Agents of Change?

Assessing Hong Kong employment agencies' compliance with the Code of Practice

Content

This report was produced with the technical and financial support of the International Labour Organization (ILO). The responsibility for opinions expressed in studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Credits

Design by TGIF

Translation by Norma Wong

Production by Rights Exposure

Foreword

This research project was designed by the Executive Committee of the Federation of Asian Domestic Workers Unions (FADWU). The Executive Committee initiated the project and identified the research objectives for assessing the impact of the Code of Practice for Employment Agencies.

The research was conducted over a nine-month period in 2017 and 2018 by two teams from the Progress Labor Union of Domestic Worker (PLU), an affiliate of FADWU, and its partner, Komunitas Buruh Migran – Hong Kong (KOBUMI-HK). In addition, a media team gathered evidence of the practices employed by employment agencies in Hong Kong using undercover filming.

The use of participatory methodology in this project recognises the agency of migrant domestic workers to identify and prioritise the human and labour rights abuses, which 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.

Acknowledgements

FADWU would like to thank the following people and organisations for their support in producing this report:

KOBUMI-HK
Oak Foundation
Oxfam Hong Kong

Special thanks is due to the following organisations for their technical and logistical support:

Hong Kong Confederation of Trade Unions (HKCTU) [1]
International Labour Organization (ILO) [2]
Rights Exposure [3]

1 The Hong Kong Confederation of Trade Unions was founded in July 1990. It consists of more than 90 affiliates and represents more than 170,000 members. HKCTU is independent from any regime, political party or consortium (http://www.hkctu.org.hk/cms/index.jsp).

2 The International Labour Organization is a tripartite UN agency bringing together governments, employers and workers of 187 member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men (http://www.ilo.org).

3 Rights Exposure is an award-winning international human rights consultancy providing solutions for positive social change. Founded in 2014 by a team of human rights and communication professionals, it offers a range of consultancy services to NGOs, IGOs, governments, trade unions, communities and social enterprises (https://www.rightsexposure.org).

About the Organisations

Hong Kong Federation of Asian Domestic Workers Unions (FADWU)

FADWU is the only registered trade union federation of domestic workers in Hong Kong organising local and migrant domestic workers. It is an affiliate of the Hong Kong Confederation of Trade Unions (HKCTU) and International Domestic Workers Federation (IDWF). Its current affiliates include the 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.

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)

The PLU is a trade union of migrant domestic workers in Hong Kong. It was established on 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 (Philippines), the Hong Kong Federation of Asian Domestic Workers Unions (FADWU), Coalition of Migrants Rights (CMR), as well as having indirect affiliation to the 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 organising workers, education, capacity building activities, policy advocacy and campaigns, mobilisation, and legal assistance/services.

Address
Rm 06, 16/F, Man Yuen bldg., 1-8 Man Yuen Street, Yau Ma Tei, Kowloon, Hong Kong
Tel +852 6674 0696
Email pludw.hk@gmail.com

Komunitas Buruh Migran – Hong Kong (Migrant Workers Community, KOBUMI-HK)

KOBUMI-HK was established in November 2014. As a trade union with predominantly Indonesian membership, KOBUMI-HK organises migrant workers in Hong Kong, as well as family members of migrant workers in Indonesia.

KOBUMI-HK's key objective is to increase the capacity of its members to represent and work on behalf of migrant workers. Its activities include collective bargaining, influencing policy, disseminating information on migrant workers' rights, conducting relevant research, and working with other organisation to further the interests and welfare of migrant workers.

Tel +852 5135 9673
Email infokobumi@gmail.com

1. Introduction

There are 67 million domestic workers over the age of 15 worldwide, 11 million of which are migrants. Thirty-five per cent of the world's migrant domestic workers work in Asia and the Pacific.[4] Hong Kong is a major employment destination for migrant domestic workers, who are locally referred to as "foreign domestic helpers" (FDHs). As of April 2018, there were nearly 380,000 migrant domestic workers officially employed in Hong Kong, accounting for 9% of Hong Kong's total working population.[5] Filipinos and Indonesians make up the vast majority of the migrant domestic worker population in Hong Kong – in the 2016, they totalled 186,282 and 151,754 respectively.[6]

It is standard practice for migrant domestic workers from the Philippines and Indonesia to go through recruitment agencies in their countries of origin to find work in Hong Kong. These recruitment agencies generally have a direct relationship with Hong Kong employment agencies, which arrange the placement of the workers in jobs in Hong Kong. Over the last five years, a number of substantive research reports have documented that many Hong Kong employment agencies, along with their counterpart recruitment agencies in the countries of origin, have been engaged in exploitative and illegal practices in the recruitment and placement of migrant workers.[7]

4 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.

5 HKSAR, "Gov't fighting people trafficking", 27 April 2018, available at: https://www.news.gov.hk/eng/2018/04/20180427/20180427_121234_067.html, accessed 21 May 2018.

6 HKSAR Census and Statistics Department, "Foreign domestic helpers by nationality and sex", available at: https://www.censtatd.gov.hk/hkstat/sub/gender/labour_force/, accessed 21 May 2018.

Thirty-five per cent of the world's migrant domestic workers work in Asia and the Pacific.

The most recent of these reports, *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), was based on interviews with 68 Filipino domestic workers in Hong Kong and Macau. It found that in the great majority of cases, the fees charged to Filipino migrant domestic workers by employment agencies in the Philippines and Hong Kong continued to be far in excess of the legally permitted maximum in the respective territories.

The report also documented exploitative terms and conditions of work with the majority of interviewees stating that: they did not receive a full day's rest each week; they were not free to leave their employer's home during their time off; their working conditions were either bad or extremely bad; and that they had been threatened or punished by a member of the employing household. In a significant number of cases, the Hong Kong employment agencies were either directly or indirectly complicit in their exploitation. The report concluded that inadequate measures had been taken by the Philippine and Hong Kong governments to protect migrant domestic workers from abuse and exploitation.[8]

7 See: Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, November 2013 (AI Index: ASA 17/029/2013); Alliance of Progressive Labor in the Philippines (APL), Alliance of Progressive Labor – Hong Kong (APL-HK) and Progressive Labor Union of Domestic Workers in Hong Kong (PLU), *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, 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 12 March 2018; Hong Kong Federation of Asian Domestic Workers Unions (FADWU), *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, available at: http://www.rightsexposure.org/between-a-rock-and-hard-place, accessed 12 March 2018; and 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.

8 FADWU, 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, available at: http://www.rightsexposure.org/between-a-rock-and-hard-place, accessed 12 March 2018.

The HKSAR Labour Department has recently taken action to try and address the issues identified in *Between a Rock and a Hard Place* and other reports. In April 2016, it published a draft Code of Practice for Employment Agencies (CoP) [9] and undertook consultation on the proposed text with stakeholders over the following three months.

In January 2017, the Labour Department introduced the new Code of Practice. The CoP underlines the existing statutory requirements, which employment agencies in Hong Kong must comply with (e.g. under the Employment Ordinance, Employment Agency Regulations, Immigration Ordinance and Personal Data (Privacy) Ordinance), but it also sets out minimum standards, which employment agencies need to meet in relation to the following key areas:

- 3.5 Fees that may be charged by employment agencies
- 3.8 Adopting fair trade practices
- 3.9 Observing immigration laws
- 3.10 Not to aid or abet employers to breach the Employment Ordinance on payment of wages
- 3.11 Personal documents and property of job-seekers
- 4.4 Acting honestly and exercising due diligence
- 4.5 Maintaining transparency in business operations
- 4.6 Drawing up service agreements with job-seekers and with employers
- 4.7 Provision of payment receipts
- 4.10 Promoting job-seekers and employers' awareness of their rights and obligations
- 4.12 Avoiding involvement in financial affairs of job-seekers
- 4.13 Job-seekers' passports or personal identification documents

9 HKSAR Labour Department, *Code of Practice for Employment Agencies*, February 2018, available at: http://www.eaa.labour.gov.hk/_res/pdf/CoP_Eng.pdf, accessed 12 March 2018.

If fully implemented, the CoP would help to reduce the human and labour rights violations currently suffered by migrant domestic workers. However, non-compliance by employment agencies with the minimum standards set out in the CoP would not lead to any criminal liability. Despite this, the Commissioner for Labour has made clear that all employment agencies are expected to implement them and that their compliance with the provisions in the CoP would be "one of the important factors that the Commissioner will take into account when assessing if the licensee is a fit and proper person to operate an EA [employment agency]". [10]

As of April 2018, there were nearly 380,000 migrant domestic workers officially employed in Hong Kong, accounting for 9% of Hong Kong's total working population.

10 HKSAR, "Code of Practice for Employment Agencies promulgated", 13 January 2017, available at: http://www.info.gov.hk/gia/general/201701/13/P2017011300300.htm, accessed 12 March 2018.

