



Between a rock and a hard place

The charging of illegal agency fees to
Filipino domestic workers
in the Philippines and Hong Kong.

Between a rock and a hard place

The charging of illegal agency fees to
Filipino domestic workers
in the Philippines and Hong Kong.

October 2016

This report is licensed under creative Commons Attribution-Non-Commercial no Derivative 4.0 International.

Cover image: A security guard ejects members of the PLU covert recording team from an office building in Hong Kong.

Hong Kong Federation of Asian Domestic Workers (FADWU)
Progressive Labor Union of Domestic Workers in Hong Kong (PLU)

Contents

Foreward	3
Executive summary	3
Key findings in relation to the Philippines	3
Key findings in relation to Hong Kong SAR	4
Failure of the governments of HKSAR and the Philippines to provide adequate legal protection to migrant domestic workers	5
Conclusions and recommendations	6
To the Government of the Philippines:	7
To the Government of Hong Kong SAR:	7
1 Introduction	9
2 Methodology	10
3 Recruitment agency fees	12
4 Training	16
5 Coercion, deception and debts	19
6 Failure of the Philippine government to enforce laws relating to recruitment agencies	21
7 Placement agency fees in Hong Kong	26
8 Terms and conditions of work- contractual deception	30
9 Excessive working hours and denial of weekly rest days and holidays	31
10 Confiscation of identity and personal documents	34
11 Provision of food or food allowance	35
12 Threats and abuse	36
13 Forced Labour, trafficking and exploitation	38
14 Policies in Hong Kong which increase migrant domestic workers' vulnerability to exploitation and their ability to access redress mechanisms	40
15 New employment via Macau	44
16 Failure of the HKSAR government to provide adequate legal protection to migrant domestic workers	48
17 Conclusions and recommendations	53
Appendix 1 – Sample interview questionnaire for Filipino migrant domestic workers	55
Appendix 2 – HKSAR Standard Employment Contract for Migrant Domestic Workers	58
Appendix 3 – Maps of the Philippines, Hong Kong and Macau	62

Foreword

This research and campaign project to address illegal agency fees in the Philippines and Hong Kong was designed by members of the Executive Committee of the Hong Kong Federation of Asian Domestic Workers Union (FADWU). As decision-makers, the FADWU Executive Committee identified the research parameters and campaign objectives. The project was implemented by the Progressive Labor Union of Domestic Workers in Hong Kong (PLU, an affiliate of FADWU) with support from the Hong Kong Confederation of Trade Unions (HKCTU), International Domestic Workers Federation (IDWF), and Rights Exposure. A team consisting of PLU members conducted the research over a nine-month period. Training and mentoring support were provided to the PLU researchers throughout this period. A covert recording team consisting of two PLU members and an audio-visual professional was also formed to gather evidence of the illegal practices by placement agencies in Hong Kong. This participatory methodology recognises the agency of migrant domestic workers to identify and prioritise the human and labour rights abuses that they face and to find solutions. It also aims to enhance and strengthen the ability of migrant workers and their organisations to represent the needs of their community through first-hand information, knowledge and experience.

Executive summary

Between October 2015 and June 2016, the Progressive Labor Union of Domestic Workers in Hong Kong (PLU) carried out in-depth interviews with 68 Filipino migrant domestic workers in Hong Kong and Macau, and visited 10 different placement agencies in Hong Kong, posing as recently terminated migrant domestic workers seeking new employment.

The research found that Filipino migrant domestic workers were charged fees by recruitment agencies in the Philippines and placement agencies in Hong Kong, which were more than the legally permitted amount in both territories.

Key findings in relation to the Philippines

Interviewees were charged in total an average of PHP66,177 (US\$1,426) to secure a job in Hong Kong, which are normally collected in full before their departure. Although recruitment agencies in the Philippines are prohibited from charging a placement fee, 84% of interviewees (54 out of 64)¹ specifically paid an agency fee, which was on average PHP52,644 (US\$1,135) or about 80% of the total amount charged.

In addition to charging illegal recruitment fees, recruitment agencies frequently compelled experienced migrant domestic workers to undergo unnecessary training so that they could charge them for it. Of the 37 migrant domestic workers who had previously worked abroad, just under three quarters (27 out of 37) were not allowed to go directly for the official assessment and instead had to undergo further training at their own expense.

The research also highlighted that the training process lacked any standards regarding the cost or duration of the training, which ranged from 1 to 30 days. Experienced migrant workers actually spent slightly longer on average in training than women with no domestic work experience. This indicates that many recruitment agencies are inflating their charges under the guise of providing skills training.

¹ Different numbers of interviewees are given as responding to questions in the report as not all interviewees could answer all questions either because they did not know or because the questions were not relevant to them. In addition, some of the issues were only identified during the research so the initial interviews did not necessarily cover these questions.

Of even greater concern is the fact that more than half of the interviewees (35 out of 64) were told by their agency to work for multiple households or on rest days/holidays; made to sign a waiver saying that they had not been charged agency fees; or told that their terms and conditions of work in Hong Kong would be different to what was stated in their contract.

One of the principle reasons that recruitment agencies are able to coerce migrant domestic workers into accepting these illegal practices is indebtedness. The PLU research found that nearly three quarters of interviewees (47 out of 64) had taken loans in order to secure work abroad and around half of all the migrant domestic workers interviewed (33) were paying interest on these loans.

This indebtedness, which is largely a result of having to pay illegal and excessive agency fees, leaves prospective migrants with little choice but to comply with the demands made by their recruitment agency because if they refuse to do so, the recruitment agencies will not send them to Hong Kong and they will have no way of repaying their debts.

Key findings in relation to Hong Kong SAR

In addition to the agency fee paid in the Philippines, 40 out of 57 interviewees paid a further fee to a placement agency in Hong Kong. On average, this fee was HK\$11,321 (US\$1,459) or the equivalent of more than 25 times the legally permitted maximum charge (10% of the first month's salary) in Hong Kong.² This fee was normally taken through salary deductions, which averaged 5.6 months in duration.

The leveraging of illegal fees by Hong Kong placement agencies leaves migrant domestic workers with additional debts. This in turn makes it even more difficult for them to challenge the exploitative practices that they frequently experience. For example, only five out of 65 interviewees were allowed a full day's rest on their weekly day off and nearly one-third of interviewees (19 out of 63) stated that their placement agency told them to work on their weekly day off or during holidays.

In addition, more than half of those interviewed (35 out of 66) reported that they were not free to leave their employer's home during their time off and around a third (24 out of 67) had their passport and/or employment contract confiscated by their employer or placement agency. A similar proportion (20 out of 67) reported that their employer stopped them from calling home or meeting friends. In total, 72% of all interviewees (48 out of 67) experienced one or more of these mechanisms of control, leaving them isolated and making it very difficult for them to legally change jobs or challenge exploitative employers.

This data strongly indicates that a significant proportion of the Filipino migrant domestic workers interviewed were working in conditions, which would constitute forced labour as they were coerced into accepting terms and conditions of work to which they did not agree under the threat of some form of punishment (e.g. not being able to retrieve their documents or the threat of losing their job and not being able to repay their debts).

While it is clear that illegal recruitment and placement fees increase both the indebtedness of migrant domestic workers and their risk of being subject to exploitation, it should also be stressed that some of Hong Kong's regulations also directly contribute to their vulnerability, particularly the live-in requirement and the Two-Week Rule.

The mandatory live-in requirement obliges all migrant domestic workers to "work and reside in the employer's residence" and thereby makes it difficult for migrant domestic workers to draw a distinction between work and leisure time, as they cannot leave their employer's household at the end of a working day or enjoy a full weekly rest day.

Without the option of being able to live in their own accommodation, it is extremely difficult for migrant domestic workers to challenge excessive working hours, inadequate living arrangements and other abusive practices. If they complain, this may lead to their employer making their lives even more difficult or terminating their contract, thus, leaving them without an income or a place to live.

This is a real risk for migrant domestic workers. Twenty-seven interviewees had their employment terminated by their employer before the end of their contract. When this happens, under the Two-Week Rule, migrant domestic workers must find a new job within two weeks or leave Hong Kong. This is extremely difficult to do, as it takes 4-6 weeks to process an employment application. Consequently, migrant domestic workers are extremely reluctant to leave their employer, as they are very likely to lose their right to work in Hong Kong and their ability to repay their debt and/or support their families through remittances.

Hong Kong placement agencies profit from the Two-Week Rule by sending Filipino migrant domestic workers to Macau while they arrange a work visa for a new job. PLU interviewed 24 women who went to Macau after their contract expired or was terminated and found that, on average, they were charged HK\$5,778 (US\$745) in agency fees. This means that interviewees who went to Macau generally paid agency fees of more than ten times the legally permitted maximum with half the migrant domestic workers (12 out of 24) having to borrow money to pay at least part of these fees.

In this way, the Two-Week Rule provides a new opportunity for Hong Kong placement agencies to exploit migrant domestic workers and charge agencies fees well beyond those permitted under Hong Kong law.

Failure of the governments of HKSAR and the Philippines to provide adequate legal protection to migrant domestic workers

Despite the overwhelming evidence that significant numbers of recruitment and placement agencies are systematically charging migrant domestic workers agency fees well in excess of the legal maximum, very few have been charged and prosecuted for this offence in either the Philippines or Hong Kong.

Under Filipino law, illegal recruitment can be sanctioned with a maximum period of 20 years in prison and a fine of up to PHP2,000,000 (US\$43,103). However, during 2014-2015, the Philippines Overseas Employment Administration (POEA) only charged officers/employees of 11 licenced recruitment agencies for illegal recruitment, including violations of the no-placement fee policy, and none of these cases has led to a successful prosecution to date.³

Under Hong Kong law, agencies who overcharge are subject to a maximum fine of HK\$50,000 (US\$6,443). Furthermore, if there is just cause, the Labour Commissioner has the power to refuse to renew or revoke the licence of a placement agency.

While the Labour Department met its increased annual inspection target of 1,800 inspections in both 2014 and 2015, it still only secured 16 convictions in these two years (10 of which were for overcharging). Agencies convicted of overcharging or unlicensed operation were fined from HK\$1,500 to HK\$45,000 (US\$193 to US\$5,800).⁴

² This calculation assumes that the migrant domestic worker will be paid the Minimum Allowable Wage in Hong Kong.

³ Information provided by the POEA on 10 August 2016.

⁴ Information provided by the HKSAR Labour Department on 18 August 2016.

Out of a total population of more than 300,000 migrant domestic workers in Hong Kong, only 1,449 claims were made in 2015 by migrant domestic workers in relation to violations of their employment rights and 70% of these were settled through the conciliation service. In the same year, just 15 migrant domestic workers agreed to act as prosecution witnesses (of which four withdrew their consent before the cases reached the courts).⁵

The reluctance of migrant domestic workers to report violations of their employment rights or to act as prosecution witnesses is not surprising given that migrant domestic workers who wish to report their employers are likely to find themselves without work and significantly indebted. Furthermore, the Two-Week Rule means that in order to file a case against a former employer, a migrant domestic worker must apply for an extension of stay, which costs HK\$190 (US\$25) and does not allow them to work. As it takes an average of 55 days for a claim to be heard at the Labour Tribunal,⁶ migrant domestic workers would need to renew their visa multiple times and pay for all their living expenses.

In this way, the current regulations discourage migrant domestic workers from challenging exploitation, as the process of accessing justice is often prohibitively expensive. Even those women who do file claims are often forced to abandon their cases or reach unfavourable settlements. This was reflected in the research findings, which showed that, despite the numerous violations of Hong Kong law documented in this report, only two interviewees filed a complaint to the Hong Kong authorities and one had to abandon her case because she did not have the money to pursue it.

Conclusions and recommendations

The ability of Filipino migrant domestic workers to contribute to the economic growth and social development of both Hong Kong and the Philippines has been constrained by the exploitative activities of a significant number of recruitment and placement agencies in both the Philippines and Hong Kong, which levy illegal fees and coerce migrant domestic workers to accept exploitative working conditions.

Despite some positive initiatives by the governments of both the Philippines and HKSAR to try and protect the rights of migrant domestic workers, there is still inadequate monitoring, prosecution and punishment of recruitment and placement agencies in both territories and this has allowed a significant number of these agencies to charge illegal fees with impunity.

Indebtedness due to illegal agency fees significantly increases migrant domestic workers' vulnerability to exploitation and forced labour. Their situation is made worse by Hong Kong's Two-Week Rule and the live-in requirement, which make it extremely difficult for migrant domestic workers to leave abusive employers or to report labour rights violations to the authorities without putting their livelihood at risk.

In view of the above, the PLU issues a number of detailed recommendations to the relevant authorities (see section 17 for full details), including the following:

To the Government of the Philippines:

- Fully enforce the no-placement fee policy.
- Strengthen the monitoring of recruitment agencies, in particular regarding fees, and adequately sanction those who violate Philippine laws and regulations.
- Establish standard fees for skills training developed through tripartite (Government, recruitment agencies and trade unions) consultation.
- Ensure that migrant domestic workers with previous domestic work experience are specifically given the opportunity to take the TEDSA test without undergoing skills training.

To the Government of Hong Kong SAR:

- Ensure that the Employment Agencies Administration (EAA) effectively monitors, investigates and punishes, including through criminal sanctions, placement agencies that charge illegal fees, confiscate contracts/identity documents or engage in any activity, which leads to or encourages violations of migrant domestic workers' labour rights. This should include cooperation with the police to gather evidence and, where appropriate, using covert surveillance as proscribed in the Interception of Communications and Surveillance Ordinance (Cap.589).
- Repeal the Two-Week Rule and allow migrant domestic workers to change employers. Ensure they have sufficient time to secure a new job after a contract has been terminated.
- Repeal the live-in requirement so that migrant domestic workers are free to reach agreement with their employer or potential employer on whether to reside in the employing household and ensure that those living outside receive an adequate housing allowance.

⁵ Information provided by the HKSAR Labour Department on 18 August 2016.

⁶ This is the average waiting time from appointment to filing of a case to first hearing. See: HKSAR Judiciary, "Caseload, Case Disposal and Waiting Time at Different Court Levels", *Hong Kong Judiciary Annual Report 2015*, available at: http://www.judiciary.gov.hk/en/publications/annu_rept_2015/eng/caseload06.html, accessed 22 May 2016.

“If you’ll let us look for your new employer, we will charge at least HK\$8,000.”

Employment agency, Mong Kok
Recorded on 3 March 2016



Image: Casinos in Macau seen from a taxi.

1 Introduction

According to the International Labour Organization (ILO), there are an estimated 150 million migrant workers⁷ worldwide, of which 11.5 million are migrant domestic workers with an overwhelming majority of 73% being women.⁸ Key factors, which encourage migration abroad include an increasingly globalised economy, poverty, conflict and inequalities.

The Philippines is one of the major countries of origin for labour migration in Asia. According to the Philippine Overseas Employment Administration (POEA), the government body that regulates the recruitment and manages the deployment of overseas Filipino workers (OFWs) abroad, over 7.3 million Filipino migrant workers were officially employed abroad from 2012 to 2015 (see Figure 1). From 2010 to 2014, migrant domestic workers (under the Philippine government category of Household Service Workers) topped the occupational category, followed by nurses, waiters/bartenders and caregivers.⁹ In 2015 alone, Filipino migrants sent US\$30 billion home in remittances,¹⁰ which accounted for 10 per cent of the country’s Gross Domestic Product (GDP).¹¹

Year	Women	Men	Not stated	Total
2012	548,940	1,132,711	120,380	1,802,031
2013	376,299	728,110	731,936	1,836,345
2014	442,512	788,482	601,674	1,832,668
2015	653,456	940,424	250,526	1,844,406

Figure 1: Total number of Filipino migrant workers, 2012-2015 (Source: POEA)
(Information provided by the POEA on 10 August 2016.)

Thirty-five per cent of the world’s migrant domestic workers work in Asia and the Pacific.¹² Hong Kong is a top employment destination, including for Filipino migrant domestic workers.¹³ In fact, migrant domestic workers comprise 9% of Hong Kong’s total working population.¹⁴ According to the POEA, 54,333 migrant domestic workers officially migrated to Hong Kong in 2015 (see Figure 2). Of these, about 98% were women (where gender was stated).¹⁵ As of 30 June 2016, there were 346,175 migrant domestic workers employed in Hong Kong, locally referred to as “foreign domestic helpers” (FDHs). Of these, Filipinos account for 186,282 or more than half of all domestic workers in Hong Kong (see Figure 3).

Year	Women	Men	Not stated	Total
2012	75,446	11,660	–	87,106
2013	23,335	484	52,102	75,921
2014	26,482	503	37,277	64,262
2015	50,040	1,265	3,028	54,333

Figure 2: Total number of Filipino migrant domestic workers (Household Service Workers) to Hong Kong, 2012-2015 (Source: POEA)
(Information provided by the POEA on 10 August 2016.)

Countries	Philippines	Indonesia	Thailand	India	Sri Lanka	Others	Total
Number	186,282	151,754	2,496	3,399	1,145	1,099	346,175

Figure 3: Total number of migrant domestic workers in Hong Kong as of 30 June 2016 (Source: HKSAR Immigration Department)
(Information provided by the HKSAR Immigration Department on 10 August 2016.)

In 2013, the Alliance of Progressive Labor in the Philippines (APL), Alliance of Progressive Labor - Hong Kong (APL-HK) and the Progressive Labor Union of Domestic Workers - Hong Kong (PLU) published *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*. The report was based on interviews with 1,200 Filipino domestic workers in different areas of Hong Kong, which took place from November to December 2012.¹⁶

Interviewees named 245 agencies in Hong Kong and 190 in the Philippines, which they used in order to obtain work in Hong Kong. The report documented that agencies in both the Philippines and Hong Kong were systemically levying illegal recruitment fees on Filipino migrant domestic workers. The report also showed that a significant number of agencies coerced migrant domestic workers to accept exploitative and illegal working conditions. For example, it found that 22% of interviewees were told by agencies not to complain or “create any trouble” by complaining. A total of 122 agencies in Hong Kong (50% of all Hong Kong agencies identified in the survey) and 105 agencies in the Philippines (55% of all Filipino agencies identified in the survey) engaged in this practice.¹⁷

The current research report conducted fresh interviews with migrant domestic workers and gathered up-to-date data from various sources in order to assess whether the fees charged to Filipino migrant domestic workers by agencies in the Philippines and Hong Kong continue to be in excess of the legally permitted maximum that can be charged in the respective territories. The research also examined migrant domestic workers’ terms and conditions of work in Hong Kong and the measures taken by the Philippine and Hong Kong governments to ensure the protection of migrant domestic workers from abuse and exploitation.

