

NO TO THE NEW CONDITIONS OF STAY!



A primer released by the
United Filipinos in Hong Kong
(UNIFIL-HK)
a member of the
Asian Migrant Coordinating Body
(AMCB)
April 2001

ABOLISH THE TWO WEEK RULE!

1. What are the so-called New Conditions of Stay (NCS)?

The Immigration Department last 21 April 1987 implemented the New Conditions of Stay. Previous to these new rules, Foreign Domestic Helpers are given the chance to change employers within their first year of employment. However, with the advent of the NCS:

- A change of employment will not be allowed in the first two (2) years of the employment contract
- Those who break their contract will not be allowed to submit a new and valid contract before they leave Hong Kong
- When a FDH contract is terminated, she will be allowed to stay in Hong Kong for at most two (2) weeks.

As a matter of policy, if the contract is not completed, the FDH should process a new working visa from the country of origin. There are some instances, however, wherein the Immigration Department will allow processing of working visa in Hong Kong without having to go back to the country of origin. These are only when the employer is unable to continue the hiring due to death, financial difficulties, migration to other countries or serious violation of contract and exploitation such as ill-treatment by employer. The discretion, however, remains solely with the Immigration officers who deal with them on a "case to case basis".

2. Why call it Two-Week Rule? Are they the same?

The Two Week Rule is the more popular name for the NCS. It highlights one of the most unjust terms of the NCS. Very simply, under its terms, an FDH is committing a criminal offense if she remains in Hong Kong for more than two weeks after her employment is terminated, no matter what is the reason for termination - be she beaten, indecently assaulted, not paid wages, has her passport withheld, is not provided with even a ticket to leave Hong Kong.

If there is cause for complaint against the employer, the FDH may apply to the Immigration department for a visitor's visa, which may be granted or not at the discretion of the Department for such time, however long or short, and upon payment of fees to the said Department.

3. Why did the Hong Kong government implement it?

According to then Secretary for Security David Jeaffreson, these revised conditions of employment was meant "to eliminate the abuses caused by the present casual approach to employment by some employers and employees" and "to provide greater stability of employment".

He was referring to the alleged high rate of "job-hopping and moonlighting" as well as "protecting the local labor force." As examples, he claimed that there are a fair number of helpers working for employers not included in their contracts. Also, because helpers were allowed to change jobs after the first year of their contracts, employers could dismiss their helpers over minor differences, confident that they could find replacements easily. Similarly, FDHs could resign from their jobs with some assurance that they would be able to find new employers without too much difficulty.

The Two Weeks Rule is a matter of policy decided by the Governor and applied by the Immigration Department. It was not a "law" passed through the normal legislative process with any debate, for instance, in LegCo. No

Important Facts about the Campaign Against

16 April 1987

Then Secretary for Security D G Jeaffreson announced the New Conditions of Stay (NCS) in a press conference. Under the new rules:

- A change of employment will not be allowed in the first two years of the employment contract.
- Those who break their contract will not be allowed to submit a new and valid contract before they leave Hong Kong
- When a FDH contract is terminated, she will be allowed to stay in Hong Kong for at most two weeks (thus the name Two Week Rule)

An exemption is made only when the employer is unable to continue the hiring due to death, financial or other reasons. The NCS, he said, will reduce the incidence of "job-hopping and moonlighting" by foreign helpers, meaning helpers changing employers after the first year or so and also to "protect the local labor force". No consultations with concerned parties prior to the announcement were made.

17 April 1987

United Filipinos in Hong Kong (UNIFIL-HK) wrote to Sec. Jeaffreson against the NCS stating that: (a) the revised conditions of stay are unjust and discriminatory. They place the foreign domestic helpers in a disadvantageous position; (b) inadequate consideration had been given to the situation of the foreign domestic helpers in the review of the policy; (c) FDHs will not be able to terminate their contracts in the future, for fear of being asked to leave without the benefit of a change of employment even in cases of terms of contract being violated or the helpers abused; (d) employment agencies will be placed in an advantageous position as they will be able to exploit the foreign domestic helper's fear to their advantage and charge exorbitant fees.