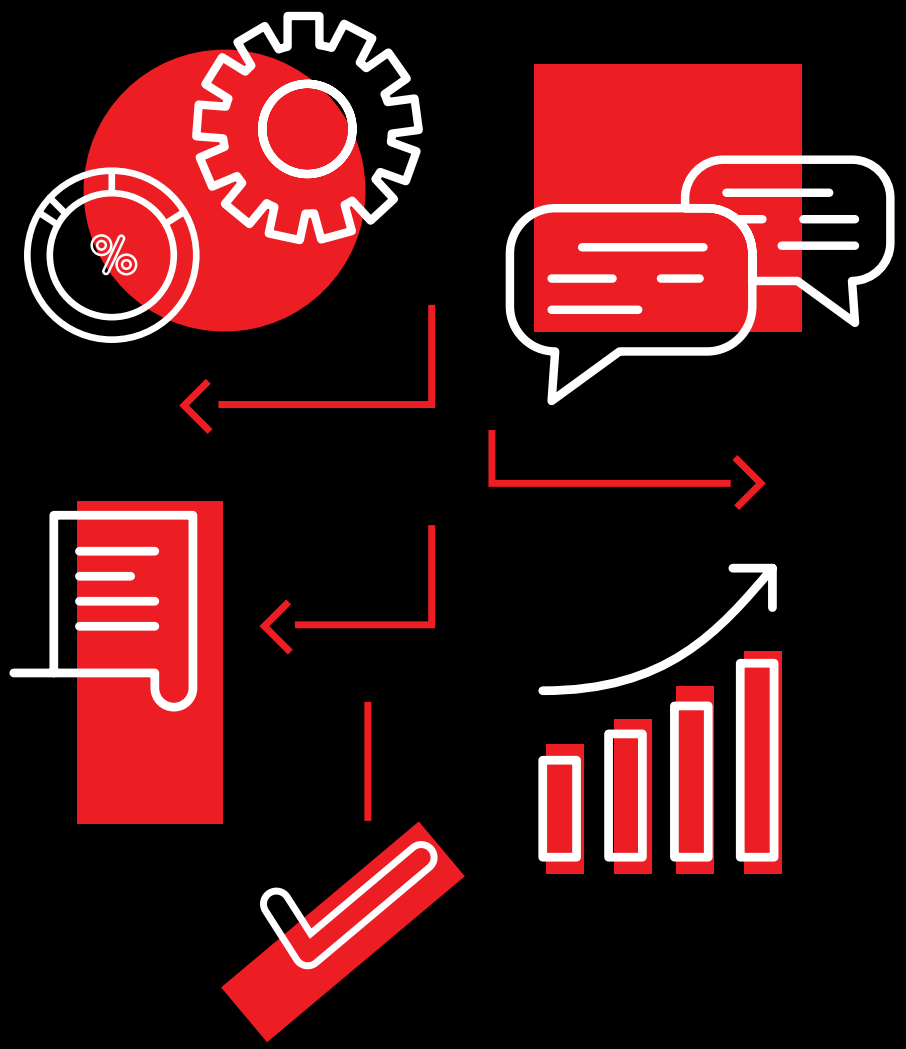
In January 2017, the Labour Department introduced the new Code of Practice. The CoP underlines the existing statutory requirements, which employment agencies in Hong Kong must comply with but it also sets out minimum standards, which employment agencies need to meet.

Furthermore, when the draft CoP was published, the Labour Department stated that it would "closely monitor the effectiveness of the CoP" and "In case the CoP could not achieve its objective, LD [Labour Department] may consider adopting other means including, inter alia, seeking legislative amendments to EO [Employment Ordinance] and/or EAR [Employment Agency Regulation] to suitably regulate the industry".[11]

In view of the above, the current research was undertaken to examine whether employment agencies in Hong Kong are complying with the standards set out in the CoP and whether the CoP has contributed to improved protection of migrant domestic workers' rights.

11 HKSAR Labour Department, Draft Code of Practice for Employment Agencies, para1.9, available at: https://www.gov.hk/en/theme/bf/consultation/pdf/10125A_consultation_paper.pdf, accessed 18 April 2018.

2. Methodology



In order to evaluate the degree to which employment agencies are complying with the CoP, the Hong Kong Federation of Asian Domestic Workers Unions (FADWU) and KOBUMI-HK Migrant Workers Community, whose membership is predominantly Indonesian, carried out structured interviews with 452 migrant domestic workers – 381 from the Philippines and 71 from Indonesia. These two nationalities were chosen because they make up the vast majority of the migrant domestic worker population in Hong Kong. All interviewees were women and their ages ranged from 22 to 60. The focus on two nationalities and the specific geographic area in which interviews were conducted (see below) mean that there are some limitations on extrapolating from the findings of the quantitative data collection and analysis.

Interviews were conducted between July 2017 and March 2018. Only migrant domestic workers who either started the recruitment process to Hong Kong after March 2017, or were in Hong Kong and in the process of changing employers via a Hong Kong-based employment agency since that date, were interviewed. This ensured that interviewees were sharing their experiences of the placement process after the CoP was operational.

Interviews took place in Hong Kong Island, Kowloon and the New Territories[12] where interviewees were approached in public spaces where migrant domestic workers often congregate (e.g. parks, restaurants, churches, outside schools), as well as through social media, personal contacts and referrals. There are limitations to this sampling methodology, as researchers did not have access to migrant domestic workers who may be prevented from having a day off, were

12 Interviews took place in the following districts: Central and Western; Eastern; Islands; Kowloon City; Kwai Tsing; Kwun Tong; Sai Kung; Sham Shui Po; Shatin; Southern; Tai Po; Tsuen Wan; Tuen Mun; Wan Chai; Wong Tai Sin; Yau Tsim Mong; and Yuen Long.

afraid to be interviewed and/or did not go to the places where other migrant domestic workers generally meet.

Interview questions with migrant domestic workers (see Appendix 1 for the full list of interview questions) focused on the application of provisions in the CoP, which addresses the main issues that have either directly or indirectly led to the violation of migrant domestic workers' human and labour rights, as documented over the last five years (e.g. illegal agency fees and confiscation of identity documents).[13]

Interviewees named 151 different registered Hong Kong employment agencies, which is the equivalent to more than 10% of the total number of registered agencies providing placement services for migrant domestic workers in Hong Kong.

Throughout the report, different numbers of interviewees have been recorded as responding to particular questions. This is due to the fact that 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.

13 See: Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, November 2013 (AI Index: ASA 17/029/2013); 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, 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 12 March 2018; FADWU, *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, available at: http://www.rightsexposure.org/between-a-rock-and-hard-place, accessed 12 March 2018; and 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.

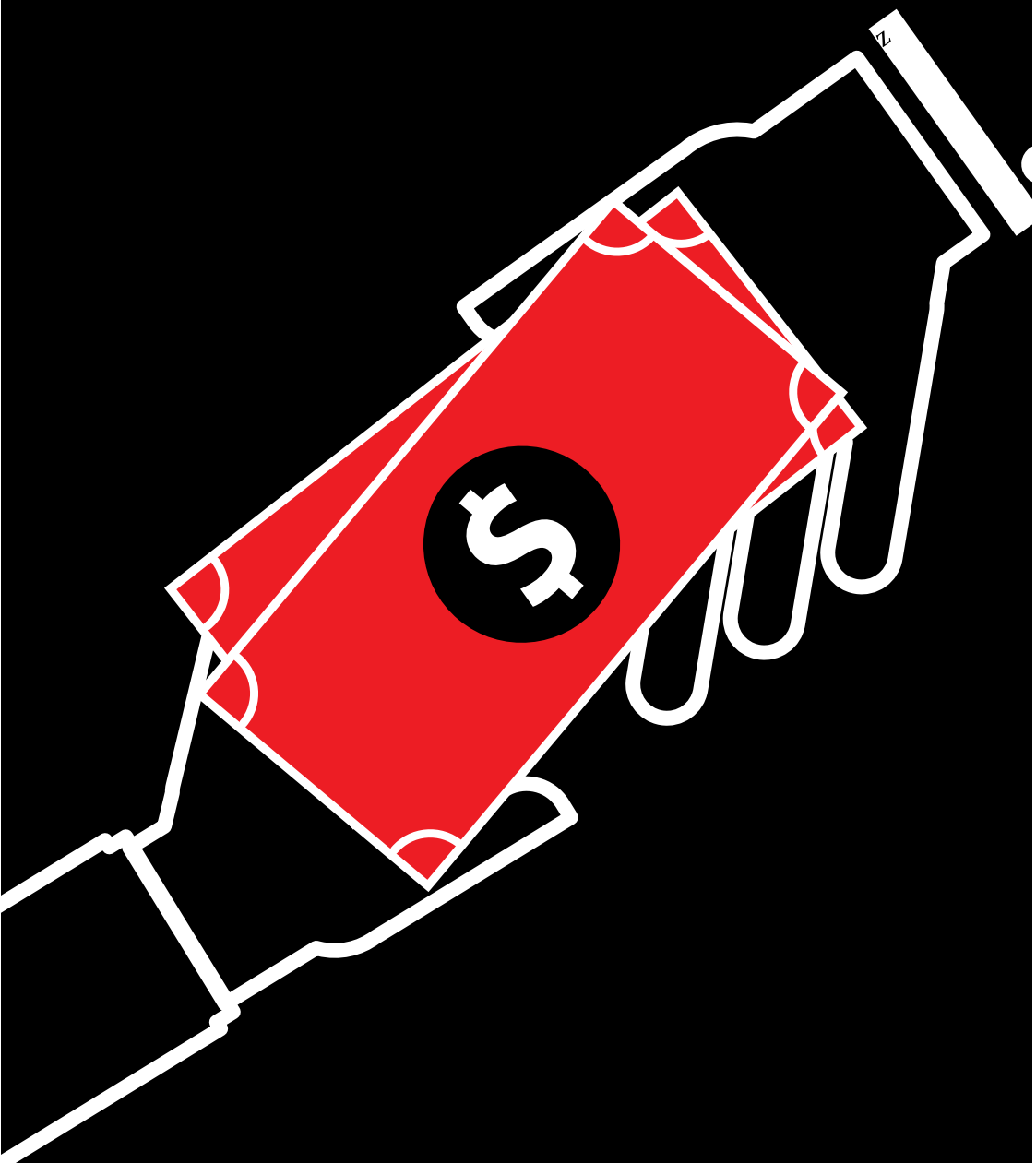
The main findings from the interviews in respect of employment agencies' compliance with the CoP are set out in chapter 3 of this report. Each sub-chapter in chapter 3 corresponds to the relevant section of the CoP being examined. Analysis of the survey results is provided in chapter 4.

To supplement the research, the FADWU Media Team conducted a series of undercover video and audio recordings at 18 different employment agencies in Hong Kong between November 2017 and March 2018. The agencies were chosen by reviewing survey responses and selecting those that interviewees had indicated were violating one or more parts of the CoP regarding fees and finances. During the visits to the employment agencies, members of the Media Team, who are 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. The recordings of the agencies took place in Causeway Bay, Fo Tan, Jordan, Mong Kok, North Point, Shatin, Tai Po and Whampoa.

The Hong Kong Federation of Asian Domestic Workers Unions (FADWU) and KOBUMI-HK Migrant Workers Community, whose membership is predominantly Indonesian, carried out structured interviews with 452 migrant domestic workers – 381 from the Philippines and 71 from Indonesia.