2 Methodology

Between October 2015 and June 2016, the PLU carried out in-depth interviews with 68 Filipino migrant domestic workers in Hong Kong and Macau. The PLU only interviewed Filipino migrant domestic workers who had arrived in Hong Kong between 2012 and 2016, and paid agency fees in the Philippines and/or Hong Kong. The PLU found interviewees in places where migrant domestic workers meet (e.g. fast food restaurants, churches, outside schools) and through social media, personal contacts and referrals. The Filipino interviewees were aged between 25 and 59, and originated from 30 different provinces in the Philippines.

Interview questions (see Appendix 1) focused on the fees paid by Filipino migrant domestic workers during the recruitment process in the Philippines, after they started work in Hong Kong and, if their contract was terminated, for their new employment in Hong Kong. Additional questions were asked relating to their general terms and conditions of work in Hong Kong. To protect the identities of the migrant domestic workers who were interviewed, their names have been changed and they are identified only by their age and home province.

In carrying out this research, the PLU met and/or communicated with associations of employment agencies, placement agencies, local trade unions and NGOs, and inter-governmental institutions. In addition, the PLU had meetings and/or correspondence with the Philippine government (Department of Labor and Employment, Philippine Overseas Employment Administration, Philippine Overseas Labor Office in HKSAR and Philippine Consulate General in HKSAR) and Hong Kong SAR (HKSAR) government (Labour Department, Employment Agencies Administration, Immigration Department and Security Bureau).

7 According to the ILO, the term “migrant worker” refers to all international migrants who are currently employed or are unemployed and seeking employment in their present country of residence.

8 ILO, *ILO Global Estimates on Migrant Workers: Results and methodology (Special focus on migrant domestic workers)*, December 2015, ppxi and 7, available at: http://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang-en/index.htm, accessed 5 June 2016.

9 Philippine Overseas Employment Administration (POEA), *2010-2014 Overseas Employment Statistics*, available at: <http://www.poea.gov.ph/ofwstat/ofwstat.html>, accessed 10 July 2016.

10 World Bank, “Migrant remittance inflows”, available at: <http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>, accessed 1 March 2016.

11 World Bank, “Personal remittances, received (% of GDP)”, available at: <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS>, accessed 1 March 2016.

12 Central, Western, Eastern, South-Eastern, and Southern Asia, and the Pacific. See: ILO, *ILO Global Estimates on Migrant Workers: Results and methodology (Special focus on migrant domestic workers)*, December 2015, p16, available at: http://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang-en/index.htm, accessed 5 June 2016.

Throughout the report, different numbers of interviewees are given as responding to questions. This is due to the fact that: (1) some of the issues in the recruitment and migration process were only identified during the research so the initial interviews did not necessarily cover these questions in the semi-structured interview; and (2) not all interviewees were able to answer all the questions, either because they could not remember or because the questions were not relevant to their situation.

In addition, the PLU conducted a series of covert recordings at 10 different placement agencies in Hong Kong between November 2015 and May 2016. During the visits to the placement agencies, PLU migrant domestic workers posed as recently terminated workers seeking new employment. Using a series of semi-structured questions, they asked the agency staff about the process of getting a new work visa and the fees they would be charged by the agency. In this report, the placement agencies have not been named, only their general location.

This report also refers to the data collected by APL, APL-HK and the PLU in their survey of 1,200 Filipino migrant domestic workers in Hong Kong in 2012 (hereinafter referred to as the 2012 APL/PLU research).¹⁹

Part One: Migration from the Philippines

The Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022 (Migrant Workers and Overseas Filipinos Act) outlines the responsibilities of the following four government agencies in promoting the welfare and protecting the rights of migrant workers and overseas Filipinos.

The **Philippine Overseas Employment Administration (POEA)** is responsible for regulating private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It is also responsible for promoting and monitoring the overseas employment of Filipino workers.

The **Overseas Workers Welfare Administration (OWWA)** formulates and implements welfare programs for overseas Filipino workers and their families in all phases of overseas employment. It also raises awareness by the Overseas Foreign Workers (OFWs) and their families of these programs and other related governmental programs.

The **Department of Labor and Employment (DOLE)** is responsible for ensuring that social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos, including the grant of legal assistance and the referral to proper medical centres or hospitals.

The **Department of Foreign Affairs** promotes and protects the rights and welfare of Filipino migrants, and provides consular and legal assistance to overseas Filipinos in distress.²⁰

Figure 1: Role of Philippine government agencies

13 POEA, *2010-2014 Overseas Employment Statistics*, available at: <http://www.poea.gov.ph/ofwstat/ofwstat.html>, accessed 10 July 2016.

14 Information provided by the HKSAR Labour Department on 18 August 2016.

15 This is an estimate, as the official statistics provided by the POEA have incomplete gender breakdowns. For example, the gender of 3,028 migrant workers is listed as “not stated” (see Figure 2).

16 APL, APL-HK and PLU, *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, pxi, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 1 March 2016.

17 APL, APL-HK and PLU, *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, pxi, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 1 March 2016.

18 These include recruitment and placement agencies.

19 APL, APL-HK and PLU, *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, p2, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 1 March 2016.

20 Rules VIII and X of the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (as amended by Republic Act No. 10022), available at: <http://www.poea.gov.ph/laws&rules/laws&rules.html>, accessed 10 July 2016.

3 Recruitment agency fees

A significant number of Filipino migrant domestic workers pay two separate agency fees – the first is to the recruitment agency in the Philippines and the second is to the placement agency in Hong Kong (see section 7). In this report, where two sets of fees have been charged they are noted separately and not double counted. 47% of the interviewees (30 out of 64) paid agency fees in both the Philippines and Hong Kong. On average, these women paid a total of US\$2,055 (US\$773 in the Philippines and US\$1,282 in Hong Kong). In the context of the Philippines, this is nearly 60% of its Gross National Income (GNI, US\$3,540) per capita in 2015.²¹

In general, Filipino migrant domestic workers are not permitted to find employment through direct hiring.²² Instead, they must go through one of the private recruitment agencies licensed by the Philippine Overseas Employment Administration (POEA) to find jobs abroad.²³

These recruitment agencies in the Philippines advertise the job vacancy, create a pool of prospective employees, and conduct preliminary screening and interviews of applicants on behalf of the foreign employer. They then prepare the migrant workers for their jobs abroad, complete the required administration and arrange transportation to the country of destination (see below for further details).

In 2006, the POEA Governing Board implemented a series of resolutions to improve the situation of migrant domestic workers. Most significant was Governing Board Resolution No. 6, which stated that Filipinos deployed abroad as household service workers (HSW) or domestic workers will not be charged any placement fee.²⁴ Violation of the no-placement fee policy is penalized under section 6(a) of the Republic Act No. 8042, as amended:

“To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance.”

Persons criminally liable are:

*“the principals, accomplices and accessories. In case of juridical persons [such as the recruitment agencies which are corporations or partnerships] the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents shall be liable.”*²⁵

The POEA considers any violation of the no-placement fee policy “whether collected prior to their deployment or on-site through salary deduction” as a “grave offense”, which will result in the cancellation of the agency’s licence irrespective “of the number of complainants or amount of placement fee collected”.²⁶

Illegal recruitment is defined under Rule IV, Section 1 of the Philippines’s Migrant Workers and Overseas Filipinos Act, and includes actions:

“To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance.”

Under Rule IV, Section 5, the penalty for those found guilty of illegal recruitment is: :

*“imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One Million Pesos (PHP1,000,000.00) [US\$21,552] nor more than Two Million Pesos (PHP2,000,000.00) [US\$43,103]”.*²⁷

Despite these regulations, Filipino migrant domestic workers continue to pay illegal agency fees. PLU’s research found interviewees were charged in total an average of PHP69,104 (US\$1,490)²⁸ to secure a job in Hong Kong. Forty-nine out of 58 interviewees specifically paid an agency fee to their recruitment agency in the Philippines, which was an average of PHP55,268 (US\$1,191) or about 80% of the total amount charged.

The agency fees that migrant domestic workers pay to the recruitment agency in the Philippines are normally collected in full before their departure. In some instances, where migrant domestic workers are not able to pay the full amount, the remainder is collected through salary deductions once they begin work in Hong Kong. This payment is usually facilitated by Hong Kong placement agencies.

Maria, a 31-year-old woman from Vizcaya, was one of many women who paid extortionate fees to secure a job in Hong Kong:

“I spent PHP131,500 [US\$2,834] in total. I paid PHP120,000 [US\$2,586] in agency fees, PHP40,000 [US\$862] up front. The rest was for the training PHP6,5000 [US\$140] and a medical PHP5,000 [US\$108].”

On top of the agency fees paid to the Philippine recruitment agency, Maria also paid HK\$8,800 (US\$1,134)²⁹ to the placement agency in Hong Kong.³⁰

The total cost for finding employment in Hong Kong for Freya, a 35-year-old woman from Isabela, was PHP117,000 (US\$2,522):

*“I paid my recruitment agency PHP82,950 [US\$1,788] in agency fee and PHP7,050 [US\$152] for training. In addition, I paid PHP12,000 [US\$259] for two medicals and about PHP15,000 [US\$232] for food and transportation.”*³¹

Jessa, a 47-year-old woman from Cagayan, also paid high fees for her job:

*“It cost me PHP152,100 [US\$3,278] to find work in Hong Kong. The recruitment agency charged me PHP90,000 [US\$1,940] in agency fee and PHP30,000 [US\$647] for training. I also had to pay PHP10,000 [US\$215] for two medicals, PHP2,000 [US\$43] for a dental check-up. The rest was for government fees, transportation and living expenses.”*³²

Despite the fact that regulations in both the Philippines and Hong Kong legally require employers to pay various costs associated with migration (e.g. agency fees, visas, administration fees, etc.), migrant domestic workers still end up paying for some costs, which should not be their responsibility.

21 World Bank, “GNI per capita, Atlas method (current US\$)”, available at: <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD>, accessed 11 July 2016.

22 As per the Labour Code of the Philippines, as amended, POEA Memorandum Circular No. 44, Series of 1996, and DOLE Memorandum dated 3 December 2008, exceptions include members of the diplomatic corps; international organizations, immediate members of the family of the heads of state/government; ministers, deputy ministers and other senior officials of the host country; employers residing in countries where placement agencies do not operate; and other employers as may be allowed by the Secretary of Labor and Employment.

23 APL, APL-HK and PLU, *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, pix, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 1 March 2016.

24 In addition, the POEA Governing Board increased the minimum wage from US\$200 to US\$400 and the minimum age requirement was raised from 18 to 23 years of age. See: *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, State Report of the Philippines*, UN Doc. CEDAW/C/PHL/708, 2 March 2015, para84.

25 Information provided by the HKSAR Labour Department on 18 August 2016.

26 POEA, “POEA cancels recruiter’s license for collecting Php 110,000 placement fee from a domestic worker”, Press Release, 14 April 2015, available at: www.poea.gov.ph/news/2015/04-3.pdf, accessed 11 July 2016 and “Question & Answer: HSW Protection and welfare enhancement reform package”, available at: http://www.poea.gov.ph/hsw/q&a_hsw.html, accessed 18 May 2016.

27 Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (as amended by Republic Act No. 10022), available at: <http://www.poea.gov.ph/laws&rules/laws&rules.html>, accessed 10 July 2016.

28 The currency conversion throughout the report is US\$1 = PHP46.40 with rounded figures.

29 The currency conversion throughout the report is US\$1 = HK\$7.76 with rounded figures.

30 PLU interview with Maria in Hong Kong on 15 November 2015.

31 PLU interview with Freya in Hong Kong on 15 November 2015.

32 PLU interview with Jessa in Macau on 24 January 2016.

For example, paragraph 8 of the Hong Kong standard employment contract states that the employer is responsible for paying medical examination fees undertaken in order for the migrant domestic worker to take up work in Hong Kong. However, as the cases quoted above illustrate, migrant domestic workers are still charged for a medical exam in the Philippines³³ and it is not uncommon for them to undergo two exams – one at the initial stage of the recruitment process and the second before their departure. When asked by the PLU if it would support the policy of employers paying for all medical exams of migrant domestic workers, irrespective of where it was done, the Society of Hong Kong Accredited Recruiters of the Philippines (SHARP), an association of licensed Philippine recruitment agencies, replied that:

“To require the employers to shoulder even the medical examination fees of the workers both in Hong Kong and in the Philippines may become too much burden to them.”³⁴

In some instances, recruitment agencies coerced migrant domestic workers to sign a waiver stating that they did not pay any agency fee even though they did. Signing the waiver effectively prevents workers from challenging recruitment agencies at a later date to get the illegal charges reimbursed, but the workers sign the document because they are afraid that if they refuse, they would not be able to work in Hong Kong. Jessa was one of nine interviewees who was forced to do so:

“I signed the waiver so that I could fly to Hong Kong. If I refused, I would not be able to work in Hong Kong and my recruitment agency would only give back half of the money I paid them.”³⁵

Similarly, Shaira, a 46-year-old woman from Negros Occidental, was told to sign the waiver and according to her:

“This was insurance for my recruitment agency who wanted to be sure that I would not complain later on to the authorities about paying an agency fee.”³⁶

SHARP, an association consisting of 45 licensed Philippine recruitment agencies, communicated to the PLU that:

“we closely monitored our members if they fully comply with the no placement fee policy by randomly and secretly sending out applicants to apply. Those found violating the no placement fee policy were asked to explain.”

Despite this, SHARP was aware of only three agency members whose licenses were cancelled for violating the no-placement fee policy and even so, it was “not sure if their cases arose out of their workers deployed to Hong Kong”.³⁷

33 This is in accordance with Philippine government policy. PLU meeting with the Philippine Consulate General in Hong Kong on 23 March 2016.

34 Information provided by SHARP on 15 August 2016.

35 PLU interview with Jessa in Macau on 24 January 2016.

36 PLU interview with Shaira in Hong Kong on 7 February 2016.

37 Information provided by SHARP on 15 August 2016.

4 Training

All prospective migrant domestic workers are required by the Philippine government to undergo a skills assessment by the Technical Education and Skills Development Authority (TESDA), which covers the four core skills competencies: house cleaning, laundry and ironing, preparation of hot and cold meals, and provision of hot and cold food and beverage services.³⁸ The assessment is 3-4 hours in duration and costs PHP1,000 (US\$22). Upon successful completion, the applicants are issued a TESDA-certified HSW NC2 certificate, which incurs a PHP100 (US\$2) certification fee.³⁹

In addition, migrant domestic workers must attend the Pre-Departure Education Program (PDEP), a mandatory orientation and training organised by the Overseas Workers Welfare Administration (OWWA). The first component is the one-day Pre-Departure Orientation Seminar (PDOS), which covers “employment contract familiarization, profile of the country of destination, stages of the OFWs’ life, health and safety, airport procedures, government programs and services”. The second is the Comprehensive Pre-Departure Education Program (CPDEP), a three-day training consisting of 20 hours of Cantonese language and culture familiarization, and four hours of stress management to prepare them for life overseas”. With OWWA membership of US\$25, migrant domestic workers can access these services without additional costs.⁴⁰

Thus, the POEA will only process a migrant domestic worker’s application for work abroad if the employment contract is accompanied by the TESDA HSW NC2 certificate and the OWWA Certificate of Completion for the Pre-Departure Education Program.⁴¹

Prospective migrant domestic workers without prior experience must undergo 216 hours of skills training in order to secure work abroad.⁴² This training is provided at training centres which are normally run by recruitment agencies and situated in the capital city of Manila.

In theory, this training is not mandatory for applicants with years of experience as domestic workers in the Philippines or abroad. They can go directly for assessment to a TESDA-accredited assessment centre. Only if an applicant fails the assessment three times does training then become mandatory.⁴³

However, in practice, recruitment agencies frequently use the training process as a mechanism to increase their profits and force experienced migrant domestic workers to undergo training they do not need so that they can charge them for it. This was the experience of Eunice, a 38-year-old woman from Nueva Vizcaya:

“I worked in Singapore for four years as a domestic worker. Because of my previous work experience, I did not have to undergo training. Despite this, my recruitment agency still made me pay for the training, which was PHP15,000 [US\$323].”⁴⁴

In fact, of the 64 interviewees, 37 had previous experience working abroad as migrant domestic workers. Despite this, some three quarters (27) of those with prior experience were not allowed to go directly for the TESDA assessment and instead had to undergo training again. A case in point is Amanda, a 30-year-old woman from Sultan Kudarat:

“I had already worked as a domestic worker in Dubai for two years and Abu Dhabi for another two years. But still the recruitment agency said that I had to do training, which lasted for 30 days.”⁴⁵

According to SHARP, an association of licensed Philippine recruitment agencies:

“While it is allowed by TESDA that workers with prior experience or prior learning can take the assessment directly without going through training, for markets like Hong Kong where employers are meticulous and demanding, we believe that it may be required on a case to case basis...”⁴⁶

The PLU research strongly indicates that a migrant domestic worker’s level of relevant work experience has no bearing on the length of time that they are required to spend in training by the recruitment agency. In fact, interviewees with no previous work experience spent on average fractionally less time in training than those with substantial previous experience - 13.65 days and 14.04 days respectively.

In this way, Pia, who had four years of experience as a domestic worker in the UAE and Saudi Arabia, was required to undertake training for 30 days, while Ally, a 46-year-old woman from Pangasinan with no previous domestic work experience, did not receive any training at all, as her recruitment agency did not require her to do so.

TESDA does not set a standard training cost. Instead, it allows the training centres to determine their fee, which according to the POEA ranges from PHP10,000-15,000 (US\$216-323). However, the evidence from PLU’s research shows that interviewees paid an average of PHP15,516 (US\$334) in training fees, with nearly a third paying more than PHP15,000 (US\$323),⁴⁷ the maximum range identified by the POEA. There was a huge disparity in the amounts charged for training, which ranged from PHP3,000 to PHP40,000 (US\$65 to US\$862).

There is very little correlation between the length of time spent in training and the fees paid. For example, Lalyn, a 34-year-old woman from Davao del Sur, underwent training for one month and paid PHP33,000 (US\$711).⁴⁸ In contrast, Dina, a 37-year-old woman from La Union, spent two weeks in training, for which she paid PHP33,250 (US\$715).⁴⁹

Furthermore, four interviewees each paid PHP20,000 (US\$431) for their training. However, the duration of their training varied considerably. Delia, a 39-year-old woman from Oriental Mindoro, trained for five days;⁵⁰ Azel, a 40-year-old woman from Cagayan, for 10 days;⁵¹ Lily, a 33-year-old woman from Capiz, for 14 days;⁵² and Rea, a 33-year-old woman from La Union, for 21 days.⁵³

It would take 27 eight-hour days to complete the 216 hours of mandatory training. This is consistent with the assessment by Jalilo Dela Torre, Labour Attaché at the Philippine Consulate General in Hong Kong, who told the PLU the skills and language/culture training would take a total of 30 days to complete.⁵⁴ However, interviewees in the PLU research spent on average just 14 days in training with the length of stay ranging from 1-30 days.