21 April 1987

- The Hong Kong Government approves a HK\$300 wage increase for Foreign Domestic Helpers raising the minimum to HK\$2,300. However, together with the order for wage increase, the Immigration Department implements the New Conditions of Stay (Two-Week Rule) affecting all Foreign Domestic Helpers (FDHs), almost all of whom are Filipinas who number around 30,000.
- The United Filipinos in Hong Kong and the Mission for Filipino Migrant Workers (MFMW), through Melville Boase & Co., sent a letter to the Attorney General of Hong Kong, Mr. E H Martin, requesting for a "printed, authoritative version of these new

provisions." and raising concern over them because "we feel that there is substantial doubt about the legality of the matters proposed."

The solicitors were referring to the "power to vary any limit of stay...(which) is specifically vested in the Governor, under Section 11 (6) of the Immigration Ordinance Cap 115. " And that "...it appears to us that the nature of the proposed provisions would be in effect transfer that power to any employer...to curtail the period of her stay here simply by terminating her employment contract."

22 April 1987

The MFMW, Melville Boase & Co., the Dean of St. John's Cathedral together with other migrant advocates met with the Secretary for Security in a dialogue meant to address the concerns about the NCS.

27 April 1987

The MFMW and the Bahay Natin Crisis Intervention Center made a submission to the Secretary for Security to refute the allegations about "incidence of job-hopping and moonlighting and protection of the local labor force". Cases coming from the Association of Filipino Domestic Employees (AFDE), a member of the United Filipinos in Hong Kong (UNIFIL-HK) and the Joint Organization of Unions (JOU-HK), and the Filipino Overseas Workers Group (FOWG) were also submitted.

The findings revealed that:

- *On Job-hopping and Moonlighting:*

"...In most, cases it is the employers who initiate the termination (not the foreign helper) and usually without a month's notice. Majority of these terminations occurs during the first six months of employment. Thus terminated helpers have no choice but to look for another employer."
- *On Protecting the Labor Force:*

"...Government statistics show that 1986 registered the lowest unemployment rate and underemployment rate in Hong Kong. In fact, out of 3,182 vacancies for domestic helpers last year, only 1,130 (35.5%) placements were recorded. Moreover, from January to March 1987, out of 739 vacancies, only 257 have been filled.

11 May 1987

Melville Boase & Co, representing MFMW and UNIFIL, expresses disappointment over the lack

of response by the Attorney General and also to raise additional points regarding the magnified financial benefits of the employment agencies with the implementation of the New Conditions of Stay.

18 May 1987

Secretary for Security Jeaffreson responded to the 17 April letter of the UNIFIL saying that "...the revised conditions of employment do not discriminate against either employees or employers...We have introduced the revised conditions to eliminate the abuses caused by the present casual approach to employment by some employers and employees...(and) are meant to provide for greater stability of employment for both foreign domestic helpers and employers.

15 July 1987

- Attorney General Mr. Michael Thomas QC appeared in person to the Director of Immigration to take the case challenging the new visa rules for FDHs. A judicial review has been granted by Justice Jones on July 30 and 31. The lead counsel, Mr. Henry Litton, QC argued that the NCS is *ultra vires*, as the Immigration Ordinance does not provide the right for anyone to cut short a person's stay once a visa has been given apart from the Governor.

19 July 1987

- Campaign update released by UNFAIR - United Filipinos Against Injustice and Racism - composed of organizations under the UNIFIL and five other groups and organizations.
- AFDE sends regular case summaries to the Secretary for Security and to the Labor and Immigration Departments and to the Philippine Consulate to highlight the adverse impacts of the NCS.
- The Legal Aid Department has agreed to take the case of Filipino domestic helpers against the "illegal" conditions of the Two-Week Rule.