3. Survey results in relation to employment agencies' compliance with the CoP

3.1 Fees that may be charged by employment agencies [14]



Section 3.5.1 of the CoP prohibits Hong Kong employment agencies from directly or indirectly receiving from migrant domestic workers "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 maximum fee that agencies are permitted to charge for their services is legislated for in the Employment Agency Regulation of the Employment Ordinance and re-stated in the CoP. The fee is set at:

"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." [15]

Thus, at the current Minimum Allowable Wage of HK$4,410[16] (US$564)[17], the maximum chargeable agency fee (also referred to as commission) is HK$441 (US$56). For standard employment contracts made between 1 October 2016 and 29 September 2017, the minimum allowable wage was HK$4,310 (US$552)[18],

14 This sub-chapter looks exclusively at fees that can be charged by Hong Kong employment agencies. There are separate regulatory frameworks governing what fees, if any, recruitment agencies in countries of origin are permitted to charge. According to Section 51 of the Philippines' Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, no placement fee can be charged to a migrant domestic worker, available at: http://www.poea.gov.ph/laws&rules/files/Revised%20POEA%20Rules%20And%20Regulations.pdf, accessed 16 May 2018. Indonesia's Ministry of Manpower and Transmigration issued a Ministerial Decree (No. 98/2012) in May 2012 on Components and Amount of Placement Fee for Indonesian Domestic Workers Employed in Hong Kong SAR, which set the maximum chargeable fee at IDR 14,780,400 (US$1,042). See: HKSAR Legislative Council, "Regulation of domestic helper employment agencies in selected places", 24 February 2014, para4.5, available at: http://www.legco.gov.hk/yr13-14/english/sec/library/1314in07-e.pdf, accessed 16 May 2018.

15 Regulation 10(2) (Part II of Schedule 2), Cap 57A Employment Agency Regulation, Employment Ordinance of HKSAR, available at: https://www.elegislation.gov.hk/hk/cap57, accessed 13 March 2018.

16 HKSAR, "Minimum Allowable Wage and food allowance for foreign domestic helpers to increase", 29 September 2017, available at: http://www.info.gov.hk/gia/general/201709/29/P2017092900399.htm, accessed 13 March 2018.

17 The currency conversion throughout the report is HK$1 = US$0.127 with rounded figures.

18 HKSAR, "Minimum Allowable Wage and food allowance for foreign domestic helpers to increase", 30 September 2016, available at: http://www.info.gov.hk/gia/general/201609/30/P2016093000528.htm, accessed 17 April 2018.

thus, would be subject to a maximum fee of HK$431 (US$55)[19].

The CoP stipulates that the commission "shall only be charged after the job-seeker has received his/her first-month's wages", thus, migrant domestic workers cannot be charged in advance. Agencies that break the law are liable to a maximum fine of HK$350,000 (US$44,800) and imprisonment for three years.[20]

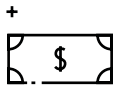
Despite the CoP's clear re-statement of existing legislation on agency fees, the current research shows that 56% of interviewees (253 out of the 450 who responded to this question) were charged illegal fees by employment agencies after their arrival in Hong Kong. Furthermore, 30% of interviewees (136 out of 449) were also charged in advance of receiving their first month's salary in contravention of the CoP.

Among the new arrival interviewees,[21] 57% (222 out of 389) were charged illegal fees by their Hong Kong agency. Out of this group, 132 interviewees paid through salary deduction. On average, they paid HK$9,013 (US$1,154), more than 20 times the maximum chargeable agency fee, over 4.5 months. The total fees ranged widely from HK$1,000 (US$128) to HK$28,800 (US$3,686). In addition, 112 interviewees paid an average of HK$1,151 (US$147) upfront after their arrival in Hong Kong before starting their job or before receiving their first month's salary.

19 All interviewees for this report had their contracts signed between these two statutory wage periods.

20 HKSAR Labour Department, *Code of Practice for Employment Agencies*, February 2018, p12, available at: http://www.eaa.labour.gov.hk/_res/pdf/CoP_Eng.pdf, accessed 13 March 2018.

21 New arrival interviewees refer to migrant domestic workers who arrived in Hong Kong from abroad to take up employment as opposed to those who changed employers in Hong Kong.



Despite the CoP's clear re-statement of existing legislation on agency fees, the current research shows that 56% of interviewees were charged illegal fees by employment agencies after their arrival in Hong Kong.

A similar percentage of the interviewees who changed employers in Hong Kong was charged illegal agency fees (51% or 31 out of 61), but the amount that they paid was generally significantly lower than the fees charged to new arrivals. The majority of this group (24 out of the 31 interviewees) paid upfront an average fee of HK$1,682 (US$215), while 8 interviewees paid an average fee of HK$3,164 (US$405) through salary deduction over a 3-month period. [22] Even the lower average fee charged to those paying upfront is still more than four times the maximum legally permitted fee.

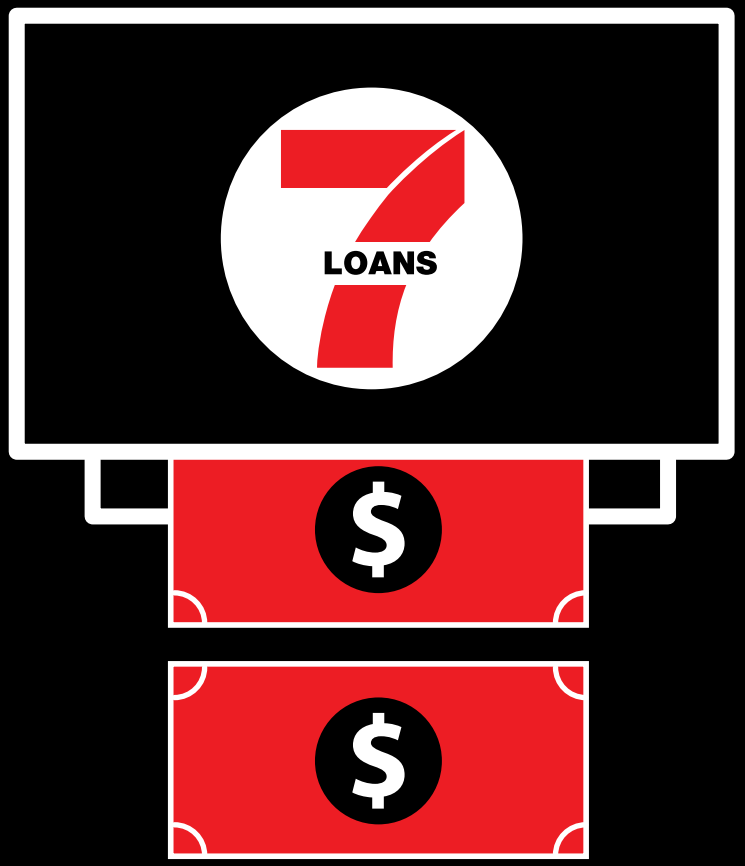
While 43% of interviewees (195 out of 450) were not charged fees above the legal limit, with 87 of this group stating that they paid no agency fee at all, the research still shows that the majority of migrant domestic workers are being charged excessive and illegal fees, often in advance, by Hong Kong employment agencies. Indeed, nearly two-thirds of those interviewed (289 interviewees) stated that it took them 4-12 months to earn back the amount they had paid in agency fees. A further 28 interviewees said it took longer than a year to do so. Indebtedness greatly increases migrant domestic workers' vulnerability to exploitation by an unscrupulous employer and/or employment agency. This is because migrants fear that if they challenge abusive practices, it will lead to losing their job and being unable to repay their debts.

In addition, the undercover recordings conducted by the FADWU Media Team between November 2017 and March 2018 documented members of staff from seven licensed employment agencies stating that they would charge a migrant domestic worker between HK$3,500 to HK$10,000 (US$448 to US$1,280) to find new employment. Four agencies also stated that a deposit was required, despite the CoP specifically stating that a fee could not be charged in advance.

22 As one interviewee paid their agency fees both upfront and through salary deduction, the total number of the two groups totals 32.

While 43% of interviewees were not charged fees above the legal limit, the research still shows that the majority of migrant domestic workers are being charged excessive and illegal fees, often in advance, by Hong Kong employment agencies.

3.2 Avoiding involvement in the financial affairs of job seekers



It has been documented[23] that many Hong Kong employment agencies evade the law by collecting payments for illegal agency fees through third parties. In particular, employment agencies use a "sham loan" system where they compel migrant domestic workers to sign a document confirming that they have taken out a "loan" from a finance company. Workers then make monthly cash payments to a designated account, commonly via 7-Eleven stores.

Section 4.12.1 of the CoP seeks to address this problem and clearly states that employment agencies:

"should not be directly or indirectly involved in the financial affairs of job-seekers. They should not advise, arrange, encourage or force job-seekers to take out loans from any financial institutions or individuals. […] They should not help any other persons, organisations or companies (including recruiting agents or intermediaries located in or outside Hong Kong) to collect fees for arranging FDHs concerned to come to Hong Kong, or training fees for any local or overseas recruiters, agents or training centres, etc. They should not advise, arrange, encourage or force FDHs to borrow money from any institutions in or outside Hong Kong, regardless of the purpose of the loan."

Despite this, 13% of those surveyed (57 out of 450) said that their employment agency encouraged them to take out a loan or borrow money from a financial institution or individual. In addition, 44 interviewees stated that their agency had directly arranged for them to take out a loan or borrow money from a financial institution or individual.

23 See: Hong Kong Federation of Asian Domestic Workers Unions (FADWU), 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, p27, available at: http://www.rightsexposure.org/between-a-rock-and-hard-place, accessed 12 March 2018.

3.3 Personal documents and property of job seekers

Confiscating a migrant domestic worker's personal documents, such as a passport, employment contract or Hong Kong ID card, is an effective mechanism for maintaining control over that person. Without these documents, migrant domestic workers are unable to legally change jobs and cannot even prove that they have a right to live and work in Hong Kong, leaving them at risk of detention and deportation. As such, migrant domestic workers who do not have these documents in their possession are much less willing to leave their jobs or challenge exploitative practices.

The retention of personal documents and property belonging to migrant domestic workers by employment agencies is already a violation of Hong Kong's Theft Ordinance (Chapter 210), and agencies convicted of theft are liable to a maximum sentence of imprisonment for 10 years. Section 3.11.1 of the CoP clearly re-states this prohibition, underlining that agencies:

"shall not retrieve or withhold any personal property, including but not limited to a job-seeker's passport, personal identification document, employment contract, bank credit or debit cards, school certificates, any other materials distributed to the job-seeker by LD [Labour Department] or any other relevant authorities (e.g. Consulates-General (CGs)) without his/her explicit consent".