Some recruitment agencies engaged in false accounting in an attempt to disguise the inflated training fees. Leah, a 40-year-old woman from Occidental Mindoro, underwent training for two weeks and stated that:

“I paid my recruitment agency PHP26,000 for the training fee but they gave me a receipt for only PHP18,500 [US\$400].”⁵⁵

PLU’s research shows that the training process is frequently devoid of standards in relation to the amount charged, duration of the training and consideration of previous work experience. Many migrant domestic workers are consequently compelled to undertake unnecessary training and/or charged excessive fees for the provision of minimal training. In this way, many recruitment agencies are effectively collecting placement fees under the guise of providing skills training.

38 TESDA, *Training Regulations: Domestic Work NCII*, Doc. No. TESDA-SOP-QSO-01-F08, October 2014, Section 1 Domestic Work NCII Qualification, available at: http://www.tesda.gov.ph/Download/Training_Regulations?Searchcat=Training%20Regulations, accessed 11 July 2016.

39 TESDA, “Procedures and Guidelines in applying for HSW NC II”, available at: <http://www.tesda.gov.ph/About/tesda/45>, accessed 11 July 2016; POEA, “Policy reforms on deployment of domestic helpers”, available at: <http://www.poea.gov.ph/hsw/hsw.html>, accessed 18 May 2016; and POEA, “Question & Answer: HSW Protection and welfare enhancement reform package”, available at: http://www.poea.gov.ph/hsw/q&a_hsw.html, accessed 18 May 2016.

40 Information provided by the OWWA on 18 July 2016. See also: OWWA, “Programs & Services”, available at: <http://www.owwa.gov.ph/?q=content/programs-services>, accessed 11 July 2016.

41 POEA, “Policy reforms on deployment of domestic helpers”, available at: <http://www.poea.gov.ph/hsw/hsw.html>, accessed 1 March 2016 and POEA, “Question & Answer: HSW Protection and welfare enhancement reform package”, available at: http://www.poea.gov.ph/hsw/q&a_hsw.html, accessed 18 May 2016.

42 DOLE, “Training under new deployment policy not mandatory for all DH – DOLE”, 31 January 2007, available at: <http://www.dole.gov.ph/news/view/461>, accessed 11 July 2016.

43 POEA, “Question & Answer: HSW Protection and welfare enhancement reform package”, http://www.poea.gov.ph/hsw/q&a_hsw.html, accessed 18 May 2016.

44 PLU interview with Eunice in Hong Kong on 5 January 2016.

45 PLU interview with Amanda in Macau on 8 February 2016.

46 Information provided by SHARP on 15 August 2016.

47 PLU meeting with the Philippine Consulate General in Hong Kong on 23 March 2016.

48 PLU interview with Lalyn in Hong Kong on 19 December 2015.

49 PLU interview with Dina in Hong Kong on 8 February 2016.

50 PLU interview with Delia in Hong Kong on 4 October 2015.

51 PLU interview with Azel in Hong Kong on 20 December 2015.

52 PLU interview with Lily in Hong Kong on 14 January 2016.

53 PLU interview with Rea in Hong Kong on 20 October 2015.

“It is hard to get evidence of employment agencies charging illegal fees because, obviously agencies would not issue receipts for fees they’ve charged illegally that would prove they’re violating the law.”

Holly Allan, Executive Director
Helpers for Domestic Helpers (HDH)

Image: CCTV monitor in a Hong Kong office block where employment agencies have their offices.

5 Coercion, deception and debts

Interviewees generally funded their migration by borrowing money from family or friends, taking out a bank loan, borrowing from a private moneylender, using their savings or a combination of the above. It took the women an average of 10 months to repay their loans and earn back the money spent on their migration. For example, Lily borrowed PHP102,000 (US\$2,198) from a bank at 6% monthly interest. It took her 20 months to repay this amount. Similarly, Freya explained:

“I had to borrow PHP117,000 [US\$2,522] from a private moneylender at 6% monthly interest so that I could fund my migration. After a year and a half, I still haven’t finished paying off my debt.”⁵⁶

Nene, a 32-year-old woman from Bohol, described her difficult financial situation:

“To find work in Hong Kong, I had to borrow PHP22,000 [US\$474] from a friend at 10% monthly interest. Although it was not a lot of money, it still took me two years to repay the full amount because my employer terminated me after three months. I still owed the Hong Kong placement agency HK\$11,100 [US\$1,430], which I had to pay first after I started my new job. But in order to get this job, I had to pay the agency HK\$5,000 [US\$644].”⁵⁷

Moreover, roughly a third of interviewees (22 out of 63) told the PLU that they were not properly informed about how much the recruitment agencies would charge them. This was the case for Sofia, a 27-year-old woman from Aurora:

“The recruitment agency told me that I would pay a total of PHP75,000 [US\$1,616] to get a job in Hong Kong. But in the end when I added up all the costs, I realised that I had paid PHP98,000 [US\$2,112]. The only receipt they gave me was for the medical, which was PHP20,000 [US\$431].”⁵⁸

Moirrah, a 42-year-old woman from Davao del Sur, was also deceived regarding the agency fees:

“I did not pay any agency fee in the Philippines, only PHP24,600 [US\$530] for training, medical and government fees. My recruitment agency told me that was all I had to pay but when I arrived in Hong Kong, the placement agency said that I had to pay them HK\$12,300 [US\$1,585] through salary deduction for ten months.”⁵⁹

Ruth, a 29-year-old woman from Apayao, had a similar experience:

“I paid my recruitment agency in the Philippines PHP65,000 [US\$1,400] in agency fee. They never told me that I had to pay more fees in Hong Kong. After I arrived in Hong Kong, the placement agency said that I owed them HK\$5,840 [US\$753]. This amount was deducted from my salary for the first two months, which meant that I was left with only HK\$1,000 [US\$129].”⁶⁰

More than half of the migrant domestic interviewees (35 out of 64) were told to work for multiple households or on statutory rest days/holidays; made to sign a waiver saying that they had not been charged agency fees; and/or told that their terms and conditions of work in Hong Kong would be different to what was stated in their contract. All of the above are illegal and it is extremely concerning that so many recruitment agencies are engaging in such practices.

Furthermore, none of the women interviewed by the PLU received an itemised bill from their recruitment agency. When some of the interviewees asked their agency for a receipt, the response ranged from a flat refusal, insistence that such a practice does not exist, to anger and accusing migrants of not trusting their agency.

54 PLU meeting with the Philippine Consulate General in Hong Kong on 23 March 2016.

55 PLU interview with Leah in Hong Kong on 17 January 2016.

56 PLU interviews with Freya in Hong Kong on 15 November 2015.

57 PLU interview with Nene in Hong Kong on 24 January 2016.

In the absence of an itemised breakdown of the fees, prospective migrants are unable to identify the services they have paid for, responsibilities their recruitment agency has towards them, and any overcharging or billing for services which have not been provided. When the PLU asked SHARP about introducing compulsory itemised receipts for all charges made to migrant domestic workers in the recruitment process, it responded that it would support this and that such practice is in fact “in accordance with POEA rules and regulations”.⁶¹

The research also documented 14 cases where migrant domestic workers were not given enough time by their recruitment agency to read and properly understand their employment contract. Coleen, a 25-year-old woman from Metro Manila, recounted her experience:

*“I signed my employment contract at the recruitment agency, a month before departing for Hong Kong. The agency staff rushed me and told me to hurry and sign the document. He did not allow me to read the contract.”*⁶²

In addition, the PLU documented four cases where migrant domestic workers did not sign their contract – instead their agency signed for them.⁶³ In a further two cases, interviewees were forced to sign a blank piece of paper while in the Philippines, as was the case for Pia, a 38-year-old woman from Iloilo:

*“Right before going to Hong Kong, my recruitment agency told me to sign a blank paper. The agency would not let us fly if we didn’t sign it, so I did.”*⁶⁴

Indebtedness – which is largely a result of having to pay for illegal agency fees - is the principle reason why recruitment agencies are able to coerce migrant domestic workers into accepting the activities outlined above. The PLU research found that 73% of interviewees (47) had taken loans in order to secure work abroad. Similarly, the 2012 APL/PLU research found that 68% of Filipino migrant domestic workers took a loan in the Philippines to pay the recruitment costs.⁶⁵

There is no doubt that a significant number of recruitment agencies in the Philippines are systematically flouting the no-placement fee policy and that a large proportion of migrant domestic workers have to go into debt to pay these fees.

Indeed, the current PLU research found that the average agency fee charged in the Philippines (PHP52,644 or US\$1,135) was not only violating the no-placement fee policy, but was also more than 21 times the legally permissible maximum charge in Hong Kong.⁶⁶

As more than half of the migrant domestic workers interviewed (33 women) were paying interest on loans they had taken to secure work abroad, they had little choice but to comply with the demands made by their recruitment agency (e.g. to undertake training they did not need, sign blank contracts or waivers stating they did not pay fees, accept that they would work on the statutory rest days, etc.) because if they refused to do so, the recruitment agencies would not send them to Hong Kong and they would be unable to pay back their loans.

In this way, inflated and illegal recruitment fees increase migrant domestic workers’ level of indebtedness and directly contribute to their vulnerability to exploitation and forced labour in Hong Kong.

58 PLU interview with Sofia in Hong Kong on 6 December 2015.

59 PLU interview with Moirrah in Hong Kong on 31 January 2016.

60 PLU interview with Ruth in Hong Kong on 22 November 2015.

61 Information provided by SHARP on 15 August 2016.

62 PLU interview with Coleen in Macau on 14 February 2016.

63 PLU interviews with Freya in Hong Kong on 15 November 2015 and Anna in Hong Kong on 10 January 2016.

64 PLU interview with Pia in Macau on 6 February 2016.

65 APL, APL-HK and PLU, *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, px, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 1 March 2016.

66 This assumes that the migrant domestic worker will be paid the Minimum Allowable Wage in Hong Kong.

6 Failure of the Philippine government to enforce laws relating to recruitment agencies

In 2012, the Philippines became the second country to ratify ILO Convention No.189 Concerning Decent Work for Domestic Workers, 2011 (Domestic Workers Convention), which specifically addresses recruitment agency fees (see Figure 5). It has also ratified a number of other key international standards, which are relevant to the protection of migrant domestic workers, including the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000,⁶⁷ the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990,⁶⁸ as well as ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930⁶⁹ and No. 97 concerning Migration for Employment, 1949.⁷⁰

Despite these commitments, the Philippine government has not adequately monitored recruitment agencies or enforced laws to prevent the exploitation of migrant domestic workers. Nowhere is this more evident than in the lack of prosecution and convictions for illegal recruitment practices.

During 2014-2015, the POEA only charged officers/employees of 11 licensed recruitment agencies for illegal recruitment, including violations of the no-placement fee policy, and not one of these cases has led to a successful prosecution to date.⁷¹

Not surprisingly, in its concluding observations on the Philippines in July 2016, the UN Committee on the Elimination of Discrimination against Women called on the Government of the Philippines to:

“(b) Strengthen the regulation and inspection of recruitment agencies for migrant workers and the sanctions in case of breaches of relevant regulations; [...]

*(d) Investigate, prosecute and punish perpetrators of exploitation and abuse of women migrant workers, in particular domestic workers, who are under its jurisdiction.”*⁷²

In 2016, the ILO Committee of Experts on the Application of Conventions and Standards (CEACR) also raised concerns over the Philippine government’s application of the Domestic Workers Convention:

*“the Committee requests the Government to provide further information on the measures taken, at the national and international levels, to strengthen the mechanisms to eliminate all forms of forced or compulsory labour in relation to domestic workers, especially migrant domestic workers recruited through private employment agencies. It further requests the Government to provide practical information on the investigations of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers, including migrant domestic workers.”*⁷³

At the time of this writing, the Philippine authorities had not responded to the PLU’s request for details on action the Government took against the recruitment agencies, identified in the 2013 APL/PLU License to Exploit report, which were involved in illegal practices. As such, the PLU is not aware of any successful prosecution or conviction of a recruitment agency involved in illegal recruitment of migrant domestic workers employed in Hong Kong.⁷⁴

67 Ratified in 2002.

68 Ratified in 1995.

69 Ratified in 2005.

70 Ratified in 2009. In addition, the Philippines has also ratified the following UN treaties: International Covenant on Civil and Political Rights, 1966 (CCPR in 1986), International Covenant on Economic, Social and Cultural Rights, 1966 (CESCR in 1974), and Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW in 1981).

71 Information provided by the POEA on 10 August 2016.

72 Committee on the Elimination of Discrimination against Women, *Concluding observations on the Philippines*, UN Doc. CEDAW/C/PHL/CO/7-8, 22 July 2016, para38.

Article 15

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

(a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;

(b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;

(c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;

(d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

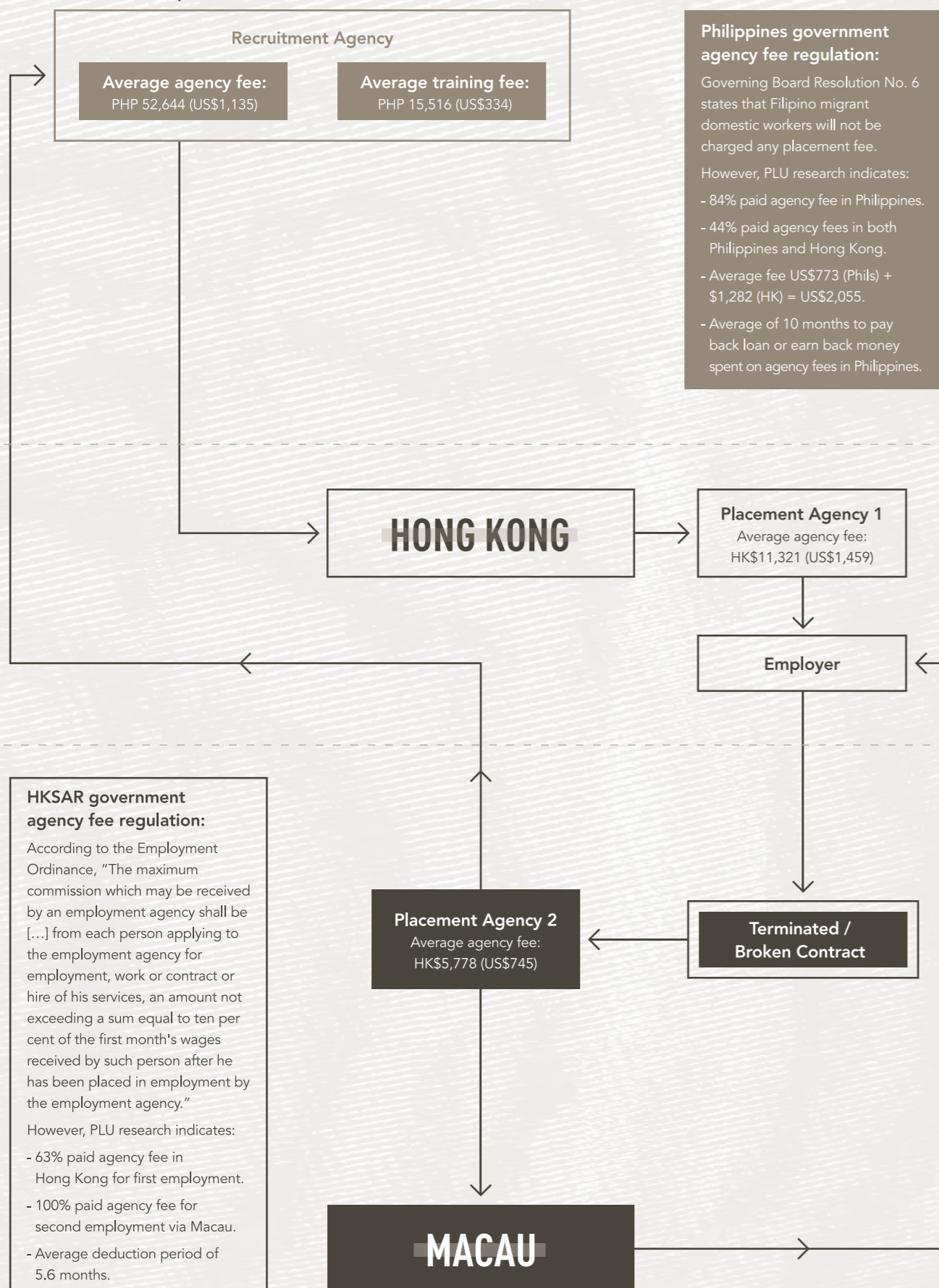
2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Figure 5: ILO Domestic Workers Convention

73 ILO Committee of Experts on the Application of Conventions and Standards, *Direct Request on Domestic Workers Convention, 2011 (No. 189) - Philippines (Ratification: 2012)*, available at: http://www.ilo.org/dyn/normlex/en/?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3254519, accessed 12 September 2016.

74 On at least five occasions from May to August 2016, the PLU has requested information from the Philippine government on action the Government took against the recruitment agencies, identified in the 2013 APL/PLU License to Exploit report, which were involved in illegal practices. However to date, the PLU has not received a reply.

PHILIPPINES



Year	Women	Men	Not stated	Total
2012	548,940	1,132,711	120,380	1,802,031
2013	376,299	728,110	731,936	1,836,345
2014	442,512	788,482	601,674	1,832,668
2015	653,456	940,424	250,526	1,844,406

Figure 1: Total number of Filipino migrant workers, 2012-2015 (Source: POEA)
 (Information provided by the POEA on 10 August 2016.)

Year	Women	Men	Not stated	Total
2012	75,446	11,660	-	87,106
2013	23,335	484	52,102	75,921
2014	26,482	503	37,277	64,262
2015	50,040	1,265	3,028	54,333

Figure 2: Total number of Filipino migrant domestic workers (Household Service Workers) to Hong Kong, 2012-2015 (Source: POEA)
 (Information provided by the POEA on 10 August 2016.)

Countries	Philippines	Indonesia	Thailand	India	Sri Lanka	Others	Total
Number	186,282	151,754	2,496	3,399	1,145	1,099	346,175

Figure 3: Total number of migrant domestic workers in Hong Kong as of 30 June 2016 (Source: HKSAR Immigration Department)
 (Information provided by the HKSAR Immigration Department on 10 August 2016.)

Part Two: Employment in Hong Kong SAR

The HKSAR government has acknowledged “the problem of indebtedness facing many FDHs [migrant domestic workers]”. However, the Government attributed this debt to fees charged by recruitment agencies in the workers’ country of origin, thus, to “be tackled at source and before they set foot in Hong Kong”.⁷⁵ The PLU’s research clearly shows that placement agencies in Hong Kong play a significant role in the indebtedness of Filipino migrant domestic workers.