*** The Campaign against the Two-Week Rule gathered momentum through the work of UNFAIR and other migrant-serving institutions and churches. The Judicial review on the NCS gave unfavorable results and so an appeal was made up to the Court of Appeals. The case against the NCS was even brought to the Privy Council in London in 1988. Cases of the negative impacts of the NCS were continuously documented and submitted to the concerned authorities. The comprehensive campaign to protect migrant rights since then included the call for the abolition of the Two-Week Rule.

the New Conditions of Stay (Two-Week Rule)

2 May 1993

A position letter was submitted by the United Filipinos in Hong Kong (UNIFIL), Asian Domestic Worker Union (ADWU), Asian Migrant Center (AMC) and Hotline (church-based) to the Governor of Hong Kong Hon. Christopher Patten. They called for the abolition of the two-week rule, a mandatory increase of salary, improvement of working conditions and right to work after "1997".

In their written submission, they said that:

"Migrant organizations, spearheaded by UNIFIL, lobbied against this issue and even brought this to the Privy Council in London but the Government remained indifferent and continued implementing this rule.

The Two-Week Rule is unjust. Because of its implementation, FDHs are vulnerable to different kinds of abuses and exploitation. The policy places great power in the hands of the employer regardless of how the FDH is treated...

FDHs commit a criminal offense of "overstaying or illegal" if she remains for more than two (2) weeks after the contract has been terminated...Is there justice in this rule especially for those wishing to change their employment for reasons such as obtaining better working conditions?

Our position is that the Two-Week Rule should be abolished immediately and be replaced with a law, which provides FDHs with protection against exploitation from unscrupulous employers and recruitment agencies."

• A signature campaign was launched by the above mentioned organizations

July 1993

• The campaign gathers momentum. A submission to the Legislative Council entitled "Stop Exploitation! Improve Working Conditions for Foreign Domestic Helpers" was issued by the UNIFIL, ADWU, Mission for Filipino Migrant Workers (MFMW), Asia-Pacific Mission for Migrant Filipinos (APMMF), AMC, Hong Kong Trade Union Education Center (HK-TUEC) and the Hong Kong Confederation of Trade Unions (HKCTU) detailing the demands as submitted to the Governor.

17 August 1993

The above mentioned organizations appealed to the International Labor Organization to look into the issues that affect FDHs in Hong Kong including the Two-Week Rule.

22 August 1993

A rally was held to call for the abolition of the NCS by the said groups. The signature campaign goes on.

November 1994

• UNIFIL made a submission regarding the NCS at a Round Table for the United Nations Committee for the Convention for the Elimination of Racial Discrimination (CERD) at the Hong Kong University.

August 1995

The same submission was delivered at the Round Table Discussion of UN Committee on the Convention for the Elimination of Discrimination against Women (CEDAW) at the Hong Kong University.

***Since 1987, the New Conditions of Stay remained untouched. Several initiatives have been taken to pressure the government to abolish the two-week rule. Various migrant organizations from different nationalities (Nepali, Sri Lankan, Thai, Indonesian, and Indian) have consistently clamored to end the unjust rules of the NCS. In many May Day celebrations and also during the International Day of Human Rights, these groups would come together to raise their demands.

These Asian migrant organizations soon formed a coordinating group called the Asian Migrant Coordinating Body in 1996 to collectively raise and campaign on a systematic basis the comprehensive issues of migrant workers in Hong Kong. The Far East Overseas Nepali Association (FEONA), Association of Sri Lankans (ASL), Indonesian Group, United Filipinos in Hong Kong (UNIFIL), the Thai Women's Association (TWA) and later, the Friends of Thai (FOT) have carried the demand to abolish the New Conditions of Stay even during their campaigns against the series of attacks against migrants - the Wage Cut in 1998, the proposal to deny Maternity protection to FDHs, another proposed wage cut and the call to ban driving duties in 1999.