Section 4.13.1 of the CoP acknowledges that during the job placement, employment agencies may need a migrant domestic worker's identity documents, such as a passport. However, upon obtaining the employment or work visa, the document must be returned directly to the worker without delay. It further states that agencies:

"should not withhold job-seekers' passports or personal identification documents, etc. in order to force them to pay or repay any sum of money such

as training fees, fees for arranging them to come to Hong Kong, loans made by FDHs, etc. regardless of whether the sum of money arose before the FDHs came to Hong Kong."

However, the confiscation of essential documents belonging to migrant domestic workers is still used as a mechanism of coercion by a significant number of employment agencies and/or employers. Just under a quarter of interviewees (24% or 108 out of 451) had their personal documents withheld either before or since taking up their current job. In nearly three-quarters of these cases (72% or 78 out of 108), it was their employment agency, which took these documents (32 interviewees said their documents were withheld by their employer).[24] The two most commonly confiscated documents were passports (94 interviewees) and contracts (62 interviewees).

Case Study 1

Anik, an Indonesian migrant domestic worker, came to Hong Kong for work in June 2016. Upon arrival at the airport, a member of staff from an employment agency in Causeway Bay confiscated her passport and mobile phone. He then blindfolded her and drove her to a flat where a family of five resided. Anik worked there for one week without pay. During this time, she was verbally abused, not allowed to leave the flat and had her movements monitored by CCTV.

After a week, Anik was taken to her employer's home in Kwai Hing. She was told to pay HK$2,410 (US$308) in monthly agency fees for six months. Her employer always accompanied her when she made the payment via a 7-Eleven store.

24 For two interviewees, their personal documents were withheld at different periods by their employment agency and employer.

Just under a quarter of interviewees had their personal documents withheld either before or since taking up their current job. In nearly three-quarters of these cases, it was their employment agency, which took these documents.

Anik worked from 5:30am to 10pm. She had no weekly rest day and was given just one meal per day. Her mobile phone was confiscated every night. She had no personal space and had to sleep in her employer's children's room.

In February 2017, Anik asked her employment agency for her passport so that she could open a bank account. The agency staff refused and further questioned whether her employer had even given her permission.

In August 2017, Anik wanted to terminate her contract, but her employer refused. As she did not have her passport, she felt she had no choice but to remain. Anik then asked FADWU to help get her passport back.

In November 2017, Anik, accompanied by FADWU members, went to her employment agency. The agency staff insisted that they did not confiscate Anik's passport but that she had volunteered it to them. The staff member said that they had many passports belonging to migrant domestic workers. FADWU staff asked whether all these had been "volunteered" to them by the workers and why they had accepted them. The agency staff was unable to provide an explanation. The agency staff then asked Anik if she wanted her passport back, that it was "alright for her to have it" and she had always been able to retrieve it whenever she wished. When Anik disputed this, the agency staff said it was her word against his.

Anik was eventually given her passport back. The agency also agreed to facilitate the termination of her employment and for her to return to Indonesia.[25]

25 This case was not part of the FADWU research survey. The FADWU Case Team provided the assistance and documented the case.

3.4 Acting honestly and exercising due diligence

Employment agencies are responsible for providing accurate information about job offers to prospective domestic workers. Without accurate information, a migrant cannot make an informed decision as to whether or not it is in their best interest to accept an offer of employment in Hong Kong. Section 3.8.2 of the CoP stresses that agencies "will, in most of the cases, be the only information source for both overseas job-seekers (including FDHs) and their prospective employers" and thus, "must not take advantage of employers and job-seekers in this regard".[26]

Similarly, section 4.4.1 states that employment agencies should exercise due diligence in checking the accuracy of the information provided to job seekers and employers. This includes details "about the job (e.g. information on employers, job description, remunerations and benefits, etc.)". Agencies are also responsible for ensuring that "any information that is made available […] to job-seekers (e.g. information about the job, accommodation arrangements provided by employers) is consistent with the facts made known to them". When there is reasonable doubt, agencies should "seek clarification and further information from the party concerned" and "refrain from using any doubtful information before it has been clarified". The CoP stresses that this is particularly relevant to employment agencies engaged in the placement of migrant domestic workers.

Despite these requirements, a significant number of migrant domestic workers were provided with false or inaccurate information by their employment agency. For example, 21% of interviewees (93 out of 437) said the total cost of securing their job in Hong Kong was higher than the amount initially quoted by their

26 HKSAR Labour Department, Code of Practice for Employment Agencies, February 2018, p15, available at: http://www.eaa.labour.gov.hk/_res/pdf/CoP_Eng.pdf, accessed 13 March 2018.

agency. A further 10% of interviewees (43 out of 449) said that they experienced different terms or conditions of employment than originally promised by their agency (e.g. in relation to their pay, place of employment, rest days or the size of the households). Thirty-six interviewees also specifically stated that their work did not correspond to what they were promised by their agency, while 19 said that their employment agency provided them with some other type of information, which was not accurate.

The research shows that a total of 31% of those interviewed (139 out of 452) were provided with inaccurate information by the employment agency in relation to either the nature of their proposed job; their terms and conditions; the cost of securing employment; or other aspects of their work in Hong Kong.

21% of interviewees said the total cost of securing their job in Hong Kong was higher than the amount initially quoted by their agency. A further 10% of interviewees said that they experienced different terms or conditions of employment than originally promised by their agency.

3.5 Drawing up service agreements with job seekers and employers

The CoP states in section 4.6 that employment agencies need to draw up and agree a separate service agreement with both the migrant domestic worker and the employer at the beginning of the job placement process or before any payment is made.

Section 4.6.2 specifies that the service agreement with the migrant domestic worker needs to include, but is not limited to, the following items:

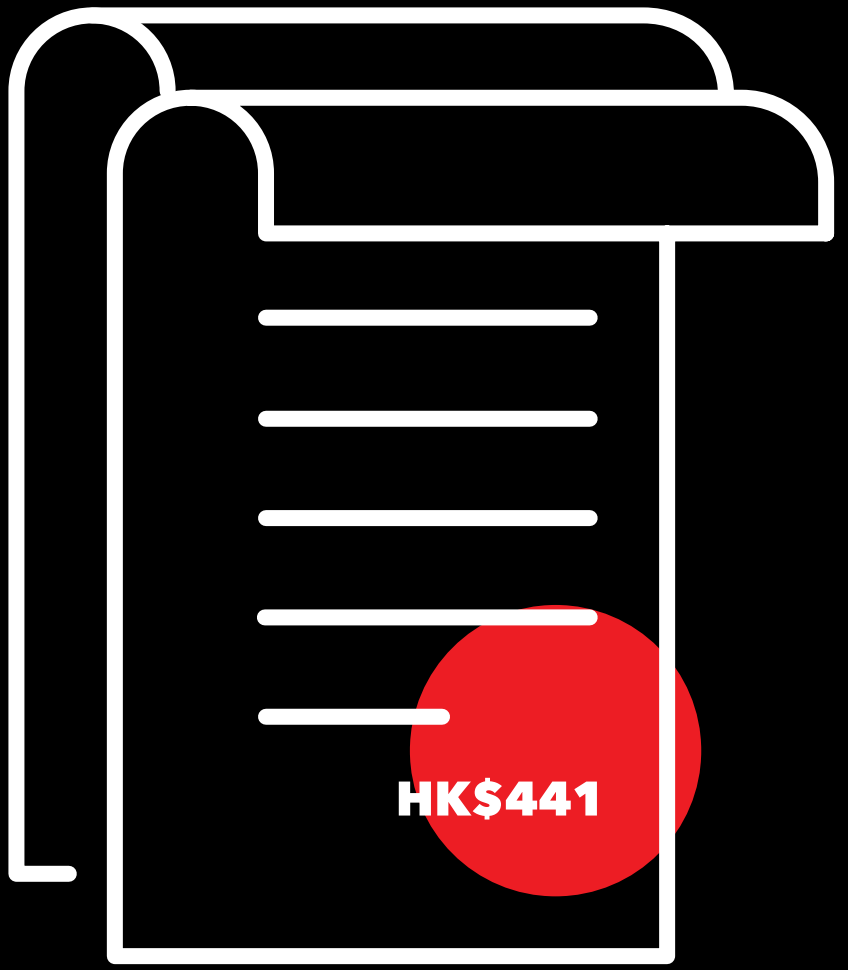
- **The types of service to be provided (e.g. seek for new employer, direct hire, contract renewal, etc.);**
- **Whether commission would be charged, and the amount if charged, which is in any case not more than 10% of the FDH's first-month's wages received after successful placement;**
- **Date of which the commission will be paid (which cannot be prior to receipt of first-month's wages by FDHs after successful placement); and**
- **FDH's employment history in the past two years, etc. (if FDH is agreeable to disclose such to prospective employers).**

Furthermore, the CoP states in section 4.5.1 that, in the interests of maintaining transparency in their business practices and avoiding disputes, employment agencies should "set out the service terms, fees schedules and complaint procedures for job seekers and employers" and get both job seekers and employers "to acknowledge in writing that they understand the terms provided in the respective service agreements".

If the above provisions were fully implemented, it would enable migrant domestic workers to identify the services they have paid for; any overcharging; billing for services, which have not been provided; the responsibilities their agency has towards them; and how they can access complaint procedures.

However, the evidence from this research indicates widespread non-compliance with these requirements in the CoP. For example, 42% of interviewees (187 out of 442) were not provided with a service agreement that clearly stated all the costs they were charged for by their agency.

3.6 Provision of payment receipts



Under section 4.7.1 of the CoP, employment agencies have a responsibility to provide receipts for any payments made by migrant domestic workers and should keep copies of these for inspection by the Labour Department. The receipt must include, but is not limited to, the following items:

- **The employment agency's name;**
- **The employment agency's authorised company "chop" (official stamp);**
- **The migrant domestic worker's name;**
- **The amount of money received and its nature; and**
- **The date of receipt.**

However, the research shows that more than two-thirds of interviewees, 69% (293 out of 425), were not given a receipt for payments they made to their agency. Of the 132 interviewees who did receive a receipt, 38% (50 interviewees) stated that the receipt did not reflect all the different services the agency charged them for. Consequently, a total of 81% of those surveyed (343 out of 425) either did not receive a receipt or were provided with one, which did not reflect all the services the agency had charged them for.