7 Placement agency fees in Hong Kong

As of 30 June 2016, there were 2,929 placement agencies in Hong Kong (also locally referred to as employment agencies). The agencies are regulated by Part XII of Hong Kong’s Employment Ordinance and the Employment Agency Regulations. For example, section 51(1) of the Employment Ordinance requires that anyone who wishes to operate a placement agency must obtain a licence or a Certificate of Exemption from the Commission of Labour.⁷⁶

In the Employment Agency Regulation of the Employment Ordinance,⁷⁷ the HKSAR government legislated on the maximum fee a placement agency can charge for their services:

“The maximum commission which may be received by an employment agency shall be- (a) from each person applying to the employment agency for employment, work or contract or hire of his services, an amount not exceeding a sum equal to ten per cent of the first month’s wages received by such person after he has been placed in employment by the employment agency.”⁷⁸

Migrant domestic workers, who are excluded from the scope of the Minimum Wage Ordinance, 2011 and instead receive the less favourable Minimum Allowable Wage,⁷⁹ which is currently set at HK\$4,210 (US\$540).⁸⁰ Consequently, the maximum Hong Kong placement agencies can charge as an agency fee (also referred to as commission) is HK\$421 (US\$54).⁸¹

Furthermore, paragraph 3.5.1 of the draft Code of Practice for Employment Agencies states that employment agencies (EAs) “shall not, directly or indirectly, receive from job-seekers reward of any kind, or any payment or advantages in respect of expenses or otherwise (e.g. photocopying fees, visa processing fees), except the prescribed commission”. The commission can “only be charged after the job-seeker has received his/her first-month wages, rather than charging them in advance.”⁸²

However, PLU’s research and covert recordings (see Figure 6 below) indicate that placement agencies in Hong Kong regularly charge Filipino migrant domestic workers illegal agency fees. Forty out of 57 interviewees paid an agency fee to their Hong Kong placement agency. On average, this fee was HK\$11,321 (US\$1,459), which is the equivalent of more than 25 times the legally permitted maximum charge in Hong Kong. The placement fee was normally taken through salary deductions, which on average lasted 5.6 months.

75 HKSAR government, “Gov’t protects maids’ rights”, 20 December 2015, available at: http://www.news.gov.hk/en/record/html/2015/12/20151220_102358.shtml, accessed 5 June 2016.

76 Information provided by the HKSAR Labour Department on 18 August 2016.

77 Enacted in 1968 with amendments in Chapter 57A on Employment Agency Regulation in 1998.

78 Regulation 10(2) (Part II of Schedule 2), Cap 57A Employment Agency Regulation, Employment Ordinance of HKSAR, available at: [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/38DB2DFF314A22BB482575EE0034A5D2/\\$FILE/CAP_57A_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/38DB2DFF314A22BB482575EE0034A5D2/$FILE/CAP_57A_e_b5.pdf), accessed 18 May 2016.

79 According to the HKSAR Labour and Welfare Bureau, migrant domestic workers are excluded from the Minimum Wage Ordinance, 2011 because the requirement that they reside in the employing household (live-in requirement) provides them with the “enjoyment of in-kind benefits”. See: HKSAR Labour and Welfare Bureau, “Legislative Council Brief: Minimum Wage Bill”, File Ref.: LD SMW 1-55/1/4(C), June 2009, para15, available at: http://www.legco.gov.hk/yr08-09/english/bills/brief/b24_brf.pdf, accessed 23 May 2016.

80 This Minimum Allowable Wage (MAW) is applicable for standard employment contracts made on or after 1 October 2015. The HKSAR government sets the MAW, which is adjusted periodically. Examples of previous MAWs are HK\$4,110 (US\$530 since 1 October 2014), HK\$4,010 (US\$517, since 1 October 2013), HK\$ HK\$3,920 (US\$505, since 20 September 2012) and HK\$3,740 (US\$480, since 2 June 2011).

81 The HKSAR government is responsible for periodically reviewing the Minimum Allowable Wage and making adjustments accordingly. See: HKSAR, “Minimum Allowable Wage and food allowance for foreign domestic helpers to increase”, Press Release, 30 September 2015, available at: <http://www.info.gov.hk/gia/general/201509/30/P201509300635.htm>, accessed 11 July 2016.

Trina, a 34-year-old woman from Isabela, relayed her experience:

“The placement agency told me that I had to pay them HK\$13,650 [US\$1,760]. My normal salary was HK\$3,920 [US\$505] but for the first six months I had a salary deduction of HK\$2,275 [US\$293], which meant that I was left with HK\$1,645 [US\$211].”⁸³

Alyssa, a 37-year-old woman from Sultan Kudarat, was also subject to illegal agency fees:

“The Hong Kong agency charged me HK\$12,500 [US\$1,610] in agency fee. So for the first five months of work, I had to pay them HK\$2,500 [US\$322] from my salary of HK\$3,920 [US\$505]. During this period, I only had HK\$1,420 [US\$182].”⁸⁴

Betty, a 42-year-old woman from Davao del Sur, described how agency fees were deducted from her salary:

“When I arrived in Hong Kong, the placement agency told me that I owed them HK\$12,300 [US\$1,585]. So for 10 months, HK\$HK\$1,230 [US\$159] was deducted from my salary of HK\$4,110 [US\$530] to pay this agency fee.”⁸⁵

As these fees exceed the legally prescribed limit in Hong Kong, placement agencies often evade the law by collecting payment through a third party. One commonly used method is through sham loans where placement agencies compel migrant domestic workers to sign a document confirming that they have taken out a “loan” from a finance company. Each month of repayment, workers make cash payments to a designated account via 7-Eleven stores.⁸⁶

Aris, a 39-year-old woman from Nueva Vizcaya, explained the “loan” process:

“As soon as I arrived in Hong Kong and applied for my ID card at the Immigration Department, the placement agency took me directly to the finance company and made me sign an application form for a loan. Then over a four-month period, I had to make cash payments totalling HK\$8,800 [US\$1,134] to the finance company via a 7-Eleven store.”

Aris’s placement agency also coerced her to sign a document stating that she had only paid 10% of her first month’s salary in agency fee.⁸⁷ Another interviewee, Sofia, had to undergo a similar financial arrangement:

“The day I arrived in Hong Kong, my placement agency told me to fill out a loan application form. After I signed it, the agency took a photocopy of my contract and passport. So over a six-month period, I paid the finance company through my 7-Eleven card a total of HK\$13,002 [US\$1,675].”⁸⁸

For Trina, her identity document was confiscated in the process:

“My placement agency took me to a finance company so that I could take out a ‘loan’ for HK\$13,650 [US\$1,760]. The finance company took my passport as collateral – it wasn’t returned to me until I paid them in full.”⁸⁹

Placement agency fees in Hong Kong

All 10 placement agencies which were visited by PLU domestic workers as part of the research, violated Hong Kong’s Employment Ordinance fees in at least one instance, including charging commission from migrant domestic workers before they received their first month’s salary in their new employment and above the legally prescribed 10% of the first month’s salary. Below are some examples of illegal placement fees charged by Hong Kong agencies.

82 HKSAR Labour Department, *Draft Code of Practice for Employment Agencies*, 2016, available at: <http://www.labour.gov.hk/eng/copconsultation.htm>, accessed 8 June 2016.

83 PLU interview with Trina in Hong Kong on 29 November 2015.

84 PLU interview with Alyssa in Hong Kong on 31 January 2016.

85 PLU interview with Betty in Hong Kong on 24 January 2016.

86 Sheridan Prasso and Cathy Chan, “Indentured Servitude in Hong Kong Abetted by Loan Firms”, Bloomberg, 13 November 2012, available at: <http://www.bloomberg.com/news/articles/2012-11-13/indentured-servitude-in-hong-kong-abetted-by-loan-firms>, accessed 20 May 2016.

87 PLU interview with Aris in Hong Kong on 24 January 2016.

88 PLU interview with Sofia in Hong Kong on 6 December 2015.

Agency #1 in Mong Kok

Agency staff: "If you'll let us look for your new employer, we will charge at least HK\$8,000 [US\$1,031]."

Domestic worker: "So what is the process?"

Agency staff: "All you have to do is to pay the charge of HK\$8,000 [US\$1,031] here in Hong Kong. When you go back to the Philippines, you'll only have to undergo medical tests and then just wait for your visa to be released."⁹⁰

Agency #2 in Tsuen Wan

Domestic worker: "I just want to know how much you will charge me?"

Agency staff: "HK\$5,000 [US\$644]."

Domestic worker: "HK\$5,000 [US\$644]? Exit to where?"

Agency staff: "You must go back to the Philippines."

Domestic worker: "How much is the deposit?"

Agency staff: "HK\$2,500 [US\$322]."

Domestic worker: "HK\$2,500 [US\$322], then the balance?"

Agency staff: "When you come back to work after one month, then we'll deduct the other half."

Domestic worker: "Oh, OK. So, when I come back you'll deduct the other half. So, do I have to pay anything else back in the Philippines? Even medical?"

Agency staff: "No need."⁹¹

Agency #3 Central branch

Agency staff: "OK, as you are terminated the total is HK\$5,800 [US\$747] if we find you an employer. You need to pay a deposit of HK\$3,000 [US\$387] in Hong Kong first when you leave to go back to the Philippines, and the balance you can pay in the Philippines."

Domestic worker: "That payment in the Philippines is for the training? Do I have to train even though I worked here?"

Agency staff: "Yes."⁹²

Agency #3 North Point branch

Domestic worker: "Today I'm out to ask for quotations. By the way, what is the HK\$5,800 [US\$747] intended for?"

Agency staff: "That's for the medical, to be done here, and one in the Philippines, service charge for looking for an employer, 10% of your salary, and that's the placement fee. And also includes the service charge for looking for an employer."⁹³

Agency #3 Fortress Hill branch

Agency staff: "The charge? Yes, we charge HK\$5,800 [US\$747], first payment of HK\$3,000 [US\$387] to be paid once we have already found you an employer and you both have signed the contract. When you are about to return to Hong Kong [from the Philippines], this is when you have to pay the balance of HK\$2,800 [US\$361]."⁹⁴

Figure 6: Covert recording on placement agency fees in Hong Kong

89 PLU interview with Trina in Hong Kong on 29 November 2015.

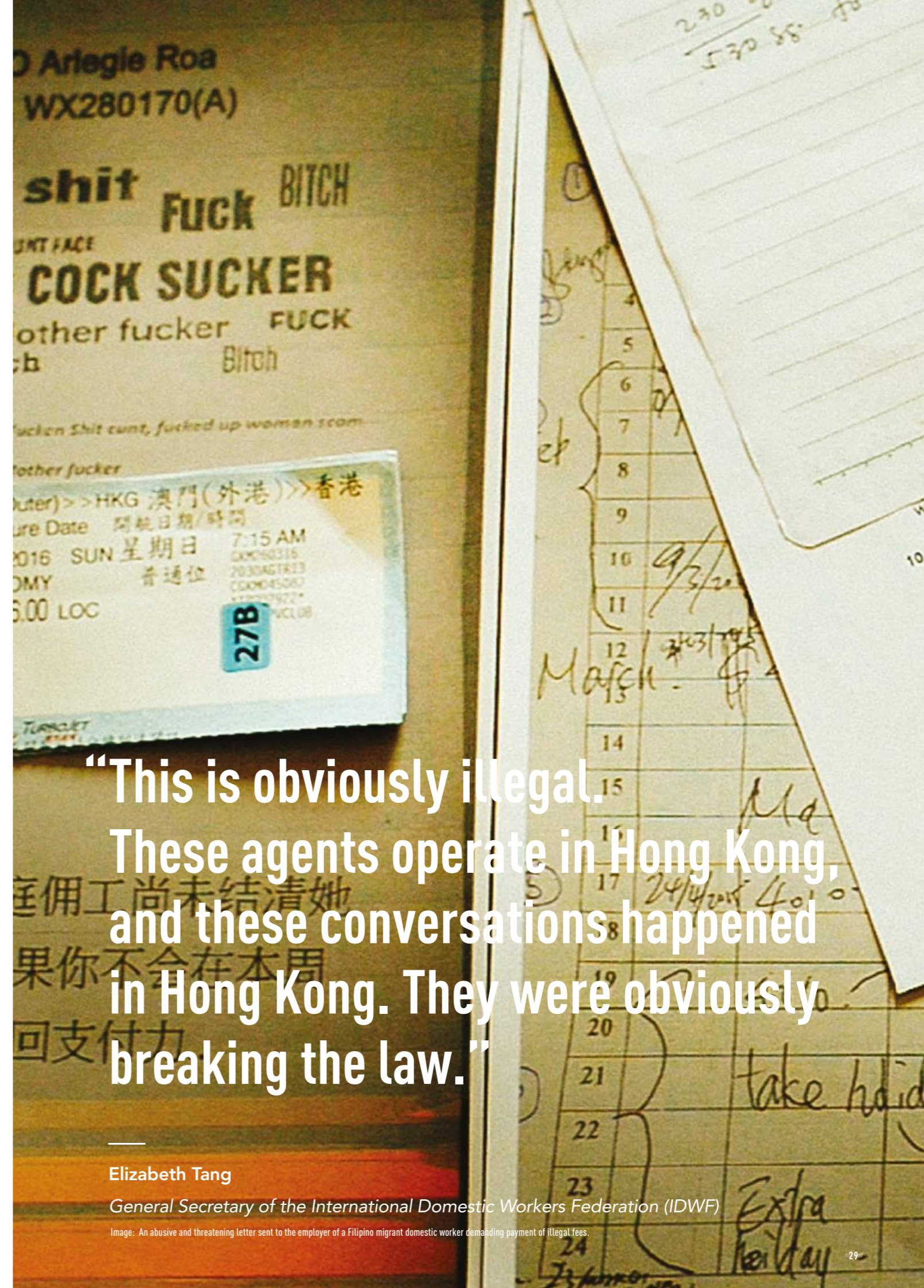
90 On top of the HK\$8,000 (US\$1,031), the agency staff further stated they would charge 10% of the first month's salary and that if the migrant domestic worker found an employer herself, they would "only" charge her HK\$7,000 (US\$902). Recorded on 3 March 2016.

91 Recorded on 3 March 2016.

92 Recordee on 15 February 2016.

93 Recorded on 15 February 2016.

94 Recorded on 15 February 2016.



"This is obviously illegal. These agents operate in Hong Kong, and these conversations happened in Hong Kong. They were obviously breaking the law."

Elizabeth Tang

General Secretary of the International Domestic Workers Federation (IDWF)

Image: An abusive and threatening letter sent to the employer of a Filipino migrant domestic worker demanding payment of illegal fees.

8 Terms and conditions of work - contractual deception

The PLU research showed that over a quarter of Filipino migrant domestic workers interviewed (18 out of 64) discovered after arriving in Hong Kong that their wages or working conditions were different to what was stated in the employment contract that they had signed in the Philippines.

For example, Mae, a 40-year-old woman from Misamis Oriental, was subject to contractual deception, which put both her and her employer in violation of Hong Kong's immigration law⁹⁵:

*"I had to work for two households: my real employer's household, which consisted of a couple, their two children and sometimes the wife's parents. I also had to work for the husband's parents who lived with their other two sons. I had so much work that my employer didn't allow me any rest day and just paid me HK\$125 [US\$16] per rest day. I wanted to have a weekly day off but I had no choice but to work."*⁹⁶

Aris was also told by her employer to work outside the employing household:

*"I woke up at 4am to get ready to go to work at the market with my employer. Most of my time was spent working at my employer's meat stall. I helped her to clean the chickens, display the meats, and generally clean the area. Mid morning I had to return home to clean the apartment and be back to the market before lunchtime. I worked there until 7pm and then I returned home to cook dinner for my employing family."*⁹⁷

95 It is an offence under the Immigration Ordinance for employers to ask migrant domestic workers to work for another person other than the employer named in his/her visa or to ask him/her to perform non-domestic duties. Employers who breach the Ordinance may face prosecution. See: HKSAR Labour Department, *Practical Guide For Employment Of Foreign Domestic Helpers – What foreign domestic helpers and their employers should know*, September 2015, p5, available at: www.labour.gov.hk/eng/public/wcp/FDHguide.pdf, accessed 20 May 2016.

96 PLU interview with Mae in Macau on 13 January 2016.

97 PLU interview with Aris in Hong Kong on 24 January 2016.

9 Excessive working hours and denial of weekly rest days and holidays

There are currently no laws in Hong Kong limiting the number of daily working or overtime hours nor is there a standard on overtime pay.⁹⁸ However as a party to the UN International Covenant on Economic, Social and Cultural Rights (CESCR), the HKSAR government must ensure that everyone in its territory enjoys the right to "rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays" (article 7(d)).

Accordingly, in 2014, the UN Committee on Economic, Social and Cultural Rights, in its review of Hong Kong SAR, called on the Government to:

*"Adopt a comprehensive law to regulate domestic work and ensure that migrant domestic workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection."*⁹⁹

Not surprisingly, many Filipino migrant domestic workers work excessive hours for their employing household in Hong Kong. PLU's research found that interviewees worked 16 hours a day on average, which shows little change from the findings of the 2012 APL/PLU research, which recorded that the average workday for a Filipino migrant domestic workers lasted 15.6 hours and that more than half of those surveyed worked more than 16 hours a day.¹⁰⁰ The current PLU research also noted that some migrant domestic workers, like Lily, routinely worked more than 16 hours per day:

*"I worked up to 20 hours per day because I was taking care of a newborn baby. I didn't get enough sleep or rest. Even on my rest days, I had to get back by 8pm because my employers expected me to do household chores and take care of the baby like preparing his milk."*¹⁰¹

Jessa recalled the long hours she had to work for almost two years:

*"I worked for two different households, 18 hours a day from 6am to midnight. My agency just told me to be patient and not complain. Even on my day off, I had to come back at 8pm and do some work before going to bed."*¹⁰²

Nene had similar working hours and conditions:

*"I worked 19 hours per day from 5am to 12am. I was only able to rest during my meals, which were just 10-15 minutes. During my weekly rest day, my employer allowed me to go out just half day – from 1-7pm. When I returned, I had to do all the household chores."*¹⁰³

98 HKSAR Labour Department, *Report of the Policy Study on Standard Working Hours*, June 2012, pp1-2, available at: http://www.labour.gov.hk/eng/plan/pdf/swh/swh_report.pdf, accessed 21 May 2016.

99 Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, UN Doc.

100 APL, APL-HK and PLU, *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, p21, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 1 March 2016.

101 PLU interview with Lily in Hong Kong on 14 January 2016.

102 PLU interview with Jessa in Macau on 24 January 2016.

103 PLU interview with Nene in Hong Kong on 24 January 2016.

Hong Kong's Employment Ordinance, which is applicable to all workers, including migrant domestic workers, provides for a weekly rest day:

"every employee who has been employed by the same employer under a continuous contract [employed continuously by the same employer for four weeks or more]¹⁰⁴ shall be granted not less than one rest day in every period of seven days" (Cap. 57, s. 17).

