation with KABAR BUMI, a local organisation of migrant workers based in Cilacap, Central Java, Tri’s husband decided to file a report to the government. Together with another 50 overcharging and document confiscation victims, he made a collective report to the Ministry of Manpower in Indonesia to demand the agency to return their money and documents. The agency promised through a written statement that they would immediately return the documents to the family, but in fact, it has never been implemented to date. Meanwhile, Tri’s family still has to pay the last instalment to the agency if they want to get her documents back. |

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| **[Case Example] Story of Duwi** Duwi, 31 years old, a woman from East Java, Indonesia is from a farm worker’s family. She is married with two children and her husband also works as a farm worker. She found it difficult to find a job in the village with her junior high school diploma. Duwi finally decided to work abroad to improve her family's financial situation. Duwi registered to the recruitment agency in 2017 with Hong Kong as a destination country. The agency asked her to provide an original document such as marriage certificate, family card, school diploma, and ID card as a requirement for obtaining her work visa. Duwi was also given an allowance of IDR 3,000,000 (US$213) by the agency. During her stay at the agency’s training center, she studied Cantonese for eight months and ​​learned about her job in Hong Kong. She signed a paper stating that HK$ 2,596 (US$331)/month will be deducted from her salary for a six-month period; and that the agency would hold all her documents during the instalment period. One week after her arrival in Hong Kong in 2018, the agency picked her up from the employer’s house saying that she was no longer employed for that employer. She was instead coerced to work part-time at several different places. During her part-time job, she never received any salary and found out that the agency had taken all of her salary. Realising she was being exploited by the agency and also by learning the fact that migrant workers are prohibited from doing a part-time work (which may result in imprisonment or blacklisting), Duwi decided to run away. She ran away without taking her passport and contract. She managed to get her passport and the work contract back from the agency after reporting her case to the Indonesian Consulate General in Hong Kong. However, the agency still forced her to pay a loan by signing a new contract with an increased amount of HK$ 3,100 (US$395); and for a longer period of repayment time (seven months instalment). In addition to reporting her case to the Indonesian Consulate General in Hong Kong, Duwi also sued her employer to the Labour Department of Hong Kong for her lost salary, one-month notice allowance and her return ticket to Indonesia. However, unfortunately, the Labour Tribunal only granted Duwi's demand for a one-way return ticket to Indonesia [HK$ 1,500 (US$191)]. Duwi pursued with another case reporting to the Employment Agencies Administration of Hong Kong. Unfortunately, the case could not proceed because her visa would be expiring soon. In addition, while waiting for her visa expiration period, Duwi was not allowed to work by the Hong Kong Immigration since her case handling process was ongoing. Once arriving in Indonesia, Duwi was assisted by a local mgirant workers organisation to have her identity documents returned from the recruitment agency. Ironically, Duwi received a lawsuit from the agency demanding her to pay off the debt while continuing to seize her personal documents.  |

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| **[Case Example] Story of Rebecca**Rebecca is a Filipina migrant domestic worker in Hong Kong. She arrived in Hong Kong in January 2016, after paying almost 90,000 Philippine Pesos (US$1,748) to her recruitment agencies in the Philippines, and another HKD15,000 (US$1,913) to the agency in Hong Kong. Since her arrival in Hong Kong, she stayed in the office of her recruitment agency for four days and was made to work as a cleaner, dishwasher and all-around helper by the recruitment agency without any pay. On the fifth day, her employer fetched Rebecca from the office of her recruitment agency.After eight months of working as a domestic worker in her employer’s flat, Rebecca was forced to serve as a dishwasher at her employer’s Korean Restaurant, which is illegal according to Hong Kong Immigration law. She worked from 6:00am to 12:00am (18 hours) that includes taking care of her employer’s children, bringing and fetching them to/from school, preparing their meals, cooking, cleaning and working at the Korean restaurant during dinner time. Rebecca was afraid to refuse the order of her employer, or to report to the Hong Kong government in fear of losing her job. She was highly indebted due to huge amount of money she paid to her agency aside from the fact that her family relied from her monthly remittance.  |