The research shows that more than two-thirds of interviewees, 69%, were not given a receipt for payments they made to their agency.

3.7 Promoting job seekers and employees' awareness of their rights and obligations

54% of interviewees stated that their employment agency did not explain their rights under Hong Kong law; where they could seek assistance in case of disputes/complaints; or provide them with information pamphlets from the Labour Department on their rights.

It is stated in section 4.10.1 of the CoP that the HKSAR government attaches "great importance to enhancing job-seekers' awareness of their employment rights and available channels for seeking assistance".[27] Accordingly, it has made it the employment agency's responsibility, under section 4.10.4 of the CoP, to brief migrant domestic workers on their rights under Hong Kong laws and standards, including the relevant anti-discrimination ordinances and the Standard Employment Contract (SEC).

In relation to the SEC, employment agencies are expected to provide migrant domestic workers with a copy of the sample SEC in their own language and to brief them on its contents. Agencies also need to document that this has been done by obtaining the migrants' confirmation in writing. However, the evidence from this research indicates that the great majority of employment agencies are not complying with this duty. Nearly three-quarters of interviewees (73% or 328 out of 451) stated that their employment agency did not provide them with a sample SEC in their own language and did not brief them on its content.

27 HKSAR Labour Department, Code of Practice for Employment Agencies, February 2018, p15, available at: http://www.eaa.labour.gov.hk/_res/pdf/CoP_Eng.pdf, accessed 13 March 2018.

Section 4.10.4 further states that employment agencies should inform migrant domestic workers on where they can go for help from the HKSAR government and/or other related organisations. Moreover, section 4.10.6(b) specifically states that employment agencies should provide migrant domestic workers and their employers with various publications produced by the HKSAR government relating to the rights of migrant domestic workers. More than a dozen documents are listed in the CoP, [28] which constitute the minimum amount of information, which the employment agency should provide to each migrant domestic worker.

Despite this, 54% of interviewees (241 out of 450) stated that their employment agency did not explain their rights under Hong Kong law; where they could seek assistance in case of disputes/complaints; or provide them with information pamphlets from the Labour Department on their rights.

The CoP also states in section 4.10.6 that employment agencies should facilitate migrant domestic workers' access to all relevant materials and information (e.g. by having copies in their premises and on their websites). In this context, it is expected that agencies would provide migrant domestic workers with a copy of the CoP itself or inform them where they can access it. However, 92% of those interviewed (417 out of 452) stated that their employment agency did not mention the CoP in any discussion with them.

28 These include: "Practical guide for employment of foreign domestic helpers - What foreign domestic helpers and their employers should know"; "Foreign domestic helpers' rights and protection under the Employment Ordinance"; "Important notes for foreign domestic helpers and their employers when using the service of employment agencies in Hong Kong"; "The Do's and Don'ts"; "Important Information for Employers and Employees on Compensation for Work Injuries and Occupational Diseases"; "Illegal employment of foreign domestic helpers is prohibited"; and "Foreign domestic helpers - Safety requirements for cleaning outward-facing windows".

3.8 Conclusion

The evidence from the 452 migrant domestic workers interviewed for this research shows that the vast majority of Hong Kong employment agencies are not fully implementing the CoP. When interviewees' answers to key survey questions are aggregated, it shows that 96% of interviewees' employment agencies were not fully compliant with crucial elements of the CoP. [29] Nearly three-quarters of employment agencies (74%) did not comply with four or more key standards in the CoP.

It should be stressed that interviewees named over 150 different registered Hong Kong employment agencies, which is the equivalent of more than 10% of the total number of registered agencies providing placement services for migrant domestic workers in Hong Kong. This clearly shows that non-compliance with the CoP and other statutory requirements is widespread across the whole sector.

96% of interviewees' employment agencies were not fully compliant with crucial elements of the CoP. Nearly three-quarters of employment agencies did not comply with four or more key standards in the CoP.

29 Answers to 16 key questions were aggregated. These questions relate to whether employment agencies: charged illegal fees; took fees before the first salary; provided inaccurate information; encouraged or arranged for loans to be taken; provided proper receipts and service agreements; explained workers' rights, where to get help and provided relevant information; or withheld important documents. It should be stressed that the aggregated responses do not include the survey question on whether employment agencies discussed the CoP with migrant domestic workers at any time. If this was included, it would increase considerably the level of non-compliance with the CoP, as 92% of interviewees said their agency did not discuss the CoP with them.

4. Analysis

4.1 Why are employment agencies failing to comply with the CoP?

Evidence from the survey suggests that the majority of migrant domestic workers experience violations of the CoP and that a large number of employment agencies are not fully implementing the CoP. In this sub-chapter, findings of the study commissioned by the International Labour Organization (ILO), "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong* (hereinafter referred to as the 2017 ILO report), are used to gain insights into the business perspective on the CoP and its application, and the reasons why so many employment agencies are not fully implementing it.

The 2017 ILO report was finalised in December 2017 and involved in-depth interviews with 16 individuals representing 23 employment agencies, which recruit migrant domestic workers to work in Hong Kong. The majority of these agencies place approximately 10-50 migrant domestic workers each month. The interviews took place on 17 August or between 3-8 September 2017 in Hong Kong. Of the 16 individuals interviewed, seven were involved in industry associations and were members of the executive committee or on the board. As such, their views are likely to be influential with mainstream employment agencies in Hong Kong and provide insights into why there is such a high level of non-compliance with the CoP.[30]

The 2017 ILO report found that almost all employment agencies interviewed resented the CoP and the increased regulation of their businesses. They argued that they were the wrong target for this regulation, as they had no role in the employment contract once it was signed and viewed themselves as "unfortunate middlemen unfairly caught between employer and the worker in a conflict which has nothing to do with them".[31]

30 M. Zhou, *"Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming.
31 M. Zhou, "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, p17.

Some respondents thought that employers should be the target of regulation, including potentially requiring employers to undergo mandatory training sessions, as in Singapore where first-time employers of migrant domestic workers are required to attend an Employers' Orientation Programme before they are allowed to recruit. Others argued that the CoP unfairly displaced the Government's obligations to protect migrant domestic workers onto employment agencies. A minority thought that the Government should enact comprehensive legislation to protect migrant domestic workers.[32]

The 2017 ILO report also documented a lack of understanding among interviewees regarding their obligations under the CoP. Licensees and directors generally sent a junior staff member to attend government training sessions on the CoP or noted that someone else in the agency had responsibility to advise on what needed to be done to ensure compliance with the CoP.

Consequently, while all those who took part in the ILO research said that they had read the CoP, many were not aware of its detailed requirements. For example, in relation to maintaining transparency in their operations (section 4.5), many agencies were unaware that they were supposed to disclose their overseas business partners and/or were extremely reluctant to do so, arguing both that commercial relationships should remain confidential and that disclosure was not practical, as partners changed periodically. The ILO researcher noted that no employment agency disclosed their business partnerships on any documents that they reviewed apart from one agency, which named two out of its four Filipino counterparts on its business cards.[33]

32 M. Zhou, *"Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong, ILO, forthcoming, p18.*

33 M. Zhou, "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong,* ILO, forthcoming, pp23-24.

The 2017 ILO report found that almost all employment agencies interviewed resented the CoP and the increased regulation of their businesses. They argued that they were the wrong target for this regulation, as they had no role in the employment contract once it was signed and viewed themselves as "unfortunate middlemen unfairly caught between employer and the worker in a conflict which has nothing to do with them".

Similarly, there was a limited understanding of the notion of due diligence[34] (section 4.4) and resistance to the obligation to check the accuracy of the information provided by jobseekers and employers. Indeed, no agency reported verifying information supplied by the employer.[35]

This lack of awareness may also explain why agency representatives commonly considered the CoP to be a simple re-statement of existing regulations. Interviewees commonly claimed that the CoP had no relevance to their businesses because they were already fully compliant or that it would only require minor adjustments to existing policies and practice.[36]

Respondents also refused to recognize the extent to which Hong Kong employment agencies do not comply with the CoP and existing statutory requirements. For example, most agency representatives denied that agencies

34 The 2017 ILO report states that "there was limited understanding of the element of 'due diligence'. In the Chinese version of the CoP, there is no equivalent term for due diligence. Rather the [employment agencies] are required to act 'honestly' and 'conscientiously'" (p25).

35 M. Zhou, "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong,* ILO, forthcoming, p24.

36 M. Zhou, "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong,* ILO, forthcoming, p20.

overcharged workers, although a few speculated that some agencies in the New Territories may not be compliant with the laws. These views stand in stark contrast to the findings of this report, including the fact that that over half of interviewees paid illegal fees to Hong Kong employment agencies.

Furthermore, five of the employment agencies that took part in the ILO research are named by 32 interviewees in the current research as not complying with one or more provisions in the CoP. In fact, these five agencies accounted for a total of 116 violations of the CoP as reported by the 32 interviewees.

Employment agencies, which took part in the ILO research, were aware of the requirements in the CoP to avoid involvement in the financial affairs of migrant domestic workers and the vast majority insisted that they complied with them. Despite this, two agencies admitted that they were still involved in the financial affairs of jobseekers in violation of the CoP. [37]

The views expressed by employment agencies in the 2017 ILO report also indicate that their primary focus when considering the CoP and its implementation is the impact it will have on their companies' profitability. Consequently, employment agencies commonly raised concerns about the increased burden of documentation, including the: need to register every jobseeker; requirements to keep receipts for wages and documents; and lengthening processing times resulting from complying with the CoP (e.g. issuing service agreements, distributing Labour Department information and obtaining acknowledgement forms).

37 M. Zhou, "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, pp21 and 22.

38 Many agencies guarantee to find an alternative domestic worker for a discounted fee if the employer is unhappy with the domestic worker's performance within a specified period and the contract is terminated. Discounts vary from 25% to 100% of the usual service fee paid by employers and the guarantee period varies from 3 months to a year. See: M. Zhou, "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, pp9, 20 and 23.