Under the Employment Ordinance,¹⁰⁵ all workers are also entitled to 12 statutory holidays¹⁰⁶ per calendar year.

According to PLU's research, the vast majority (61 out of 67) of Filipino migrant domestic workers do receive a weekly rest day and statutory holidays. However, of those who received a weekly rest day, 91% (60 out of 65) did not enjoy the full 24 hours, as stipulated by Hong Kong law:

"Rest day means a continuous period of not less than 24 hours during which an employee is entitled under Part IV to abstain from working for his employer" (Cap. 57, s. 2).

Once again, this is entirely consistent with the 2012 APL/PLU research, which found that 92% of Filipino migrant domestic workers received the legally mandated day off each week, but on average they enjoyed less than 14 hours of leisure time.¹⁰⁷

Furthermore, PLU's current research also showed that Hong Kong placement agencies were complicit in this violation of Hong Kong law, as nearly one third of interviewees (19 out of 63) stated that their agency told them to work on their holidays/weekly days off.

In addition, more than half of those interviewed (35 out of 66) reported that they were not free to leave their employer's home during their time off. Moreover, the five interviewees who were denied a weekly rest day also faced severe restrictions on their freedom of movement, as noted by Mae:

"Not only did I not have a day off or any public holidays, I could not leave the house without their permission. They kept my passport because they wanted to make sure that I kept working [illegally] in the two households. My employers didn't want me to call my family, meet friends or even call them on the phone. When I see other Filipino domestic workers outside, I can't talk to them or even smile at them."¹⁰⁸

Maricar, a 46-year-old woman from Ilocos Norte, faced similar restrictions:

"I was only given a day off twice a month but no statutory holidays. My employers kept my passport and controlled my movements. They did not allow me to meet friends or go to church. During my few days off, they would constantly call me on my mobile to check up on me, asking where I was and what I was doing."¹⁰⁹

¹⁰⁴ HKSAR Labour Department, *Report of the Policy Study on Standard Working Hours*, June 2012, pp1-2, available at: http://www.labour.gov.hk/eng/plan/pdf/swh/swh_report.pdf, accessed 21 May 2016.

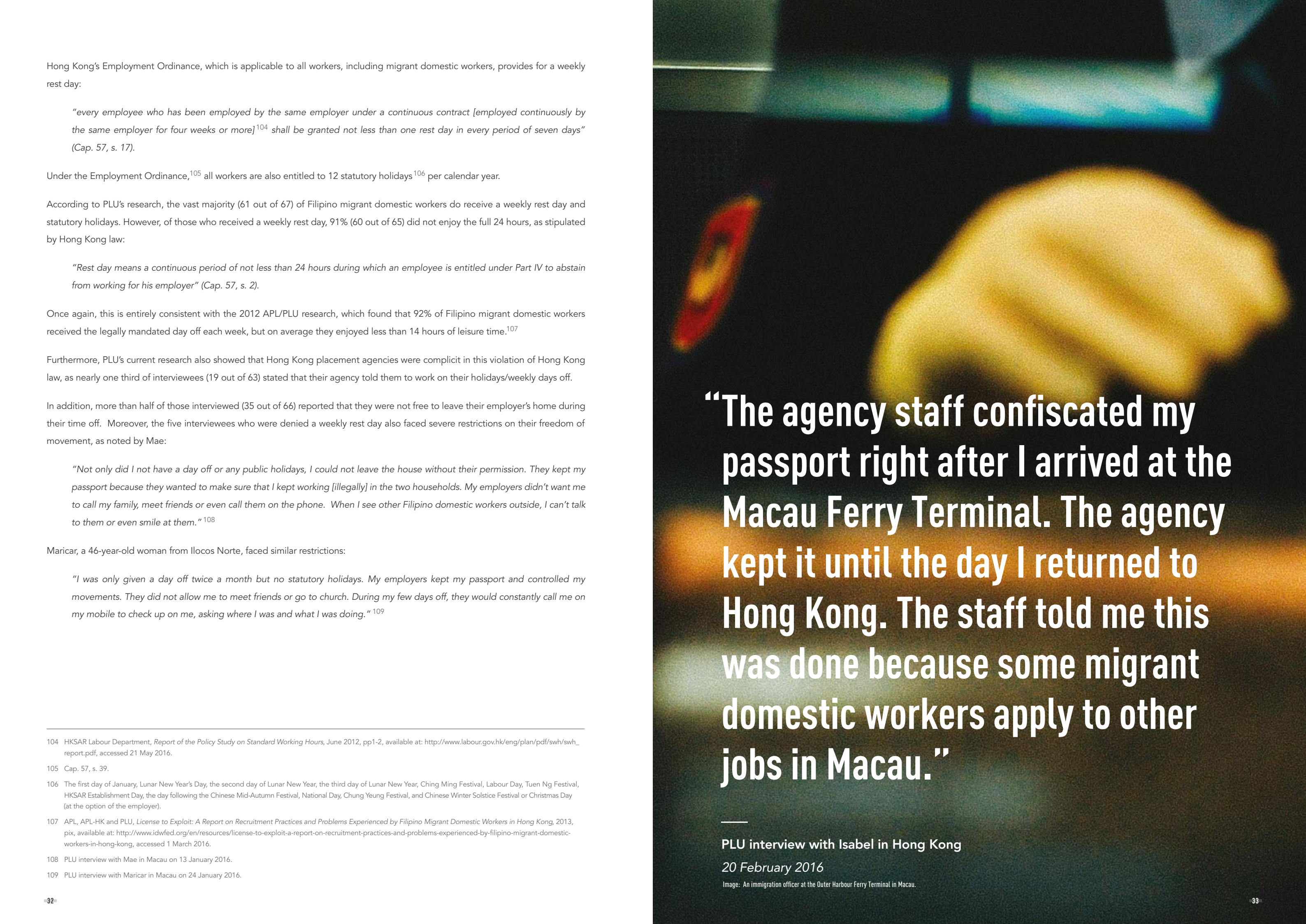
¹⁰⁵ Cap. 57, s. 39.

¹⁰⁶ The first day of January, Lunar New Year's Day, the second day of Lunar New Year, the third day of Lunar New Year, Ching Ming Festival, Labour Day, Tuen Ng Festival, HKSAR Establishment Day, the day following the Chinese Mid-Autumn Festival, National Day, Chung Yeung Festival, and Chinese Winter Solstice Festival or Christmas Day (at the option of the employer).

¹⁰⁷ APL, APL-HK and PLU, *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, pix, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 1 March 2016.

¹⁰⁸ PLU interview with Mae in Macau on 13 January 2016.

¹⁰⁹ PLU interview with Maricar in Macau on 24 January 2016.



“The agency staff confiscated my passport right after I arrived at the Macau Ferry Terminal. The agency kept it until the day I returned to Hong Kong. The staff told me this was done because some migrant domestic workers apply to other jobs in Macau.”

PLU interview with Isabel in Hong Kong
20 February 2016

Image: An immigration officer at the Outer Harbour Ferry Terminal in Macau.

10 Confiscation of identity and personal documents

The confiscation of identity and personal documents, such as passports, contracts, ID or ATM cards, is a violation of sections 2 and 17 (“Theft” and “Obtaining Property by Deception”) of Hong Kong’s Theft Ordinance, Cap. 210.¹¹⁰ However, this practice is commonly used by employers or placement agencies to maintain control over migrant domestic workers. Without these documents, migrants are unable to legally change jobs or prove that they have regular immigration status. As such, they are less willing to leave or challenge abusive or exploitative employers.

The 2012 APL/PLU research found that this was a widespread problem and that 70 placement agencies in Hong Kong (28% of all Hong Kong agencies used by migrant domestic workers in the survey) forced migrant domestic workers to hand over their passports.¹¹¹

Similarly, the PLU research found that about a third (24 out of 67) of interviewees had their passport and/or employment contract confiscated by their employer or placement agency. These documents were routinely taken when the worker arrived in Hong Kong.

Karen is a 26-year-old woman from Zamboanga del Sur who arrived in Hong Kong in January 2014. According to her:

*“Upon arrival, I had to hand over my passport to my placement agency. I asked for it back but they said I needed to fully pay back my agency fees first – so after four months of salary deduction.”*¹¹²

Several interviewees stated that they were afraid of negative repercussions if they asked for their documents to be returned. Ling, a 35-year-old woman from Nueva Vizcaya, expressed her fears:

*“My employer kept my passport. I was afraid to ask for it back because she might get angry with me and terminate my contract. I didn’t want to lose my job.”*¹¹³

For Carey, standing up for her rights led to her losing her job:

*“When my employer asked for my passport, I refused to give it to her. She got angry and threatened to terminate my contract. I told her she could terminate me if she liked but it was my right to hold on to my documents. That made her even angrier. In the end, she did terminate me.”*¹¹⁴

Nearly a third of the migrant domestic interviewees (20 out of 67) also reported that their employer stopped them from calling home or meeting friends, which further isolated them and limited their ability to get advice or help in challenging exploitation and abuse.

110 Information provided by the HKSAR Security Bureau on 26 August 2016. See also: HKSAR Department of Justice, “Chapter 10 Theft Ordinance”, available at:

http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/AC628B0C8930CE4F482575EE004D2B22?OpenDocument&bt=0, accessed 25 May 2016.

111 APL, APL-HK and PLU, *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, pxi, available at: <http://www.icwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 1 March 2016.

112 PLU interview with Karen in Hong Kong on 30 January 2016.

113 PLU interview with Ling in Hong Kong on 22 November 2015.

114 PLU interview with Carey in Hong Kong on 24 January 2016.

11 Provision of food or food allowance

As stipulated in paragraph 5(b) of Hong Kong’s standard employment contract (see Appendix 2), employers are obliged to provide migrant domestic workers with food free of charge. If food is not provided, employers are required to pay workers a monthly food allowance in lieu of not less than HK\$995 (US\$128).¹¹⁵ Like the Minimum Allowable Wage, the HKSAR government is responsible for periodically reviewing and adjusting the amount accordingly.¹¹⁶

Nearly half (31 out of 67) of the interviewees told the PLU that they were not given adequate food by their employers nor were they provided with any food allowance. Common complaints included having to eat stale food or leftovers, inadequate portions, poor quality items and less than three meals per day.

Mae described her experience of food deprivation:

*“I was never given rice, only soup with just the dumpling wrappers – without the meat filling. Since I couldn’t leave the apartment, I had to secretly take some of the baby’s milk or pick food from the rubbish – even fish bones – in order to survive. Sometimes I was so hungry that I would wake up at 5am to secretly grab some food from the fridge. My employers did not treat me like a human being. Even when they went to restaurants and brought me with them, they didn’t bother to give me anything to eat.”*¹¹⁷

Angela’s employers also did not provide her with enough to eat:

*“I just had a small portion of rice to eat with some leftover dishes or canned food but only a small amount. My employers never gave me any food allowance to compensate.”*¹¹⁸

Several interviewees, such as Lily, had to supplement their diet by buying food with their own money:

*“I was not given enough food to eat. Sometimes I had no breakfast, just water. When my employers had lunch, I was lucky if they left something for me. If not, then I had to buy food with my own money. If they provided food for me, it was normally just a small amount of rice with some dishes – like 4-5 pieces of vegetables or 1-2 small piece of meat.”*¹¹⁹

In a 2014 joint report to the ILO, the Hong Kong Confederation Trade Unions (HKCTU) and Hong Kong Federation of Asian Domestic Workers Unions (FADWU) outlined the failings of the HKSAR government in relation to its obligation under ILO Convention No. 97 concerning Migration for Employment, 1949 (Migration for Employment Convention),¹²⁰ including on this issue:

*“there is no definition of quality and quantity of food both under the Employment Ordinance and the Standard Contract. Both migrant domestic workers and imported workers under SLS [Supplementary Labour Scheme] report to the unions on insufficient food.”*¹²¹

115 This is applicable for standard employment contracts made on or after 1 October 2015. Examples of previous food allowance were set at HK\$964 (US\$124, since 1 October 2014), HK\$920 (US\$119, since 1 October 2013), HK\$875 (US\$113, since 20 September 2012) and HK\$775 (US\$100, since June 2011).

116 HKSAR, “Minimum Allowable Wage and food allowance for foreign domestic helpers to increase”, Press Release, 30 September 2015, available at: <http://www.info.gov.hk/gia/general/201509/30/P201509300635.htm>, accessed 11 July 2016.

117 PLU interview with Mae in Macau on 13 January 2016.

118 PLU interview with Angela in Macau on 29 November 2015.

119 PLU interview with Lily in Hong Kong on 14 January 2016.

120 The HKSAR government ratified the Migration for Employment Convention in 1997.

121 HKCTU and FADWU, *Joint report on Hong Kong SAR of the People’s Republic of China on the government’s application of Migration for Employment Convention (Revised)*, 1949 (No. 97) (Ratification: 1997), 31 Aug 2014, para28.

12 Threats and abuse

More than half (38 out of 67) of the interviewees felt that their working conditions were bad or extremely bad (see also section 9). Kim, a 36-year-old woman from Ilocos Norte, outlined her situation:

“I worked very long hours – 17 hours a day from 6am to 11pm. Even on my rest days, I had to work first before going out and also after I came home. I wasn’t given enough food or made to eat leftovers or unwanted parts like the fish’s stomach. My employers constantly monitored me through video and audio devices.”¹²²

However, PLU’s research suggests that it is difficult for migrant domestic workers to challenge these conditions without making their situation even more difficult. More than half (37 out of 67) of the Filipino migrant domestic workers interviewed by the PLU stated that they had been threatened or punished by a member of the employing household (primarily through verbal/psychological abuse). Joyce, a 35-year-old woman from South Cotabato, described her treatment by her employers:

“I experienced both verbal and physical abuse from the couple and their two daughters. Once the husband hit me on the back with his jacket when I didn’t understand his instructions. I also had to endure kicks, slaps and things thrown at me by one of the daughters. Frequently, they shouted at me, saying insulting or bad words like stupid or that I am only a maid. When I complained to my placement agency, the owner said that I must have done something wrong for the family to behave this way.”¹²³

PLU’s research indicated that this response was typical. The fact that placement agencies generally either failed to act or took the side of the employer discouraged migrant domestic workers from reporting problems to placement agencies and simply endured the exploitation and abuse they were being subjected to.

Kim, like many migrant domestic workers, was subject to repeated verbal abuse by her employer:

“The husband shouted at me whenever he gave instructions or I made a mistake. He used to tell me I was stupid or silly. When I tried to reason with him, he told me that I had no right to answer back, that I was just a maid.”¹²⁴

Maricar’s experience was similar:

“The wife shouted at me whenever she was not happy with me. She said that Filipinos were stupid and called me a prostitute.”¹²⁵

Jovilyn, a 43-year-old woman from Isabela, described her situation as follows:

“My work hours were very long – 17 hours per day with very little free time. My weekly day off was not 24 hours and I had no statutory holidays. My work was very stressful because my employer frequently shouted at me especially if I didn’t understand her or follow her instructions. I had to strictly follow the work timetable set by my employer, including finishing it on time.”¹²⁶

¹²² PLU interview with Kim in Hong Kong on 20 December 2015.

¹²³ PLU interview with Joyce in Hong Kong on 29 November 2015.

¹²⁴ PLU interview with Kim in Hong Kong on 20 December 2015.

¹²⁵ PLU interview with Maricar in Macau on 24 January 2016.

¹²⁶ PLU interview with Jovilyn in Hong Kong on 17 January 2016.

“The most significant factor determining whether MDWs are likely to be in forced labour is related to their debt burden. MDWs with excessive debt burden (where debt level is equal to or more than 30% of annual income) were six times more likely to be in forced labour than those without high debt.”

Justice Centre, Coming Clean:

The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong, March 2016

Image: Lights of a casino in Macau.

13 Forced Labour, trafficking and exploitation

Between March 2015 and March 2016, Justice Centre carried out research on the prevalence of forced labour and trafficking amongst migrant domestic workers. It surveyed over 1,003 migrant domestic workers from eight countries of origin across Hong Kong, including 506 from the Philippines, using random sampling techniques.

Justice Centre found that 17% of all migrant domestic workers were in conditions of forced labour and that 14% of these women had been trafficked into forced labour.¹²⁷ If these findings are extrapolated to the total migrant domestic worker population in Hong Kong, this would indicate that some 50,000 migrant domestic workers are in forced labour.¹²⁸

Justice Centre found that those most at risk of forced labour were migrant domestic workers on their first contract to Hong Kong, who secured contracts in their home countries, and who had significant recruitment debt. Justice Centre concluded that:

“The most significant factor determining whether MDWs [migrant domestic workers] are likely to be in forced labour related to their debt burden. MDWs with excessive debt burden (where debt level is equal to or more than 30% of annual income) were six times more likely to be in forced labour than those without high debt.”¹²⁹

In addition, 66% of those surveyed showed strong signs of exploitation, although not meeting the threshold to constitute forced labour, and a further 11% showed medium signs of exploitation. Only 5% of all the migrant domestic workers surveyed showed no signs of exploitation.¹³⁰

Similarly, Amnesty International’s 2013 report, *Exploited for Profit, Failed by Governments*, interviewed 97 Indonesian migrant domestic workers and found that recruitment agencies in Indonesia and placement agencies in Hong Kong were routinely involved in the trafficking of Indonesian migrant domestic workers and their exploitation in conditions of forced labour. The Indonesian agencies used deception and coercion to recruit Indonesian migrants and, in collusion with the Hong Kong agencies, compelled the women to work in situations, which violated their human and labour rights. The principal mechanisms of coercion, which were applied in both Indonesia and Hong Kong, were the confiscation of identity documents, restrictions on freedom of movement and the manipulation of debt incurred through recruitment fees.¹³¹

PLU’s interviews in 2015-16 showed a range of exploitative practices, including those, which would meet the internationally recognised definitions of forced labour and trafficking (see Figure 7). Filipino migrant domestic workers reported the use of deception and coercion by recruitment agencies in the Philippines and placement agencies and/or employers in Hong Kong, which in many cases compelled them to accept terms and conditions of work to which they did not agree. The “menace of a penalty” (e.g. not being able to retrieve their documents, the threat of losing their job and not being able to repay debts, etc.) meant that many felt they had no choice but to remain in exploitative jobs.