AMCB's December 10 statement last year said:

"Still, amidst our joy, a lot of challenges await the Asian migrants. Long-standing issues that encroach on rights still hound the migrant workers. The New Condition of Stay (more popularly known as the two-week rule) continues to deny the right of migrants to work, has forced thousands of migrants to undeniable risks, and has made the Asian migrants more vulnerable to abuse. This vulnerability has been proven to countless cases of physical, mental, and sexual abuse experienced by thousands of migrant workers. Many employers

still treat the migrant workers as if they are not humans or at best, second-class citizens. Migrant workers are forced to work under unthinkable conditions while being paid a pittance - just enough for the grumbling stomachs of our families back home."

And during the International Women's Day celebration last March 8, 2001:

"While migrant workers were expected to "share the burden" of the Asian financial crisis in 1999, they are clearly not expected to benefit from the so-called ongoing economic recovery in Hong Kong. Anti-migrant policies like the New Conditions of Stay continue to impact the job security and lives of countless women migrant workers."

January 1999

In its Human Rights report to the United Nations Secretariat, the HKSAR government maintained that the "two-week rule" does not discriminate against domestic helpers by race. "The government has always rejected any suggestions that the rule is based on or entails racial discrimination either in the literal sense of that term or in the broader sense," according to the report which devoted four pages to the issue.

September 1999

UNIFIL presented a submission on discriminatory laws, including the two week rule, to the Home Affairs Bureau in relation to the Report of the HKSAR under Article 9 of the Convention on the Elimination of All Forms of Racial Discrimination. In the final report of the Committee, it said that:

"In paragraph 21 of its concluding observations on the 13th report, the Committee expressed concern about the "two week rule." And in paragraph 35, it recommended that the rule "be modified to allow foreign workers to seek new employment in Hong Kong when their employment contracts are terminated." In expressing its concern, the Committee's added that -

'The overwhelming majority of the persons affected by this rule are female Filipino Domestic workers, this rule appears hide discriminatory aspects under the terms of the Convention which may leave workers vulnerable to abusive employers.'

In its most recent move, the Asian Migrant Coordinating Body met with representatives of the Immigration Department last February 12, 2001 in a dialogue meant to raise the persistent problems being faced by migrant workers including the New Conditions of Stay. The Immigration Department committed no substantial changes to the two week rule although some concessions were given regarding assistance especially to Indonesian migrant workers.

substantial consultations among FDHs and their advocates were done prior to its implementation. It is a simple government dictate, imposed at the whim of the government and changed at the whim of the government.

4. Are these reasons justified?

No. In a joint submission done by the Mission for Filipino Migrant Workers (MFMW) and the Bahay Natin Crisis Intervention Center last 27 April 1987, cases coming from various migrant groups refute the claims of the proponents of the NCS.

According to their data, in the years before the NCS, "...in most cases, it is the employer who initiate the termination and usually without a one month's notice. Majority of these terminations occurs during the first six months of employment. Thus, terminated helpers have no choice but to look for another employer." How can FDHs be accused of "job-hopping" and "moonlighting" if it is the employer who pushes them out of the contract?

On the issue of protecting the local labor force that time, the Hong Kong government's own statistics do not point to such a need. "In fact, out of 3,182 vacancies for domestic helpers last year (1986), only 1,130 (35.5%) placements were recorded. Moreover, from January to March 1987, out of 739 vacancies, only 257 have been filled." If the available jobs haven't even been filled, how can the Hong Kong government accuse foreign workers of stealing, or potentially stealing, local Chinese workers' employment opportunities?

In fact, with the implementation of the Two week Rule, these problems have become more serious. Not a few domestic helpers are forced to overstay or do "illegal" work because they are heavily in debt and have no other resources to pay back these debts. If there was no Two Week Rule and FDHs were allowed to find a new employer in Hong Kong (for domestic work), FDH would not risk going to the market of non-domestic work or over stay.