Furthermore, as the business model for legitimate employment agencies is based around the service fee paid by the employer, this is the relationship that these agencies prioritise. Since the HKSAR government legislated to limit the fee that can be charged to workers, agencies have increased the fee they charge to employers. Agency representatives reported an average profit margin of approximately HK$4,500 (US$576) per placement of a Filipino or Indonesian domestic worker, after the deductions of overheads and outgoings. Agencies also profit from early terminations of contracts, as they can charge a second service fee to find a replacement worker for the employer and this is also possible even if a contract is terminated during a "guarantee period". [38]

For this reason, the employment agencies interviewed had generally focused their efforts to comply with the CoP on the provisions that regulate their relationship with employers. For example, while all employment agencies interviewed for the 2017 ILO research had a template service agreement for employers, very few used any service agreement for migrant domestic workers. Similarly, none of the agencies interviewed reported any increased efforts to raise workers' awareness of their rights and obligations. On the contrary, respondents either felt this was the Labour Department's responsibility or that workers were already informed or even "too aware" of their rights.[39]

In summary, the 2017 ILO report indicates that the principal reasons for employment agencies' non-compliance with the CoP are: resentment of increased regulation, which is regarded as unnecessary and burdensome; a lack of awareness of the detailed requirements of the CoP; complacency regarding their existing level of compliance with the CoP; a failure to recognise that illegal

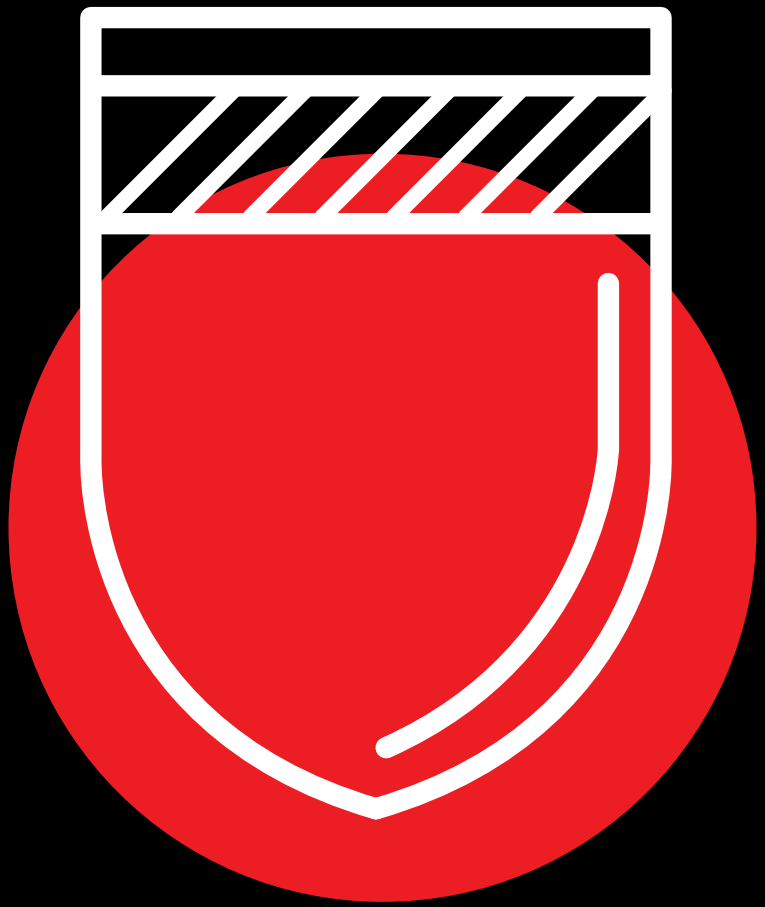
39 M. Zhou, "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, pp9 and 23.

activity and poor practices are widespread in the sector; frustration over a perceived lack of meaningful consultation during the design of the CoP; and a focus on CoP provisions that relate to employers rather than migrant domestic workers.

For all these reasons, the vast majority of employment agencies are failing to promote or actively engage with the CoP in their work, as reflected in the fact that an overwhelming 92% of migrant domestic workers interviewed in the current FADWU research (417 out of 452) stated that their employment agency did not mention the CoP in any discussion with them.

Five of the employment agencies that took part in the ILO research are named by 32 interviewees in the current research as not complying with one or more provisions in the CoP. In fact, these five agencies accounted for a total of 116 violations of the CoP as reported by the 32 interviewees.

4.2 Has the CoP improved the protection of migrant domestic workers' rights?



Although this research shows that 96% of employment agencies used by interviewees are not fully compliant with the CoP, full compliance by some agencies and partial compliance by others, combined with increased public awareness of its provisions, particularly among employers, may still have had a positive impact on the protection of migrant domestic workers' rights and this needs to be assessed separately.

The current research asked interviewees questions relating to human and labour rights issues, which in the past have not been respected by significant numbers of employers in Hong Kong.[40] For example, section 6 of the Standard Employment Contract (SEC, see Appendix 2 for details) [41] states that domestic workers are entitled to all rest days, statutory holidays and paid annual leave, as set out in chapter 57 of Hong Kong's Employment Ordinance. The Employment Ordinance makes clear that all employees who have been continuously employed for four weeks or more must receive at least one rest day a week (section 17) and that a rest day means a continuous period of not less than 24 hours, during which time the employee is entitled to abstain from working (section 2).

40 See for example: Amnesty International, Exploited for Profit, *Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, November 2013 (AI Index: ASA 17/029/2013); 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, 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 12 March 2018; FADWU, *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, available at: http://www.rightsexposure.org/between-a-rock-and-hard-place, accessed 12 March 2018; and 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.

41 The SEC is a legally binding contract (form number ID 407) prescribed by the HKSAR government for employing domestic workers recruited outside of Hong Kong. See: Immigration Department, "Employment of Domestic Helpers from Abroad", accessed at: https://www.immd.gov.hk/eng/forms/hk-visas/foreign-domestic-helpers.html, 18 March 2018.

While 98% of interviewees (437 out of 447) said that they were given one rest day per week, the great majority, 85% (381 out of 447), also stated that they did not receive the full 24 hours, as required by law.

In relation to freedom of movement, 40% of those interviewed (182 out of 451) reported that they were not free to leave their employer's home during rest periods or days off or were only sometimes free to leave their employer's home.

Nearly all interviewees (97% or 439 out of 451) were provided with food by their employer,[42] but 32% (140 out 439) of this group stated that they were not given enough to eat (93 interviewees) or that they were only sometimes given enough to eat by their employer (47 interviewees). In addition, 9% of interviewees (41 out of 452) said that they had been threatened, punished or mistreated by their employer.

The 2016 FADWU research, *Between and Rock and a Hard Place*, includes some of the same questions and it is therefore worthwhile to take note of the findings from this report. In the 2016 research, the majority of interviewees (40 out of 57) paid illegal fees and were not free to leave their employer's home during their time off (35 out of 66). Nearly half (31 out of 67) were not given adequate food and around a third (24 out of 67) had their documents taken by either their employer or employment agency. The 2016 FADWU report also found that the great majority of interviewees (60 out of 65) did not receive their full rest day.

42 Section 5(b) of the SEC obliges employers to provide migrant domestic workers with food free of charge or alternatively to pay the workers a monthly food allowance in lieu, of not less than HK $1,053 (US$135). This is applicable for standard employment contracts made on or after 30 September 2017. See: HKSAR, "Minimum Allowable Wage and food allowance for foreign domestic helpers to increase", 29 September 2017, available at: http://www.info.gov.hk/gia/general/201709/29/P2017092900399.htm, accessed 19 March 2018.

However, it is not possible to directly compare the responses in the two reports and draw conclusions on whether there has been any improvement in migrant domestic workers' rights since the introduction of the CoP because of the significant differences in methodology.In particular, the 2016 FADWU research explicitly excluded any migrant domestic workers who had not paid any fees to their employment agency and in doing so, removed those agencies, which are likely to have the highest standards in relation to their placement of migrant domestic workers. The current research did not exclude this group and some 19% of interviewees (87 out of 452) stated that they did not pay any fees to their employment agency.[43]

While 98% of interviewees said that they were given one rest day per week, the great majority, 85%, also stated that they did not receive the full 24 hours, as required by law.

43 The 2017 ILO report also found that 13% of employment agencies (2 out of 16) did not charge migrant domestic workers any fee.

In addition, the 2016 FADWU research was based on a much smaller sample of 68 interviews, which means there was probably a proportionately higher number of interviewees who were existing personal contacts, as compared to those who were randomly interviewed in public spaces. Migrant domestic workers who were already known to FADWU are likely to have sought out FADWU precisely to try and solve work-related problems.

Despite this, it is useful to take note of some of the trends indicated. In particular, the 2016 FADWU report found that 55% of interviewees (37 out of 67) had been abused by their employer. However, in the current research only 9% of interviewees (41 out of 452) reported this. Migrants are generally reluctant to go to their agency for help because they feel that agencies tend to be unsympathetic and fear that if they lodge a complaint, it may result in the termination of their contract.[44] This is supported by responses to the current research: out of 347 interviewees who acknowledged that they had work-related problems, only 13% (44 interviewees) complained to their agency about them. Out of the 44 who complained, only 32% (14 interviewees) said that their agency tried to help them and just 7% (3 interviewees) were successful in resolving the problem.[45]

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

45 It should be noted that the number of domestic workers who encountered labour rights abuses was greater than the number who acknowledged that they had problems (e.g. 397 interviewees stated that they were either not always given a rest day or were not given a full day off).

The prosecution of high profile cases, which received substantial media coverage, involving the abuse and ill treatment of migrant domestic workers in which employers were prosecuted and received severe punishments may have had some impact on employers' treatment of migrant domestic workers. For example, in the highly publicised court case of Indonesian national Erwiana Sulistyaningsih, her former employer Law Wan-tung was convicted in February 2015 on eight charges of assault, grievous bodily harm and criminal intimidation. She was sentenced to six years in prison and fined HK$15,000 (US$1,920) for 10 charges of failing to pay wages or grant time off.[46] In December 2017, Erwiana was awarded HK$809,430 (US$103,607) in damages from Law as part of a civil claim, with the judge calling her mistreatment "inhumane, degrading and abhorrent".[47]

In February 2018, Law was ordered to pay another former domestic worker, Tutik Lestari Ningsih, HK$170,000 (US$21,760) in aggravated damages for false imprisonment and common assault. Law had employed Tutik as a domestic worker in 2010 – imprisoning her for 346 days, forcing her to work 20 hour days with no holidays, and paying her just HK$6,000 (US$768).[48]

46 "Employer in Hong Kong maid abuse case is sentenced to six years' jail", *The Guardian*, 27 February 2015, available at: https://www.theguardian.com/world/2015/feb/27/hong-kong-court-sentences-woman-to-6-years-in-prison-for-abusing-indonesian-maid-0, accessed 24 April 2018.