Given the above, it is not surprising that Hong Kong SAR was downgraded from Tier 2¹³² to Tier 2 Watch List¹³³ in the 2016 US State Department Trafficking in Persons (TIP) report. The Report concluded that the Government of Hong Kong did not “fully meet the minimum standards for the elimination of trafficking” and it did not “demonstrate overall increasing antitrafficking efforts compared to the previous reporting period”. Specifically, the US State Department stated that:

“Authorities’ investigations and prosecutions for labor trafficking were inadequate for the scale of the problem, and there were no convictions for labor trafficking in 2015 because there remains no specific criminal offense related to the crime. Hong Kong’s laws do not prohibit all forms of trafficking and authorities continued to define human trafficking as the trans-border movement of people for prostitution, inconsistent with the 2000 UN TIP Protocol. While the government convicted eight traffickers during the reporting period, sentences were incommensurate with the gravity of the crime, with three perpetrators sentenced to seven months’ imprisonment or less. The government did not appropriately penalize employment agencies that perpetuated labor trafficking via debt bondage. Labor tribunals lacked sufficient translation services, did not provide the right to counsel, and often had judges inexperienced with forced labor cases. Some trafficking victims may have been punished for crimes committed as a direct result of being subjected to trafficking.”¹³⁴

The US State Department went on to urge the HKSAR government to:

“Enact a comprehensive anti-trafficking law that prohibits all forms of trafficking in accordance with the definitions set forth in the 2000 UN TIP Protocol; proactively identify [...] labor trafficking victims among vulnerable populations – such as [...] foreign migrants, domestic workers [...] – and refer them to available services; vigorously prosecute suspected labor traffickers and recruiters, especially those who exploit foreign domestic workers; penalize employment agencies that charge excessive fees; do not penalize victims for crimes committed as a result of being subjected to trafficking; increase protective services for vulnerable populations, such as foreign domestic workers [...]; make labor tribunals more effective through improved translation services, the right to counsel, and anti-trafficking training for judges; grant foreign victims permission to work and study while participating in judicial proceedings against their traffickers; adopt an action plan to combat trafficking and commit resources to its implementation; provide legal alternatives to foreign victims who may face hardship or retribution in their home countries; and educate law enforcement, government officials, and the public on trafficking definitions aligned with international standards.”¹³⁵

Despite overwhelming evidence, the HKSAR authorities have continued to deny that trafficking and forced labour of migrant domestic workers are serious problems in Hong Kong. In June 2016, the HKSAR government rejected the TIP report’s assessment that “Hong Kong is a destination, transit and source territory for men, women and children subjected to sex trafficking and forced labour” and stated that the Report “contains an agglomeration of mere allegations, from unverified information, concerning the protection of foreign domestic helpers (FDHs) [migrant domestic workers]”. Moreover according to the HKSAR Security Bureau, “any suggestion that employment of FDHs [migrant domestic workers] in Hong Kong is a form of human trafficking is not substantiated by facts and is strongly rejected”.¹³⁶

127 In Justice Centre’s research, migrant domestic worker respondents were classified as being in forced labour if they ticked positive in at least one of the three criteria: unfree recruitment; work and life under duress; or impossibility of leaving. They were classified as being trafficked for the purpose of forced labour if they ticked positive in at least two of the three criteria and one of them must be unfree recruitment. See: Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016, p36.

128 Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016, p7.

129 Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016, p52.

130 Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016, March 2016, p7.

131 Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, November 2013 (AI Index: ASA 17/029/2013), pp8 and 15.

132 Countries whose governments do not fully meet the Trafficking Victims Protection Act’s minimum standards, but are making significant efforts to meet those standards. See: <http://www.state.gov/j/tip/rls/tiprpt/2016/258696.htm>, accessed 10 July 2016.

133 In addition to the Tier 2 criteria, countries whose number of victims of severe forms of trafficking is very significant or is significantly increasing; there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or the determination to make significant efforts to meet the minimum standards was based on commitments by the country to take additional future steps over the next year. See: <http://www.state.gov/j/tip/rls/tiprpt/2016/258696.htm>, accessed 10 July 2016.

134 US State Department, “Hong Kong”, *Trafficking in Persons Report 2016*, p194, available at: <http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>, accessed 10 July 2016.

135 US State Department, “Hong Kong”, *Trafficking in Persons Report 2016*, pp194-195, available at: <http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>, accessed 10 July 2016.

136 Information provided by the HKSAR Security Bureau on 26 August 2016.

Forced or compulsory labour: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself up voluntarily” with the exception of compulsory military service, normal civic obligations, emergency work required in the event of war or calamity, and work that is a consequence of a criminal conviction.¹³⁷

Menace of penalty: “direct and indirect coercion, such as physical violence, psychological coercion and the retention of identity documents. The penalty may also take the form of a loss of rights or privileges”. For the work to have been undertaken voluntarily, “free and informed consent must be given by the worker when accepting the work and must cover the whole duration of the work or service”. Actions, which interfere with this freedom would include “deception or false promises to induce a worker to provide services” and that such practices would be a clear violation of the Forced Labour Convention.¹³⁸

Trafficking in persons: “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. The use of force, coercion, etc. for anyone under 18 years of age need not be involved so long as the purpose of the conduct was exploitation.¹³⁹

Figure 7: Definitions under international standards

14 Policies in Hong Kong which increase migrant domestic workers’ vulnerability to exploitation and their ability to access redress mechanisms

While it is clear that excessive recruitment and placement fees, and consequent high levels of debt increase the risk that migrant domestic workers will be subject to trafficking and forced labour, it should also be stressed that some of Hong Kong’s regulations relating to migrant domestic workers also directly contribute to their vulnerability.

Based on the findings of the PLU research, there are two Hong Kong regulations, which significantly increase the risk of migrant domestic workers being exploited and abused, and restrict their ability to seek redress and compensation.

The first is the mandatory live-in requirement, an immigration regulation, which obliges all migrant domestic workers to “work and reside in the employer’s residence” (see Appendix 2).¹⁴⁰ The live-in requirement creates a dependency on the employer and makes it difficult for migrant domestic workers to draw a distinction between work and leisure time, as they cannot leave their employer’s house and go to their own home at the end of a working day or on their days off.

This disadvantages migrant domestic workers who are seeking to negotiate better working conditions and directly impacts on their ability to challenge excessive working hours, inadequate living arrangements, lack of privacy, restrictions on their freedom of movement and having to work on their days off.

Without the option of being able to live in their own accommodation, migrant domestic workers are left with little choice but to endure exploitative or abusive conditions. If they complain, this may lead to their employer making their life even more difficult or terminating their contract. Indeed, 27 of the migrant domestic workers interviewed by the PLU had their employment terminated by their employer before the end of their contract, and around a quarter of these workers had their contract ended before or just after their salary deduction period had ended. When this happens, the migrant domestic worker is unlikely to be able to find another job due to the Two-Week Rule.

The Two-Week Rule (New Condition of Stay, 1987) stipulates that migrant domestic workers must find new employment within two weeks of their contract being terminated or leave the territory. Upon receipt of all necessary documents, it normally takes the Hong Kong authorities 4-6 weeks to process an application for new employment.¹⁴¹ As such, it is extremely unlikely that a migrant domestic worker will be able to change jobs in two weeks. However, the HKSAR government has made clear that the Two-Week Rule is:

“necessary for maintaining effective immigration control and it helps prevent FDHs [migrant domestic workers] from frequent job-hopping and taking up illegal work in Hong Kong after contract termination. The main purpose of the ‘two-week rule’ is to allow sufficient time for FDHs [migrant domestic workers] to prepare for their departure; and it is not to facilitate them to find new employer.”¹⁴²

Migrant domestic workers who are subject to exploitation or abuse would naturally consider leaving their employer, but statements like this from the Government discourage them from doing so.

If they did leave their current employer, the Two-Week Rule means that they will almost certainly lose their right to work in Hong Kong and their ability to repay their debt and/or support their families through remittances. This is of crucial importance, as it defeats the primary reason for which domestic workers migrated abroad in the first place. For example, Justice Centre’s 2016 report noted that 97% of the migrant domestic workers they surveyed sent remittances home and 72% had three or more people dependent on these remittances.¹⁴³ The report also noted that: “32.5% of surveyed MDWs felt that they had no choice but to keep working in Hong Kong because of the amount of money they had paid and/or the debt they had accumulated to secure their contract.”¹⁴⁴ In this way, the current regulations discourage migrant domestic workers from challenging abuse and trap them in exploitative situations, including forced labour.

In December 2015, Matthew Cheung, Secretary of the Labour and Welfare Bureau stated that:

“Our community will not tolerate any abuse of FDHs [migrant domestic workers] and the authority will act relentlessly to ensure justice will be done. FDHs [migrant domestic workers] who feel aggrieved should come forward and report their cases to the authorities which will take follow-up enforcement action promptly.”¹⁴⁵

However, the Two-Week Rule once again means that in order to file a case against a former employer, a migrant domestic worker must apply for an extension of stay. Crucially, work is not permitted on this type of visa and the cost is HK\$190 (US\$25). As it takes an average of 55 days for a claim to be heard at the Labour Tribunal,¹⁴⁶ migrant domestic workers would need to renew their visa multiple times and pay for their living expenses without earning an income. The costs of doing so make it impossible for the majority to seek redress.

141 Information provided by the HKSAR Immigration Department on 10 August 2016.

142 HKSAR Legislative Council Panel on Manpower, “Policies Relating to Foreign Domestic Helpers and Regulation of Employment Agencies”, LC Paper No. CB(2)870/13-14(01), 27 February 2014, para17.

143 Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016, p50.

144 Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016, p46.

145 HKSAR government, “Gov’t protects maids’ rights”, 20 December 2015, available at: http://www.news.gov.hk/en/record/html/2015/12/20151220_102358.shtml, accessed 5 June 2016.

146 This is the average waiting time from appointment to filing of a case to first hearing. See: HKSAR Judiciary, “Caseload, Case Disposal and Waiting Time at Different Court Levels”, *Hong Kong Judiciary Annual Report 2015*, available at: http://www.judiciary.gov.hk/en/publications/annu_rept_2015/eng/caseload06.html accessed 22 May 2016.

137 Article 2, ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930 (Forced Labour Convention).

138 ILO, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Report concerning the possible adoption of an ILO instrument to supplement the Forced Labour Convention, 1930 (No.29)*, 1 February 2013, p7.

139 Article 3, UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (Trafficking Protocol).

140 Paragraph 3 of the standard employment contract.

This is the reason why, despite the numerous violations of Hong Kong law documented in this report, only two interviewees filed a complaint to the Hong Kong authorities – one was to the police and the other to the Labour Department. In the latter case, Jovilyn explained the reason for her complaint in 2014:

“My employer terminated my contract after three months but refused to give me my one month’s salary in lieu of notice. I first went to my agency who called my employer but she still refused. So I filed a complaint at the Labour Department.”

However, Jovilyn decided not to pursue the case:

“The Labour Department sent me several notices to come to their office one day and then change it to another day. In the end, I gave up because it was taking too long and my case was not progressing at all. Besides I had no money to pay for my extension visa so I decided to drop the case and just find another job.”¹⁴⁷

In recent years, various UN monitoring bodies have urged the Hong Kong government to review or repeal the Two-Week Rule and the live-in requirement, including the UN Committee on the Elimination of Discrimination against Women (November 2014), the UN Committee on Economic, Social and Cultural Rights (April 2014) and the UN Human Rights Committee (March 2013).¹⁴⁸

For example, in 2014, the UN Committee on Economic, Social and Cultural Rights, noted:

“the unfavourable working conditions faced by migrant domestic workers in Hong Kong, China, particularly due to the ‘two-week rule’, [...] as well as the requirement for migrant domestic workers to live in the employing household. The Committee regrets that Hong Kong, China, has not taken any concrete measures to repeal these rules, and that migrant domestic workers are therefore exposed to abuse and exploitation.”

And called on the HKSAR government to:

“Take immediate action to repeal the two-week rule and the live-in requirement and eliminate conditions that render migrant domestic workers vulnerable to compulsory labour and sexual assault.”¹⁴⁹

Similarly, in 2014, the UN Committee on the Elimination of Discrimination against Women expressed concern that migrant domestic workers in Hong Kong “continue to be subjected to” the Two-Week Rule and the live-in requirement and urged the HKSAR government:

“to consider extending the two-week rule to ensure that foreign women domestic workers whose contracts have been terminated have sufficient time to search for other employment or file suit against their former employers;”

And:

“to revise the live-in rule so that it is available on an optional basis.”¹⁵⁰

¹⁴⁷ PLU interview with Jovilyn in Hong Kong on 17 January 2016.

¹⁴⁸ Both the UN Covenant on Civil and Political Rights and UN Covenant on Economic, Social and Cultural Rights were ratified in 1976 under the territorial application of the United Kingdom of Great Britain and Northern Ireland. Upon resuming sovereignty over Hong Kong in 1997, the People’s Republic of China notified the UN that the Covenants will also apply to the HKSAR, pursuant to HKSAR’s provisions of the Basic Law. The UN Convention on the Elimination of Discrimination Against Women was ratified in 1986 under the territorial application of the United Kingdom of Great Britain and Northern Ireland. Upon resuming sovereignty over Hong Kong in 1997, the People’s Republic of China notified the UN that the Convention with the reservation made by China will also apply to HKSAR.

¹⁴⁹ Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, UN Doc. E/C.12/CHN/CO/2, 13 June 2014, para43.

¹⁵⁰ Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of China (Hong Kong)*, UN Doc. CEDAW/C/CHN/CO/7-8, 14 November 2014, paras64-65.

“You exit to Macau or Philippines?”

“Macau?”

“Yes.”

“How much?”

“Maybe HKD5,000 in cash, no deduction.”

“HK\$5,000 cash? Does that include a free boarding house?”

“No, not including the boarding house.”

“Oh! Not included. So the HK\$5,000 is just for the agency fee?”

“Yes.”

Employment agency, Tsuen Wan

Recorded on 3 March 2016

Image: Covert recording of an employment agency in Hong Kong.

15 New employment via Macau

A significant number of placement agencies in Hong Kong are systematically overcharging migrant domestic workers for their services and in doing so, violating Hong Kong law. This occurs not only during the migrant domestic worker's first migration to Hong Kong but also in the process of finding new employment. As outlined above, when a migrant domestic worker's contract is terminated, the Two-Week Rule means that they must either find new employment and an approved work visa within the two weeks or leave the country (see section 14).

According to Elizabeth Tang, General Secretary of the International Domestic Workers Federation (IDWF):

“Migrant domestic workers who have been terminated by their employer are especially vulnerable to being charged illegal fees by Hong Kong agencies. The agencies know that the women are desperate to find new employment so they take full advantage of this.”¹⁵¹

It is not uncommon for placement agencies to send Filipino migrant domestic workers to Macau where they have to wait until their work visa for new employment has been arranged. Placement agencies in Hong Kong take advantage of this situation and once again charge illegal agency fees in violation of Hong Kong's 10% maximum commission law to facilitate new employment for Filipino migrant domestic workers. These fees are not shared with recruitment agencies in the Philippines and can include charges for transportation, accommodation and food in Macau as a means to inflate and disguise agency fees (see Figure 8).

PLU interviewed 24 women who went to Macau after their contract expired or was terminated and found that the total cost of securing a new job was HK\$6,851 (US\$883). Of this, HK\$5,778 (US\$745) was charged in agency fees and the average waiting period was 5 weeks. On average, the migrant domestic worker interviewees who went to Macau paid placement agencies more than ten times the legally permitted maximum of 10% of their salary for the first month in agency fees alone.

The main reason given by interviewees for opting for Macau, instead of returning to the Philippines, was that the process for new employment was quicker and cheaper. This was supported by the research findings. PLU interviewed five women who had returned to the Philippines to wait for their work visa. They waited on average about 9 weeks and paid an average of HK\$8,976 (US\$1,156) in agency fees.

The vast majority (18 out of 24) paid part or all of the fees upfront with money from their personal savings. The remaining amount was paid for through loans and taken through salary deductions in the initial months of the new job.

Delia, a 39-year-old woman from Oriental Mindoro, explained the costs involved in finding new employment:

“The placement agency sent me to Macau where I was for one month. I had to pay them HK\$9,000 [US\$1,600] in agency fee. I paid them HK\$2,000 [US\$258] from my savings before leaving Hong Kong and HK\$7,000 [US\$902] after I started my new job through salary deductions. When I returned to Hong Kong, the agency took my passport and told me that they would return it to me only after I had fully paid off the agency fee.”¹⁵²

Carey, a 39-year-old woman from Nueva Vizcaya, spent 18 days in Macau while her work visa was being processed. She outlined her expenses:

“My agency charged me HK\$10,800 [US\$1,392] – HK\$8,800 [US\$1,134] was for the agency fee including interest. I also had to pay HK\$2,000 [US\$258] for accommodation and food. I paid HK\$2,000 [US\$258] upfront and the rest in salary deductions over four months.”¹⁵³

When Carey first approached the placement agency, they informed her that she would have to pay HK\$10,000 (US\$1,289). She did not know until the process had already started that she would also have to pay HK\$800 (US\$103) in interest.

Carey's situation is not unusual. Six other interviewees told the PLU that the agency fee for finding new employment was higher than what their placement agency initially told them.

Hong Kong placement agency fees for Macau exit

Two placement agencies agreed to assist PLU researchers, posing as migrant domestic workers who had been terminated and were looking for new employment, in renewing their work visa via Macau. Agency #1 is clearly in violation of the 10% maximum commission law, while agency #2 indicates costs that are inflated, possibly to disguise agency fees. Furthermore, migrant domestic workers are normally required by both HKSAR and Philippine authorities to return to their home country when applying for a work visa.¹⁵⁴

Two placement agencies specifically explained to the PLU migrant domestic worker that the fees were for transportation, accommodation and/or food. These ancillary charges are not only illegal, but are inflated. Monthly estimates from migrant domestic workers, who exited to Macau for new employment, are HK\$700 (US\$90) for accommodation and HK\$1,000 (US\$129) for food.

Agency #1 in Tsuen Wan

Domestic worker: “I'm looking for a job.”

Agency staff: “Finish or terminated?”

Domestic worker: “I just want to ask how much it would cost me?”

Agency staff: “Maybe HK\$5,000 [US\$644] cash. No deductions.”

Domestic worker: “HK\$5,000 [US\$644] cash? Does that include a free boarding house [in Macau]?”

Agency staff: “No, not including the boarding house.”

Domestic worker: “Oh. Not included. So the HK\$5,000 [US\$644] is just for the agency fee?”

Agency staff: “Yes.”¹⁵⁵

Agency #2 in Central

Domestic worker: “How about if I choose to exit to Macau?”

Agency staff: The rate would be HK\$5,200 [US\$670] for Macau. HK\$4,800 [US\$619], which will be for your boarding house and food for two months.”

Domestic worker: “Same rate applies to the Philippines exit right?”