**Recommendations**

The stories of the three migrant domestic workers are not an isolated case. There are several factors that contribute to these similar debt bondage situations of migrant workers: a) most of prospective migrants are not adequately or fully informed of the breakdown of the fees, such as the cost of training, agency fees, travel costs, working documents, and accommodation. Migrant workers often only realise they are in debt once they are in the training center or even after arriving at the destination country; b) Lack of will from both sending and receiving governments to proactively prevent or respond to the system that traps migrant workers into debt bondage. This has prompted the recruitment businesses in both receiving and sending countries to establish a complex and sophisticated systems to extract illegal and excessive costs from migrant (domestic) workers. One of the first few steps that governments can take would include:

* Ratify[[6]](#footnote-6) and incorporate the ILO Convention 189 on Domestic Workers into national laws and policies;[[7]](#footnote-7)
* Direct hiring should be legal and encouraged than migrant workers, especially women migrant workers majority of whom are categorised as ‘unskilled’, being forced to go through agencies;
* Ban or regulate local brokers or subagents and ensure accurate information to prospective migrant workers of their migration process including potential risks;
* Investigate reports and cases of (illegal) overcharging, wage deduction or document confiscation, hold responsible actors (e.g. recruitment agencies, employers, bank or financial institution) to account and ensure affected migrant workers and their families access to justice and remedies.

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Indonesian Migrant Workers Union (IMWU) is a union of migrant workers, many of whom are foreign domestic workers, n Hong Kong. IMWU was first established in 1993 as an association called Indonesian Group-Hong Kong (IG-HK). IMWU is the first trade union of Indonesian migrant workers in Asia.

Keluarga Besar Buruh Migran (KABAR BUMI) is a grassroots organisation that brings together former Indonesian migrant workers and their families. KABAR BUMI strives to uphold the recognition and protection of the rights of Indonesian migrant workers and their families in particular, and migrant workers throughout the world.

Asia Pacific Mission for Migrants (APMM) is a registered non-profit limited company with charitable status in Hong Kong. Founded in 1984, APMM supports the migrant movement in the Asia Pacific and Middle East (APME) regions through advocacy, organising and building partnership and solidarity for the advancement of migrants’ rights and welfare.

1. Note that this data is incomplete as not all countries provided recent data on the number, age or origin of international migrants. (For more detail see, UN, Department of Economic and Social Affairs, Population Division (2017). International Migration Report 2017: Highlights, ST/ESA/SER.A/404.). [↑](#footnote-ref-1)
2. UN ESCAP. 2017. Trends and drivers of international migration in Asia and the Pacific. Economic and Social Commission for Asia and the Pacific, E/ESCAP/GCM/PREP/1, 30 August 2017, <http://www.unescap.org/sites/default/files/GCMPREP_1E.pdf>. [↑](#footnote-ref-2)
3. There are different types of recruitment agencies, including some like large, registered businesses operating in multiple countries to illegal agencies and sub-agents. For more details of the role of the recruitment agencies, loans and financial institutions, see [APWLD publication “The New Slave in the Kitchen” Debt Bondage and Women Migrant Domestic Workers in Asia” (2011)](http://apwld.org/wp-content/uploads/2013/09/New-Slave-in-the-Kitchen-Debt-Bondage.pdf). [↑](#footnote-ref-3)
4. <http://www.madenetwork.org/sites/default/files/Policy-Brief-Recruitment-Fees-Migrants-Rights-Violations.pdf> [↑](#footnote-ref-4)
5. Asia Pacific Mission for Migrants publication [“Invisible Chains: A study on Agency-Related Debt Bondage Among Foreign Domestic Workers in Hong Kong (2014)](http://www.apmigrants.org/articles/publications/Featured%20Researches/Indebtedness%20Research%202014.pdf).” [↑](#footnote-ref-5)
6. As of October 2019, only 29 countries have ratified the convention, with only one country (Philippines) from the Asia and the Pacific region. [↑](#footnote-ref-6)
7. Article 15.1(e) states “To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall…. take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.” [↑](#footnote-ref-7)