47 Chris Lau, "Tortured helper Erwiana wins HK$809,430 civil claim against abusive Hong Kong employer", *South China Morning Post*, 21 December 2017, available at: http://www.scmp.com/news/hong-kong/law-crime/article/2125293/tortured-helper-erwiana-wins-us103480-civil-claim-against, accessed 2 May 2018.

48 Jasmine Siu, "Hong Kong woman jailed for torturing domestic helper Erwiana ordered to pay damages to second victim", *South China Morning Post*, 26 February 2018, available at: http://www.scmp.com/news/hong-kong/law-crime/article/2134786/hong-kong-woman-jailed-torturing-domestic-helper-erwiana, accessed 2 May 2018.

In a separate case in February 2018, a 79-year old employer was arrested after a video recorded by her migrant domestic worker showed the employer physically and verbally assaulting her. The video was uploaded on Facebook and viewed more than 290,000 times.[49]

In March 2018, a woman, whose hand was injured when she was separating her dog from the two that a domestic worker was caring for, was filmed verbally abusing the domestic worker telling her "You should shut the f–k up! You're just the helper." and to "Go back to the Philippines." The video was viewed more than 1.2 million times and shared over 17,000 times.[50] Both instances may be indicative of shifts in public attitudes, where abuse of migrant domestic workers is increasingly being seen as unacceptable.

Interviews for the 2016 FADWU research were carried out with migrant domestic workers who arrived in Hong Kong between 2012 and 2016 and therefore, the great majority of these would have shared experiences of treatment, which predates these cases, as well as the introduction of the CoP. Such widespread media coverage and the public debate that abuse of migrant domestic workers now generates may have had a deterrent effect on those employers who previously would have threatened, punished or otherwise seriously mistreated their worker. The impact of these cases may well have been reinforced by Government action and awareness raising initiatives linked to the CoP (see below for details).

49 Clifford Lo, "'I really want to kill you!': Hong Kong woman arrested after video shows employer hitting Indonesian domestic helper ", *South China Morning Post*, 1 March 2018, available at: http://www.scmp.com/news/hong-kong/law-crime/article/2135278/i-really-want-kill-you-video-showing-employer-hitting, accessed 2 May 2018.

50 "'Dog barking' spurred abuse of Filipina maid seen in viral video", *Asia Times*, 19 March 2018, available at: http://www.atimes.com/article/dog-bite-spurred-abuse-filipina-maid-seen-viral-video/, accessed 2 May 2018.

4.3 What else is the HKSAR government doing to tackle the problem?

On 13 January 2017, the Labour Department launched a dedicated Employment Agency Portal alongside the promulgation of the CoP. The Portal is a one-stop platform to facilitate public access to information relating to the regulation of employment agencies in Hong Kong and includes a search function so that individuals can check if an employment agency has a valid licence. The Employment Agencies Administration (EAA) has also promoted awareness of the CoP, including through 1,400 visits to employment agencies and six briefing seminars, which were attended by more than 800 agencies.[51]

The HKSAR government has also strengthened the legal framework to ensure agencies that exploit migrant domestic workers are appropriately sanctioned. The Employment (Amendment) Ordinance 2018, which was enacted by the Legislative Council (LegCo) in February 2018, raised the maximum penalty for the offences of overcharging jobseekers and unlicensed operation of employment agencies from a maximum fine of HK$50,000 to HK$350,000 (US$6,400 to US$44,800) and imprisonment for three years. It also extended the statutory time limit for prosecution of these two offences from six to 12 months.[52]

Furthermore, it extended the scope of the offences beyond the holder of the licence so that a partner, other staff member or an associate (e.g. member of the management board or those acting on behalf of an agency) can be prosecuted. In addition, it consolidated the legal status of the CoP so that non-compliance with it by the licensee and/or an associate will be grounds on which a licence may be refused or revoked.[53]

51 M. Zhou, "*Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, p19.
52 HKSAR, "Gazettal of Employment (Amendment) Ordinance 2018", 9 February 2018, available at: http://www.info.gov.hk/gia/general/201802/09/P2018020600356.htm, accessed 28 April 2018.
53 HKSAR Legislative Council, "Legislative Council Brief, Employment Ordinance (Chapter 57) Employment (Amendment) (No.2) Bill 2017 (File reference: LD CR/5/15/706)", 6 June 2017, pp3-5, available at: http://www.legco.gov.hk/yr16-17/english/bills/brief/b201706163_brf.pdf, accessed 17 April 2018.

In March 2018, the HKSAR government published an Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong[54] and set up a high-level Steering Committee to oversee the implementation of the Action Plan. The Chair of the Steering Committee, Matthew Cheung, noted that the Hong Kong community "fully appreciates the contribution of FDHs" and that "the Action Plan includes measures for enhancing their protection to prevent them from falling victim to exploitation".[55] These measures include proposals to:

- **Extend the police's victim screening mechanism to all 24 police districts and also to the Labour Department;**
- **Appoint dedicated teams or officers in the relevant law enforcement agencies to handle cases relating to trafficking and exploitation of migrant domestic workers;**
- **Set up a new dedicated division in the Labour Department to ensure the effective implementation of measures to enhance the protection of migrant domestic workers;**
- **Set up a dedicated hotline with interpretation services to provide support services to migrant domestic workers;**
- **Raise migrant domestic workers' awareness of their legal rights and channels to seek assistance and to launch public awareness campaigns;**
- **Take strong enforcement action to ensure employment agencies are operating in compliance with the laws through licensing, inspection, complaint investigation and prosecution;**
- **Grant immunity from prosecution to victims of trafficking and exploited migrant domestic workers for crimes committed as a result of being trafficked or exploited when the situation so warrants.**

These are positive and welcome measures that show the HKSAR government recognises that migrant domestic workers are subject to exploitation and abuse, and is committed to ending such practices. However, the evidence from the current research indicates that further action will be needed beyond that already envisaged by the Government to ensure that employment agencies do fully comply with the CoP and that the rights of migrant domestic workers are fully respected.

54 The Action Plan is available on the websites of the HKSAR Security Bureau (www.sb.gov.hk/eng/special) and the Labour and Welfare Bureau (www.lwb.gov.hk/eng/home/index.htm).

55 HKSAR, "Action plan to tackle trafficking in persons and enhance protection of foreign domestic helpers endorsed", 21 March 2018, available at: http://www.info.gov.hk/gia/general/201803/21/P2018032100478.htm?fontSize=1, accessed 17 April 2018.

5. What else needs to be done?

5.1 Effective enforcement action

Over the last five years, there has been an abundance of evidence showing that a very high percentage of employment agencies in Hong Kong systematically charge migrant domestic workers illegal fees. The current research shows that this continues to be the case despite the introduction of the CoP.

The EAA is responsible for licensing, inspections, investigating complaints and ensuring that employment agencies comply with Hong Kong law. However, it has failed to effectively enforce the regulations, thereby allowing the great majority of employment agencies, which are operating in an illegal manner to do so with impunity.

Although the Labour Department has increased annual inspections of employment agencies from 1,341 in 2013 to over 1,800 in the 2014-15 period, this has not resulted in any significant improvement in the number of agencies that have been charged or prosecuted for offences relating to the exploitation of migrant domestic workers (e.g. overcharging, operating without a licence, etc.).

The Labour Department reported that it only secured 16 convictions (10 of which were for overcharging) in 2014-2015, despite carrying out more than 3,600 inspections. Agencies convicted of overcharging or unlicensed operation were fined from HK$1,500 to HK$45,000 (US$193 to US$5,800).[56] In this context, increasing the number of inspections or the penalties for breaking the law will have little impact, as the inspections are not currently effective in identifying malpractice and the existing maximum sanctions are rarely utilised against those who have been convicted.

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

There has been no improvement in the conviction rate since the introduction of the CoP. Between January and July 2017, 1,500 inspections were carried out and just five convictions were obtained. Only 141 complaints were received by the EAA and it issued just twelve written warnings to employment agencies for non-compliance with the CoP. [57] The Commissioner of Labour can refuse to grant or renew, or revoke an agency's licence if a person is found not to be a proper person to operate an employment agency.

This extremely low incidence of complaints, convictions and licence sanctions is particularly concerning considering the amount of awareness-raising initiatives undertaken by the Government and the fact that the current research identified widespread illegal activity (e.g. 253 individuals who paid illegal fees) and non-compliance with the CoP (e.g. 343 individuals who were not provided with a receipt or were given an incomplete one) relating to around 150 registered Hong Kong employment agencies and more than 50 additional employment agencies not found on the EAA's official list.[58]

It could be argued that the Action Plan to tackle trafficking and enhance the protection of migrant domestic workers is designed to address this, especially as it includes the goal of "strong enforcement action to ensure employment agencies are operating in compliance with the laws". However, if the Action Plan is to make a difference in this respect, it will need to ensure that inspections are conducted more effectively and that sanctions are applied in a way that makes them a real deterrent. The Plan will also have to address elements of Hong Kong's existing regulations, like the Two-Week Rule, which discourage migrant domestic workers from making complaints against their employer or their employment agency.

57 M. Zhou, *"Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, p19.
58 See: http://www.eaa.labour.gov.hk/en/search.html, accessed 24 April 2018.

A very high percentage of employment agencies in Hong Kong systematically charge migrant domestic workers illegal fees. The current research shows that this continues to be the case despite the introduction of the CoP.