Agency staff: “And the 10% is HK\$420 [US\$54], it makes HK\$5,220 [US\$673]. You have no problem if you exit to Macau [...] all the processing will be done by the agency [...] all like PDOS, OWWA, OEC [Overseas Employment Certificate] application, but you need to pay HK\$4,800 [US\$619].”¹⁵⁶

Figure 8: Covert recordings on placement agency fees for Macau exit

151 PLU interview with Elizabeth Tang in Hong Kong on 29 June 2016.

152 PLU interview with Delia in Hong Kong on 4 October 2015.

153 PLU interview with Carey in Hong Kong on 24 January 2016.

154 Information provided by the HKSAR Immigration Department on 10 August 2016 and the Philippine Consulate General Hong Kong on 23 March 2016.

155 Recorded on 3 March 2016.

156 Recorded on 6 March 2016.

A total of 19 interviewees paid their placement agency for accommodation. Nearly half felt that the living conditions in the accommodation were bad or extremely bad. Lily described the living conditions in the boarding house where the agency had placed her:

“It was like living in a squat. There were 20 of us – all sharing one bedroom and one toilet. We slept on a hard bed with no mattress. It was overcrowded and crawling with bed bugs!”¹⁵⁷

Angela, a 59-year-old woman from Iloilo, also experienced overcrowded conditions:

“There were 30 migrant domestic workers, including me, in the boarding house. We had to sleep on the floor sideways because there wasn’t enough space for us all. We also had only one bathroom.”¹⁵⁸

Moreover, 13 interviewees stated that their agency ran the accommodation facility, including having a staff regularly visit them or live with them. A further nine interviewees were not able to leave the accommodation when they wanted to. This included having an evening curfew or in the case of Jode, a 38-year-old woman from Nueva Vizcaya, more stringent restrictions:

“The caretaker in the accommodation who works for the agency didn’t allow us to leave the accommodation. She was afraid that we would not come back. I was scared too because she kept my passport so I did what she said.”¹⁵⁹

Similar restrictions were placed on Isabel, a 32-year-old woman from Pangasinan:

“The agency staff confiscated my passport right after I arrived at the Macau Ferry Terminal. The agency kept it until the day I returned to Hong Kong. The staff told me this was done because some migrant domestic workers apply to other jobs in Macau.”¹⁶⁰

This is consistent with Nene’s account:

“The agency confiscated my passport the day after I arrived in Macau. When I asked for it back, they refused saying that it was to prevent us from running away and finding a job in Macau. I was scared to complain because I was afraid that they wouldn’t process my papers. The agency held my passport for 21 days – until I had to return to Hong Kong.”¹⁶¹

In this way, the Two-Week Rule provides a new opportunity for Hong Kong placement agencies to exploit migrant domestic workers and charge agencies fees well beyond those permitted under Hong Kong law.

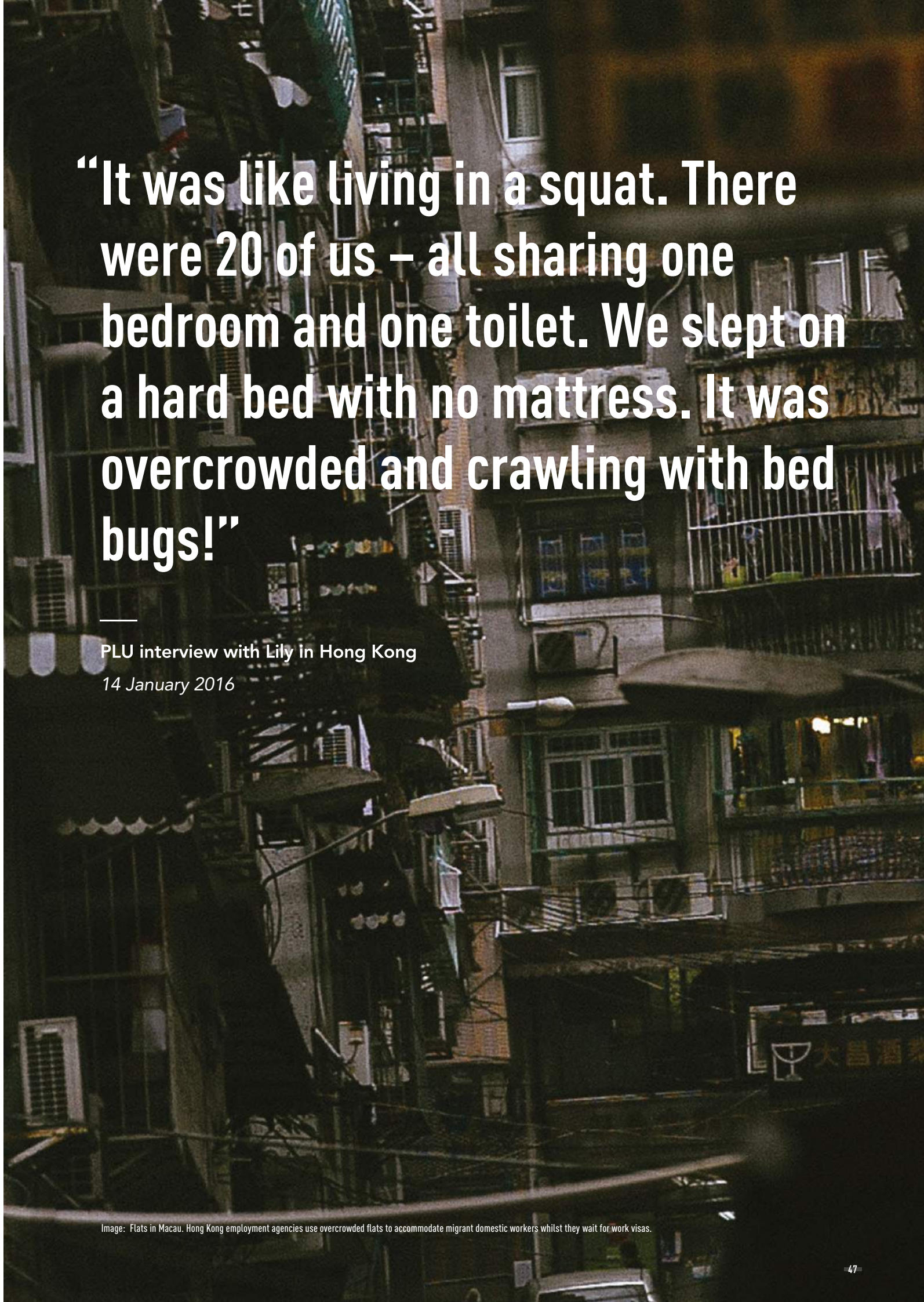
157 PLU interview with Lily in Hong Kong on 14 January 2016.

158 PLU interview with Angela in Macau on 29 November 2015.

159 PLU interview with Jode in Hong Kong on 11 October 2015.

160 PLU interview with Isabel in Hong Kong on 20 February 2016.

161 PLU interview with Nene in Hong Kong on 24 January 2016.



“It was like living in a squat. There were 20 of us – all sharing one bedroom and one toilet. We slept on a hard bed with no mattress. It was overcrowded and crawling with bed bugs!”

PLU interview with Lily in Hong Kong
14 January 2016

Image: Flats in Macau. Hong Kong employment agencies use overcrowded flats to accommodate migrant domestic workers whilst they wait for work visas.

16 Failure of the HKSAR government to provide adequate legal protection to migrant domestic workers

Filipino migrant domestic workers who have been overcharged by placement agencies can file a complaint with the Employment Agencies Administration (EAA), which is part of the Labour Department. The EAA is responsible for investigating complaints, as well as for licensing, inspections and generally ensuring agencies' compliance with Hong Kong law. Under Hong Kong law,¹⁶² agencies which overcharge are subject to a maximum fine of HK\$50,000 (US\$6,443). Furthermore, if there is just cause, the Labour Commissioner has the power to refuse to renew or revoke the licence of a placement agency.

Despite the overwhelming evidence that a significant number of placement agencies are systematically charging migrant domestic workers agency fees well in excess of the legal maximum (10% of their first month's salary), very few have been charged and prosecuted for this offence.

Although the Labour Department met its increased annual inspection target of 1,800 inspections in both 2014 and 2015, it only secured 16 convictions in these two years (10 of which were for overcharging). Agencies convicted of overcharging or unlicensed operation were fined from HK\$1,500 to HK\$45,000 (US\$193 to US\$5,800).¹⁶³

The small number of convictions is not surprising given that the Two-Week Rule means that migrant domestic workers who wish to report violations of their employment rights are likely to find themselves without work and remain significantly indebted.

If migrant domestic workers do wish to bring a case against their employer for unpaid wages, denial of rest days, etc., the first step is normally a conciliation meeting with the employer held at the HKSAR Labour Department, which is presided over by a labour officer. If the claim is not settled, the workers then can take their case to the Labour Tribunal.

Even where women are willing to leave their job and file a complaint, the process of accessing justice is often prohibitively expensive, as explained by Holly Allan, Executive Director of Helpers for Domestic Helpers (HDH):

*"Where migrant domestic workers leave their job as a result of abuse or poor working conditions and file a complaint, they are hindered from accessing justice due to financial constraints. Cases can take months if not years to be resolved and they are not legally permitted to take up employment while pursuing claims or engaged in litigation, which means they cannot afford the fees to extend their stay in Hong Kong and living expenses such as food and accommodation. Consequently, many migrant domestic workers are forced to abandon their case or accept unfavourable settlement at the conciliation stage."*¹⁶⁴

The latter issue was highlighted in a joint report submitted to the ILO in 2014 by the HKCTU and FADWU. The report addressed the obstacles faced by migrant workers when filing a case with the Labour Department, specifically at the Labour Tribunal (LT) and the Minor Employment Claims Adjudication Board (MECAB):

*"The presiding officer at LT and MECAB usually urge upon the claimants for settlements. For migrant workers, the percentage of workers not to continue to pursue the case until it can be concluded is certainly much higher than locals, considering that negotiation for settlement depends on the degree to which they have sound legal knowledge and the burden of prolonged stay in Hong Kong. Workers cannot support the travel back and forth between their homeland and Hong Kong to pursue the case. Therefore, they also usually cannot be the witness of the Labour Department to charge an employer for legal violations such as underpayment."*¹⁶⁵

Consequently, the overwhelming majority of migrant domestic workers settle during the conciliation process. In 2015, the Labour Department handled 1,449 employment claims involving migrant domestic workers. Of these claims, about 70% were settled through the conciliation service.¹⁶⁶

Furthermore, in 2015, a total of just 15 migrant domestic workers agreed to act as a prosecution witness in their cases. Out of these 15, four migrant domestic workers withdrew their consent after settling their civil claims or failed to establish contact with the Labour Department. Among the other 11 cases, five on wage offences were dismissed by the court after trial and the remaining six are pending.¹⁶⁷

In view of the above, it is not surprising that various inter-governmental bodies have repeatedly urged the HKSAR government to take action to address these issues and ensure proper protection of migrant domestic workers. For example, in its 2014 review of Hong Kong, the UN Committee on the Elimination of Discrimination against Women expressed its concerns about the "abuse by recruitment and placement agencies, which charge exorbitant fees and sometimes confiscate travel documents" and called on the HKSAR government "to strengthen its mechanisms to protect foreign women domestic workers from discrimination and abuse by employers and recruitment and placement agencies."¹⁶⁸

In 2014, the UN Committee on Economic, Social and Cultural Rights recommended that the HKSAR government "provide effective mechanisms for reporting abuse and exploitation" and "establish an inspection mechanism for monitoring the conditions of work of domestic workers, in particular migrant workers".¹⁶⁹

162 HKSAR Legislative Council Secretariat, "Fact Sheet: Employment agencies placing foreign domestic helpers", File Ref.: FS30/12-13, 17 June 2013, paras3.2-3.3, available at: <http://www.legco.gov.hk/yr12-13/english/sec/library/1213fs30-e.pdf>, accessed 22 May 2016.

163 Information provided by the HKSAR Labour Department on 18 August 2016.

164 PLU interview with Holly Allan in Hong Kong on 22 June 2016.

165 HKCTU and FADWU, *Joint report on Hong Kong SAR of the People's Republic of China on the government's application of Migration for Employment Convention* (Revised), 1949 (No. 97) (Ratification: 1997), 31 Aug 2014, para46.

166 Information provided by the HKSAR Labour Department on 18 August 2016.

167 Information provided by the HKSAR Labour Department on 18 August 2016.

168 Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of China (Hong Kong)*, UN Doc. CEDAW/C/CHN/CO/7-8, 14 November 2014, paras64-65.

169 Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, UN Doc. E/C.12/CHN/CO/2, 13 June 2014, para43.

In 2015, the ILO Committee of Experts on the Application of Conventions and Standards reviewed HKSAR's application of the Migration for Employment Convention and noted that "migrant domestic workers continue to face difficulties in filing complaints, including to the Labour Department, due to the length of proceedings, language barriers, the live-in requirement and the 'two-week rule'". As such, the Committee requested the Government of HKSAR:

*"to take appropriate measures to strengthen the enforcement of the rights of foreign domestic workers under the Employment Ordinance and the SEC [standard contract of employment], and to ensure that migrant workers who have applied for an extension of their stay due to legal proceedings have access to effective and speedy dispute resolution, are able to complete the legal proceedings and obtain redress."*¹⁷⁰

In addition to the reforms proposed above, the HKSAR government also needs to introduce legislation, which specifically criminalises forced labour. Although the HKSAR government ratified ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930 in 1997, it still has not brought forward provisions, which clearly define the offence of forced labour in Hong Kong law and establish appropriate penalties. Without this, it will be difficult to effectively prosecute those who use forced labour and ensure there is a proper deterrent.

Similarly, HKSAR needs to introduce comprehensive anti-trafficking legislation, as the current law only prohibits trafficking for prostitution, not forced labour. The HKSAR government has claimed that there is no evidence of trafficking to the territory and that such crimes are a "rare occurrence",¹⁷¹ but the evidence provided in this report, along with previous reports from Amnesty International and Justice Centre clearly shows that both forced labour and trafficking are very significant problems in Hong Kong (see also the conclusion of the US State Department Trafficking in Persons report for 2016 in section 13).

The HKSAR government has stated that it is committed to providing "a level playing field for all immigrant workers vis-à-vis the local workforce"¹⁷² and has recently undertaken awareness raising initiatives relating to migrant domestic workers' rights. In April 2016, it started consulting on a draft Code of Practice for Employment Agencies through which it "aims to promote professionalism and quality services in the employment agencies industry". While this is a welcome initiative, it is unlikely that a voluntary Code of Practice will significantly change the current status quo given that many placement agencies are currently flouting the existing law with impunity.

170 ILO Committee of Experts on the Application of Conventions and Standards, *Observation (CEACR) - adopted 2014, published 104th ILC session (2015): Migration for Employment Convention (Revised), 1949 (No. 97) - China - Hong Kong Special Administrative Region (Ratification: 1997)*, 2015, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192071, accessed 23 May 2016.

171 HKSAR government, "Response to US report on Trafficking in Persons", Press Release, 27 July 2015, available at: <http://www.info.gov.hk/gia/general/201507/27/P201507271028.htm>, accessed 5 June 2016.

172 ILO Committee of Experts on the Application of Conventions and Standards, *Observation (CEACR) - adopted 2014, published 104th ILC session (2015): Migration for Employment Convention (Revised), 1949 (No. 97) - China - Hong Kong Special Administrative Region (Ratification: 1997)*, 2015, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192071, accessed 23 May 2016.

17 Conclusion and recommendations

Filipino migrant domestic workers provide essential services and make significant contributions to productivity, economic growth and human development in both Hong Kong and their own country.¹⁷³ In recent years, the governments of both the Philippines and HKSAR have taken some positive measures to try and better protect the rights of migrant domestic workers. Despite this, there is still inadequate monitoring, prosecution and punishment of recruitment and placement agencies in both the Philippines and Hong Kong, and this has allowed a significant number of these agencies to charge illegal fees with impunity.

Indebtedness due to excessive agency fees is a pivotal issue in terms of explaining why migrant domestic workers in Hong Kong remain vulnerable to human and labour rights abuses, including forced labour. Their situation is made worse by some of Hong Kong's immigration and labour regulations, particularly the Two-Week Rule and the live-in requirement, which make it extremely difficult for migrant domestic workers to leave abusive employers or to report incidences of exploitation and human rights violations to the authorities. In addition, there are some serious gaps in HKSAR's legal framework in relation to trafficking and forced labour.

In view of the above, the PLU makes the following recommendations.

To the Government of the Philippines:

- Fully enforce the no-placement fee policy.
- Strengthen the monitoring of recruitment agencies, in particular regarding fees, and sanction those who violate Philippine laws and regulations.
- Ensure that where violations are proven to have taken place, all appropriate recruitment agency personnel, including managers and directors, are held liable and thereby prevented from opening a new agency under a different name.
- Establish standard fees for skills training developed through tripartite (Government, recruitment agencies and trade unions) consultation.
- Ensure that migrant domestic workers with previous domestic work experience are specifically given the opportunity to take the TEDSA test without undergoing skills training.
- Oblige recruitment agencies to assess migrant workers' skills on arrival at the training centre to set a training period based on existing skills and needs, and reduce charges proportionately. Ensure that the training and assessment system is properly monitored in order to prevent abuse.
- Ensure that migrant domestic workers undergo no more than one medical exam in the Philippines, which is charged to the employer, in accordance with paragraph 8(i) of Hong Kong's standard employment contract.
- Oblige recruitment agencies to provide migrant domestic workers with a fully itemised receipt of their fees.
- Improve the quality of the Government's Post-arrival Orientation Seminar in Hong Kong (and other destinations) to include the input and participation of trade unions. Migrants should be informed of their rights and duties in the destination territories (particularly their right to retain possession of their personal identity and travel documents and employment contract); relevant contact details if problems should occur (e.g. agency staff, nearest Philippine embassy/consulate, local NGO or trade union); and details of how to access redress mechanisms in the country of destination and the Philippines.
- Adopt bilateral agreement or cooperation between the Philippine and Hong Kong governments on the regulation, monitoring and sanctioning of illegal or abusive recruitment practices and agencies.
- Ratify ILO Protocol of 2014 to the Forced Labour Convention, 1930 so that relevant illegal recruitment practices can also be punished as "forced labour" crimes.

“My agency charged me HK\$10,800 – HK\$8,800 was for the agency fee including interest. I also had to pay HK\$2,000 for accommodation and food.”