The Two Week Rule is simply this - a repressive immigration control directed against foreign domestic helpers. It is just an excuse to stop FDH's extension of visas and curtail their right to work legally acquired in Hong Kong.

5. Why then is the NCS unjust and discriminatory against Foreign Domestic Helpers (FDHs)?

Much has already been said about this. Since 1987, migrant groups and concerned institutions have raised criticism against the NCS.

a) The NCS places the FDH in a very disadvantaged position leaving them most vulnerable to abuse and exploitation. The policy invests greater power in the hands of employers regardless of how the FDH is treated - whether indecently assaulted, beaten, wages not paid, forced to undertake "illegal" work. Under the NCS, circumstances surrounding the termination of employment and how an FDH was treated by the employer prior to termination are completely disregarded and deemed unimportant. When contested, the burden of proof rests on the shoulders of FDHs.

b) FDH will not be able to terminate their contracts in the future, for fear of being asked to leave without the benefit of a change of employment even in cases of terms of contract being violated or the helpers abused. The Two Week Rule is being used by some employers as a weapon to threaten or even blackmail their helpers. FDHs dare not argue or assert their basic rights. Subsequently, they are forced to be kept silent. With these strict rules, the FDH only has two options: (1) to remain in employment in what may be abusive and exploitative conditions or 2) to resign, losing all benefits and almost certainly being repatriated.

c) FDHs commit a criminal offense if she remains for more than two weeks after the contract is terminated. Furthermore, on

conviction, she would be subjected to either a fine or imprisonment, apart from facing deportation. Is there justice in this rule especially for those wishing to change their employment for reasons such as obtaining better working conditions? Why is the freedom to terminate (and hence, the subsequent search for new employment) curtailed?

d) The Rule does not apply equally to all parties. The employer who terminates the contract can easily look for replacements in the labor market without penalties. On the part of the FDH, the government levies an imposition by way of extension of visa fee against a maid alone for taking the steps to file complaints or seek redress against their employers. The government is levying a charge against one party alone. Moreover, the Immigration Department denies the foreign worker the right to work or to support herself in any way while proceedings are conducted against the former employer, thus even depriving her of the ability to earn the funds to pay for the extension of visa fees to pursue her claims. Since legal proceedings are slow and laborious, waiting for decisions incurs further costs for visa extensions and living expenses at a time when no income can be earned.

e) The so-called "flexibility" of the Two Week Rule relies heavily on discretion by the Immigration case officers. Laws and even administrative directives are unsafe and can lead to gross miscarriages of justice and unfairness.

f) Two weeks is not sufficient enough for any terminated employee (or one who has finished a contract) to look for a new employer.

6. How does the NCS favor employers and employment agencies?

Employment agencies will be placed in an advantageous position, as they will be able to exploit the fear of the FDH. They can force the FDH to remain with their abusive employers.

Also with the increased turnover of recruitment (because of higher termination rates), employment agencies will stand to gain substantial financial benefits. They will profit from the situation.

Finally, pursuing cases against scrupulous employers and employment agencies will be harder since evidence (the FDH) will not be available, as they would have to leave within two weeks.

7) What needs to be done?

The Two Week Rule has to be abolished!

More than ten years under this unjust, discriminatory and repressive policy has done adverse impacts on the lives of countless foreign domestic helpers. It is time to put a stop to this injustice.

A concerted effort among migrant organizations of various nationalities together with advocate institutions and churches may well pressure the Hong Kong government to again conduct a review on the policy with the intention of scrapping it. Local public opinion has to be raised in support of these calls. International solidarity needs to be harnessed. The role of various international monitoring agencies especially those related with relevant conventions to protect the rights of migrant workers may be tapped to add pressure to this campaign.

The road may be long, but as our previous experiences of struggle against other unjust and exploitative policies like the wage cut campaign, the proposal to deny maternity protection to women migrant workers, and the like have shown, our strength and positive action will prevail. #