PLU interview with Carey in Hong Kong
24 January 2016

To the Government of Hong Kong SAR:

- Ensure that the Employment Agencies Administration (EAA) effectively monitors, investigates and punishes, including through criminal sanctions, placement agencies that charge illegal fees, confiscate contracts/identity documents or engage in any activity, which leads to or encourages violations of migrant domestic workers' labour rights. This should include cooperation with the police to gather evidence and, where appropriate, using covert surveillance as proscribed in the Interception of Communications and Surveillance Ordinance (Cap.589).
- Repeal the Two-Week Rule and allow migrant domestic workers to change employers. Ensure that they have sufficient time to secure a new job after a contract has been terminated.
- Repeal the live-in requirement so that migrant domestic workers are free to reach agreement with their employer or potential employer on whether to reside in the employing household and ensure that those living outside receive an adequate housing allowance.
- Include migrant domestic workers in the scope of the Minimum Wage Ordinance.
- Pass legislation, which clearly sets out maximum working hours, overtime payments and rest periods, and ensure that this is applicable to all sectors, including domestic work.
- Waive the costs of visa extensions for migrant domestic workers with a pending case in the labour or criminal court and allow them the right to work while their case is being pursued.
- Ensure that migrant domestic workers seeking compensation for human or labour rights abuses have effective access to support measures (e.g. sheltered accommodation and interpretation) throughout the process.
- Allow third parties, including trade unions, NGOs or individuals, to take a complaint for a labour violation to the Labour Tribunal on behalf of a migrant domestic worker.
- Pass specific legislation, which clearly defines and prohibits forced labour, with penalties that are adequate and strictly enforced, in accordance with article 25 of the ILO Convention No. 29 concerning Forced or Compulsory Labour (1930).
- Extend the People's Republic of China's ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) to Hong Kong SAR and fully implement its provisions into Hong Kong law.
- Provide trafficked migrant workers with appropriate support and a temporary residency permit allowing them to work.
- Ratify and fully implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Convention No.189 concerning Decent Work for Domestic Workers (2011), and the ILO Protocol of 2014 to the Forced Labour Convention, 1930.

173 ILO, "Making decent work a reality for migrant domestic workers", *Domestic Work Policy Brief No.9*, 17 December 2015, available at: http://www.ilo.org/global/topics/domestic-workers/publications/WCMS_436974/lang-en/index.htm, accessed 21 May 2016. See also: ILO, "Migrant Domestic Workers", available at: http://www.ilo.org/global/topics/domestic-workers/publications/WCMS_436974/lang-en/index.htm, accessed 21 May 2016.

Appendix 1 Sample interview questionnaire for Filipino migrant domestic workers

Name: _____ Year of birth: _____
Hometown: _____ Arrival in Hong Kong: _____
Last day of work: _____ Terminated by: _____
Mobile: _____ Email: _____
Date of interview: _____ Place of interview: _____

In the Philippines

1. What was the name of the agency?
2. Did you work as a migrant domestic worker before coming to HK? Yes / No
3. Did you undergo training before coming to HK? Yes / No. If so, for how long?
If not, what was the reason? Did you still have to pay for a training certificate? Yes / No
4. What were you charged in total to secure a job in Hong Kong (e.g. training, accommodation, certificate, etc.)?
5. Did the agency charge a fee? Yes / No. If so how much?
6. How did you pay for this? (a) Savings (b) loan from family/friends (c) loan from bank/money lender (d) advance from the agency.
7. Did you have to pay interest on the loan/advance? Yes / No. If so, how much?
8. How long did it take to repay the loan OR to earn back the amount you had paid in agency fees?
9. Were you properly informed about how much the agency fee, training, medical examination, etc. would cost? Yes / No
Did you receive an itemised receipt? Yes / No
10. Did you sign a written contract? Yes / No
11. Did you have enough time to read and properly understand the contract? Yes / No
12. Did the agency tell you that the terms and conditions of your work would be different to those stated in your contract?
Yes / No Did not receive contract
13. Did the agency tell you that you have to:
 - (a) accept wages below the Minimum Allowable Wage – Yes / No
 - (b) not complain about any bad treatment you receive – Yes / No
 - (c) work for multiple households/outside the household – Yes / No
 - (d) work on holidays and/or weekly rest days – Yes / No
14. Did the Filipino agency ask you to sign a waiver stating that you did not pay any fees to the agency? Yes / No

In Hong Kong

15. Were your wages or working conditions different to those stated in your contract? Yes / No. If so, how are they different?
16. In your last employment, were deductions made from your salary to pay agency fees? Yes / No
If not, what was your salary?
If so:
- During the deduction period, how much of your salary did you actually receive each month?
 - What is/was your monthly salary after the deduction period?
 - For how many months were deductions made from your salary to repay the agency fees (or if ongoing, for how many months will the deductions go on)?
 - Did you have to pay an agency fee in Hong Kong? Yes / No. If so how much was it?
 - What was the name of the agency you paid it to? How did you pay the agency?
 - Did you have to take out a “loan” in Hong Kong in order to pay an agency fee? Yes / No
17. Were you paid on time every month? Yes / No
18. How many hours do you work per day?
19. Do you get one rest day per week? Yes / No If so, was this a full 24 hours? Yes / No
20. Are you given a day off for all statutory holidays? Yes / No
21. Are you free to leave your employer's home during rest periods or days off? Yes / No
22. Has your employer or agent ever taken away your passport, identity documents or your contract? Yes / No.
If so:
- Who took the documents (specify employer or agency)?
 - Which documents?
 - Did you ask for them back? Yes / No
23. Does your employer try to stop you calling home or meeting other people
(e.g. friends, family or organisations that might provide you with advice and help)? Yes / No
24. Do you have your own room? Yes / No
25. Are you given enough to eat? Yes / No. If not, were you given food allowance? Yes / No
26. In general, how would you describe your working conditions in Hong Kong? (a) Extremely bad (b) Bad (c) OK (d) Good (e) Very good
27. Have you been threatened or punished by your employer or any member of the employer's household? Yes / No
28. Have you been sexually harassed or abused in your workplace? Yes / No
29. Was your job terminated before the end of your contract? Yes / No / N/A (terminated by worker)
30. Did you get the compensation you were entitled to when your contract was terminated early by the employer? Yes / No / N/A

31. Did you encounter difficulty retrieving your documents (passport, contract, etc.) after your contract finished or was terminated?
Yes / No /N/A
32. Did you complain to the placement agency or Philippines Consulate about your treatment? Yes / No.
If so, were they helpful in trying to resolve your problem? Yes / No
33. Did you complain to the Hong Kong authorities (e.g. Labour Department, police)? Yes / No.
If so, were they helpful in trying to resolve your problem? Yes / No

In Macau

34. Why did you not apply for new employment by returning to the Philippines?
35. What is the name and office location of the Hong Kong agency you used to find new employment?
36. Did your agency send you to Macau while waiting for your new job to be processed? Yes / No. If so, why did they send you?
- How long did the agency tell you that you would have to stay in Macau?
 - In reality, how long did you have to stay?
37. What were you actually charged in total to secure a new job?
What was the breakdown of the costs (accommodation, food, transportation, etc.)?
38. Did you have to pay an agency fee? Yes/No. If so, how much was the fee? Did you receive an itemised receipt? Yes / No
39. When did you have to pay the fees (may be multiple answers)?
(a) Before leaving HK; (b) in Macau/China; (d) when you returned to HK; (e) after starting work in the new job.
40. Was this total cost higher than what you were initially told by the agency? Yes / No.
If so, what did the agency initially say the cost would be?
41. How did you pay for this? (a) Savings (b) loan from family/friends (c) loan from bank/money lender (d) advance from the agency.
42. How much salary do you/will you receive in your new job (a) during the deduction period (b) after the deduction period.
43. If accommodation was included in the fees, how would you describe the living conditions of the accommodation in Macau?
(a) Extremely bad (b) Bad (c) OK (d) Good (e) Very good
44. Was the accommodation run by the agency? Yes / No.
Was an agency staff at the accommodation or did s/he visit the accommodation? Yes / No
45. If accommodation was included in the fees, how many migrant domestic workers were at the same accommodation?
46. If accommodation was included in the fees, did you have to share a room? Yes / No.
If so, with how many people in total (including interviewee)?
47. If food was included in the fees, were you given enough food? Yes / No / N/A
48. Were you able to leave the accommodation when you wanted to? Yes / No
49. Did your agency take away your passport or other identity documents? Yes / No

D. H. Contract No. A 000001

EMPLOYMENT CONTRACT
(For A Domestic Helper recruited from abroad)

This contract is made between
("the Employer", holder of Hong Kong Identity Card/Passport No.*) and
..... ("the Helper") on and
has the following terms:

1. The Helper's place of origin for the purpose of this contract is
2. (A)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Helper arrives in Hong Kong.
(B)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on, which is the date following the expiry of D.H. Contract No. for employment with the same employer.
(C)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Director of Immigration grants the Helper permission to remain in Hong Kong to begin employment under this contract.
3. The Helper shall work and reside in the Employer's residence at
4. (a) The Helper shall only perform domestic duties as per the attached Schedule of Accommodation and Domestic Duties for the Employer.
(b) The Helper shall not take up, and shall not be required by the Employer to take up, any other employment with any other person.
(c) The Employer and the Helper hereby acknowledge that Clause 4 (a) and (b) will form part of the conditions of stay to be imposed on the Helper by the Immigration Department upon the Helper's admission to work in Hong Kong under this contract. A breach of one or both of the said conditions of stay will render the Helper and/or any aider and abettor liable to criminal prosecution.
5. (a) The Employer shall pay the Helper wages of HK\$ per month. The amount of wages shall not be less than the minimum allowable wage announced by the Government of the Hong Kong Special Administrative Region and prevailing at the date of this contract. An employer who fails to pay the wages due under this employment contract shall be liable to criminal prosecution.
(b) The Employer shall provide the Helper with suitable and furnished accommodation as per the attached Schedule of Accommodation and Domestic Duties and food free of charge. If no food is provided, a food allowance of HK\$ a month shall be paid to the Helper.
(c) The Employer shall provide a receipt for payment of wages and food allowance and the Helper shall acknowledge receipt of the amount under his/her* signature.
6. The Helper shall be entitled to all rest days, statutory holidays, and paid annual leave as specified in the Employment Ordinance, Chapter 57.
7. (a) The Employer shall provide the Helper with free passage from his/her* place of origin to Hong Kong and on termination or expiry of this contract, free return passage to his/her* place of origin.
(b) A daily food and travelling allowance of HK\$100 per day shall be paid to the Helper from the date of his/her* departure from his/her* place of origin until the date of his/her* arrival at Hong Kong if the travelling is by the most direct route. The same payment shall be made when the Helper returns to his/her* place of origin upon expiry or termination of this contract.

8. The Employer shall be responsible for the following fees and expenses (if any) for the departure of the Helper from his/her place of origin and entry into Hong Kong:—
 - (i) medical examination fees;
 - (ii) authentication fees by the relevant Consulate;
 - (iii) visa fee;
 - (iv) insurance fee;
 - (v) administration fee or fee such as the Philippines Overseas Employment Administration fee, or other fees of similar nature imposed by the relevant government authorities; and
 - (vi) others:

In the event that the Helper has paid the above costs or fees, the Employer shall fully reimburse the Helper forthwith the amount so paid by the Helper upon demand and production of the corresponding receipts or documentary evidence of payment.

* Delete where inappropriate.
† Use either Clause 2A, 2B or 2C whichever is appropriate.

9. (a) In the event that the Helper is ill or suffers personal injury during the period of employment specified in Clause 2, except for the period during which the Helper leaves Hong Kong of his/her* own volition and for his/her* own personal purposes, the Employer shall provide free medical treatment to the Helper. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The Helper shall accept medical treatment provided by any registered medical practitioner.

(b) If the Helper suffers injury by accident or occupational disease arising out of and in the course of employment, the Employer shall make payment of compensation in accordance with the Employees' Compensation Ordinance, Chapter 282.

(c) In the event of a medical practitioner certifying that the Helper is unfit for further service, the Employer may subject to the statutory provisions of the relevant Ordinances terminate the employment and shall immediately take steps to repatriate the Helper to his/her* place of origin in accordance with Clause 7.

10. Either party may terminate this contract by giving one month's notice in writing or one month's wages in lieu of notice.

11. Notwithstanding Clause 10, either party may in writing terminate this contract without notice or payment in lieu in the circumstances permitted by the Employment Ordinance, Chapter 57.

12. In the event of termination of this contract, both the Employer and the Helper shall give the Director of Immigration notice in writing within seven days of the date of termination. A copy of the other party's written acknowledgement of the termination shall also be forwarded to the Director of Immigration.

13. Should both parties agree to enter into new contract upon expiry of the existing contract, the Helper shall, before any such further period commences and at the expense of the Employer, return to his/her* place of origin for a paid/unpaid* vacation of not less than seven days, unless prior approval for extension of stay in Hong Kong is given by the Director of Immigration.

14. In the event of the death of the Helper, the Employer shall pay the cost of transporting the Helper's remains and personal property from Hong Kong to his/her* place of origin.

15. Save for the following variations, any variation or addition to the terms of this contract (including the annexed Schedule of Accommodation and Domestic Duties) during its duration shall be void unless made with the prior consent of the Commissioner for Labour in Hong Kong:

(a) a variation of the period of employment stated in Clause 2 through an extension of the said period of not more than one month by mutual agreement and with prior approval obtained from the Director of Immigration;

(b) a variation of the Employer's residential address stated in Clause 3 upon notification in writing being given to the Director of Immigration, provided that the Helper shall continue to work and reside in the Employer's new residential address;

(c) a variation in the Schedule of Accommodation and Domestic Duties made in such manner as prescribed under item 6 of the Schedule of Accommodation and Domestic Duties; and

(d) a variation of item 4 of the Schedule of Accommodation and Domestic Duties in respect of driving of a motor vehicle, whether or not the vehicle belongs to the Employer, by the helper by mutual agreement in the form of an Addendum to the Schedule and with permission in writing given by the Director of Immigration for the Helper to perform the driving duties.

16. The above terms do not preclude the Helper from other entitlements under the Employment Ordinance, Chapter 57, the Employees' Compensation Ordinance, Chapter 282 and any other relevant Ordinances.

17. The Parties hereby declare that the Helper has been medically examined as to his/her fitness for employment as a domestic helper and his/her medical certificate has been produced for inspection by the Employer.

Signed by the Employer _____
(Signature of Employer)

in the presence of _____
(Name of Witness) (Signature of Witness)

Signed by the Helper _____
(Signature of Helper)

in the presence of _____
(Name of Witness) (Signature of Witness)

* Delete where inappropriate.

SCHEDULE OF ACCOMMODATION AND DOMESTIC DUTIES

1. Both the Employer and the Helper should sign to acknowledge that they have read and agreed to the contents of this Schedule, and to confirm their consent for the Immigration Department and other relevant government authorities to collect and use the information contained in this Schedule in accordance with the provisions of the Personal Data (Privacy) Ordinance.

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

A. Approximate size of flat/house square feet/square metres*

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

..... adult minors (aged between 5 to 18) minors (aged below 5) expecting babies.

..... persons in the household requiring constant care or attention (excluding infants).

(Note: Number of Helpers currently employed by the Employer to serve the household)

3. Accommodation and facilities to be provided to the Helper

A. Accommodation to the Helper

While the average flat size in Hong Kong is relatively small and the availability of separate servant room is not common, the Employer should provide the Helper suitable accommodation and with reasonable privacy. Examples of unsuitable accommodation are: The Helper having to sleep on made-do beds in the corridor with little privacy and sharing a room with an adult/teenager of the opposite sex.

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

No. Sleeping arrangement for the Helper:

Share a room with child/children aged

Separate partitioned area of square feet/square metres*

Others. Please describe

.....

.....

B. Facilities to be provided to the Helper:

(Note: Application for entry visa will normally not be approved if the essential facilities from item (a) to (f) are not provided free.)

(a) Light and water supply Yes No

(b) Toilet and bathing facilities Yes No

(c) Bed Yes No

(d) Blankets or quilt Yes No

(e) Pillows Yes No

(f) Wardrobe Yes No

(g) Refrigerator Yes No

(h) Desk Yes No

(i) Other facilities (Please specify) _____

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

5. Domestic duties include the duties listed below.

Major portion of domestic duties:—

1. Household chores

2. Cooking

3. Looking after aged persons in the household (constant care or attention is required/not required*)

4. Baby-sitting

5. Child-minding

6. Others (please specify)

.....

6. The Employer shall inform the Helper and the Director of Immigration of any substantial changes in item 2, 3 and 5 by serving a copy of the Revised Schedule of Accommodation and Domestic Duties (ID 407G) signed by both the Employer and the Helper to the Director of Immigration for record.

Employer's name and signature

Date

Helper's name and signature

Date

* delete where inappropriate

tick as appropriate

Appendix 3

Map of the Philippines



Map of Hong Kong



Map of Macau



We would like to thank the following people who contributed to this report.

Helpers for Domestic Helpers, HER Fund, Claire Hobden (ILO), Hong Kong Confederation of Trade Unions, International Federation of Domestic Workers, Lee Cheuk Yan (Labour Party), Oxfam Hong Kong, Rex Varona (Migrant Forum in Asia).

Design and layout by Wai Chan (reformer).

Translations by Norma Wong (Chinese) and Hansley Juliano (Tagalog).

We would especially like to thank all the migrant domestic workers who agreed to be interviewed for the report, who generously shared their time and experiences with us.

Without them, this report would not have been possible.

About

Hong Kong Federation of Asian Domestic Workers Unions (FADWU)

FADWU is the only registered trade union federation of domestic workers in Hong Kong organizing local and migrant domestic workers. It is an affiliate of Hong Kong Confederation of Trade Unions (HKCTU) and International Domestic Workers Federation (IDWF). Its current affiliates include Hong Kong Domestic Workers General Union (HKDWGU), Thai Migrant Workers Union in Hong Kong (TMWU), Union of Nepalese Domestic Workers in Hong Kong (UNDW), Overseas Domestic Workers Union (ODWU), and Progressive Labor Union of Domestic Workers in Hong Kong (PLU). It currently has 1,200 paying members via its affiliates.

Contact

Address: 19/F, Wing Wong Comm, Bldg., 557-559 Nathan Road, Kowloon, Hong Kong

Tel: +852 2770 8668 **Fax:** +852 2770 7388

Email: fadwu.hk@gmail.com

Progressive Labor Union of Domestic Workers Hong Kong (PLU)

PLU is a trade union of migrant domestic workers in Hong Kong. It was established 27 April 2012 and is registered at the Registry of Trade Unions in Hong Kong (TU/1247). PLU is affiliated with SENTRO ng mga Nagkakaisa at Progresibong Manggagawa (Phils.), Hong Kong Federation of Asian Domestic Workers Unions (FADWU), Coalition of Migrants Rights (CMR), as well as having indirect affiliation to Hong Kong Confederation of Trade Unions (HKCTU) and the International Domestic Workers Federation (IDWF).

The PLU's objective is to promote and uphold the rights and welfare of all domestic workers in Hong Kong. It does this through programmes and services focused on organizing workers, education, capacity building/activities, policy advocacy and campaigns, mobilization and legal assistance/services.

Contact

Address: Rm 06, 16/F, Man Yuen bldg., 1-8 Man Yuen Street, Yau Ma Tei, Kowloon, Hong Kong

Tel: +852 6674 0696