Case Study 2

In September 2017, with the help of the FADWU, three Filipino migrant domestic workers jointly filed a complaint against Familia Employment Agency to the Labour Department. After a four-month investigation, the Labour Department pressed formal charges against Familia for overcharging agency fees. In January 2018, the Shatin Magistrates' Courts fined the Agency HK$15,000 (US$1,920) and ordered it to refund the excessive placement fees totalling $2,638 (US$338) – HK$542 (US$69), HK$1,596 (US$204) and HK$500 (US$64) respectively to the three workers.[59]

Although each migrant domestic workers paid between HK$5,000 to HK$8,000 (US$640 to US$1,024), they were only able to recoup a fraction of the total amount because the prosecution period for overcharging was limited to six months – commencing from the start of the Labour Department's investigation in September 2017. Thus, most of the illegal fees paid out to the Agency were inadmissible.[60] The fines and compensation paid by the agency was only marginally more than the amount they received in illegal fees from these three migrant domestic workers alone and consequently cannot be an effective deterrent.

59 HKSAR, "Employment agency convicted of overcharging foreign domestic helpers", 26 January 2018, available at: http://www.info.gov.hk/gia/general/201801/26/P2018012600676.htm, accessed 28 April 2018.
60 This case was not part of the FADWU research survey. The FADWU Case Team provided the assistance and documented the case.

5.2 The Two-Week Rule

The Action Plan does not propose to repeal the Two-Week Rule, which stipulates that migrant domestic workers must find new employment within two weeks of leaving their job or leave Hong Kong. This is extremely difficult to do, as it takes 4-6 weeks to process an employment application.[61]

The Two-Week Rule makes migrant domestic workers very reluctant to make a complaint or leave their employer because if they do, they are likely to lose their right to work in Hong Kong, which in turn would make it impossible for them to repay their debts and/or support their families through remittances.

Even where individuals are willing to leave their job and file a complaint, the process of accessing justice is often prohibitively expensive. Cases can take months to be resolved and, without an exception from the Immigration Department (which is normally only granted after the case has been accepted for prosecution), migrant domestic workers are not allowed to work while pursuing claims or engaging in litigation, which means they cannot afford living expenses, such as food and accommodation. As a result, many abandon their case or accept an unfavourable settlement at the conciliation stage. In this way, the Two-Week Rule increases migrant domestic workers' vulnerability to abuse and their reluctance to file complaints and take legal action.[62]

While the Action Plan does contain measures designed to facilitate cooperation with the authorities, these provisions are caveated in a way, which appears to mean that they are unlikely to benefit most migrant domestic workers. For example, the Action Plan says it will grant visa extensions, waive visa fees and seek to help migrant domestic workers to stay in Hong Kong (e.g. through the handling of applications to change their employer without leaving Hong Kong). However, these measures will only be available to those individuals who are "acting as prosecution witness in legal proceedings instituted by the relevant departments" or when they are assisting "in the investigation and prosecution process"(initiatives 14 and 21 of the Action Plan). Consequently, it would appear that most migrant domestic workers who make a complaint against their employer or agency and have to leave their job are still likely to be caught under the provisions of the Two-Week Rule and forced to leave Hong Kong.

The Two-Week Rule makes migrant domestic workers very reluctant to make a complaint or leave their employer because if they do, they are likely to lose their right to work in Hong Kong, which in turn would make it impossible for them to repay their debts and/or support their families through remittances.

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

62 Various UN monitoring bodies have urged the Hong Kong government to review or repeal both the Two-Week Rule and the live-in requirement, including the UN Committee on the Elimination of Discrimination against Women, the UN Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee.

5.3 Further amendments to the legal framework

Given that only 26 convictions have been secured by the Labour Department against employment agencies for any crime in the period from January 2014 to July 2017,[63] it is extremely disappointing that the Action Plan states that "the present legislative framework has served Hong Kong well".

The charging of illegal fees alone affects many thousands of migrant domestic workers each year, contributing to their indebtedness. This debt, the threat of losing their job and the confiscation of identity documents continue to be used as coercive tools by employers and employment agencies to compel them to remain in exploitative jobs where they are vulnerable to both human and labour rights violations, including forced labour. [64]

In this context, the HKSAR government urgently needs to introduce comprehensive anti-trafficking legislation, which is consistent with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) and specifically criminalises forced labour.

In addition, the Government should review Hong Kong's regulatory framework for employment agencies to ensure that it does not contain loopholes, which will make the sanctioning of rogue employment agencies more difficult. For example, the EAA does not currently regulate the number of employment agencies that can be registered at one address. This allows businesses to operate two agencies or more under different names at the same location. Indeed the 2017 ILO report notes that 12 out of 16 respondents had more than one licensed agency.[65]

The fact that it is legal under Hong Kong law to have multiple licensees operating at the same place makes agencies' business practices less transparent and can seriously undermine any enforcement action, as penalties against one licensed employment agency have a limited impact on its related agencies, which can be working from the same address.

Similarly, "chop renting" is also not illegal according to the EAA. [66] "Chop renting" is a practice whereby an accredited employment agency stamps the official documentation for a subagent who is not accredited to recruit migrant domestic workers by the country of orgin, thereby allowing the subagent to process the placement of migrant domestic workers, sign service agreements with employers and charge fees. The licensed employment agency is not providing the service for which it is accredited, but is, for a fee, allowing an unaccredited and unregulated subagent to operate under its official auspices. This type of dishonest subcontracting should also be prohibited.

EAA does not currently regulate the number of employment agencies that can be registered at one address. This allows businesses to operate two agencies or more under different names at the same location. Indeed the 2017 ILO report notes that 12 out of 16 respondents had more than one licensed agency.

63 M. Zhou, *"Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, p7.

64 The ILO indicators of forced labour are: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. See: ILO, ILO Indicators of Forced Labour, 1 October 2012, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf, accessed 16 May 2018.

65 M. Zhou, *"Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, p11.

66 M. Zhou, *"Wrong prescription, wrong patient": Preliminary views on the Code of Practice for Employment Agencies in Hong Kong*, ILO, forthcoming, pp12 and 13.

6.Conclusion and recommendations

There are professional and reputable employment agencies operating in Hong Kong. Indeed, the current research found that 4% of interviewees (20 out of 452) stated that their employment agencies had fully complied with key aspects of the CoP, which were reviewed in the survey. Furthermore, 43% of interviewees (195 out of 450) were not charged fees above the legal limit and of this group, 19% (87 out of 450) confirmed that they had paid no agency fee at all to their employment agency in Hong Kong.

This shows that employment agencies can operate a sustainable and profitable business model, which implements a no-fee policy for migrant domestic workers and fully complies with the CoP and others statutory provisions in Hong Kong.

The HKSAR government has taken positive action in the last two years to improve the protection of migrant domestic workers, including through the introduction of the CoP, the passage of the Employment (Amendment) Ordinance 2018 and the publication of the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong.

However, this report shows that 96% (434 out of 452) of interviewees' employment agencies are not complying with key aspects of the CoP and that the majority of interviewees (56% or 253 out of 450) are still paying illegal agency fees. The research also confirms that these are not the activities of a few rogue agencies, as 148 registered Hong Kong employment agencies were identified as not being fully compliant with the CoP.

Worse still, those agencies, which flout the law and the CoP do so with impunity. Between January and July 2017, there were just five convictions of employment agencies for violating the law and 12 written warnings were issued for non-compliance with the CoP. The lack of effective enforcement action must be

addressed as a matter of urgency and this will require further changes to existing policy and practice.

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

To the Government of Hong Kong SAR:

- Ensure that the Employment Agencies Administration (EAA) effectively investigates and punishes, including through criminal sanctions, employment agencies that are not compliant with the CoP and/or other statutory requirements.
- Take action to improve the efficiency of EEA inspections to ensure a higher detection rate of violations of the law and the CoP, including through reviewing procedures for collecting evidence, providing further training on effective inspections and ensuring that migrant domestic workers are privately interviewed as part of the inspection process.
- Amend regulations to improve the transparency of employment agencies' business practices, including by ensuring that companies cannot evade the consequences of sanctions by operating multiple agencies under different licences at the same time.
- Repeal the Two-Week Rule and ensure that migrant domestic workers have sufficient time to secure a new job after a contract has been terminated.
- Pass comprehensive legislation to protect all workers, including migrant domestic workers, which clearly sets out maximum working hours, overtime payments and rest periods.
- Require first-time employers of migrant domestic workers to undergo training, similar to the orientation programme used in Singapore.
- Amend the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong to ensure that all migrant domestic workers with a pending case in the labour or criminal court are granted visa extensions, have their visa fees waived and are supported to stay in Hong Kong, including allowing 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 cases of overcharging by employment agencies to be heard at the Labour Tribunal so that third parties, including trade unions, NGOs or individuals, can take a complaint on behalf of a migrant domestic worker.
- 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. Pass specific legislation, which clearly defines and prohibits forced labour, with penalties that are adequate and strictly enforced.

To Hong Kong Employment Agencies:

- Ensure that all staff, including senior management, are aware of the detailed requirements of the CoP and that they promote and ensure full compliance with all elements of the CoP.
- Associations of employment agencies should promote the CoP across the industry and prohibit agencies, which are not fully compliant with the CoP from being members of their executive committees/boards. Associations should also take action against employment agencies, which fail to bring their business practices in line with the requirements of the CoP and/or other statutory provisions (e.g. barring them from membership, publishing a black list of non-compliant employment agencies, etc.).
- Distribute copies of the CoP to all migrant domestic workers as part of the process of ensuring that job seekers are aware of their rights and obligations.

Appendix 1: Sample research survey for Filipino and Indonesian migrant domestic workers on the Code of Practice for Employment Agencies

Name:	Year of birth:
Nationality:	Date of arrival in Hong Kong:
Date of 1st EA/RA visit to find job:	
Start date of current job:	
EA/RA name and branch:	
Mobile:	Email:
Date of interview:	Place of interview (district):

New arrivals

1.Did the EA charge or collect from you any fees/payment when you arrived in Hong Kong to take up your employment? Yes / No

If "Yes", did you pay:

(a) Upfront? Yes / No

If "Yes", how much (specify currency): _____

(b) Through salary deductions (including payments via 7-11) for an amount above 10% of your 1st month salary? Yes / No

If "Yes":

- For how many months were deductions/payments made from your salary (or if ongoing, for how many months in total will the deductions/payments be for)?
- During this period, how much of your salary did you receive each month?
- What is/will be your monthly salary after this period?

(c) Other? Yes / No

If "Yes", specify: _____ and how much (specify currency)? _____

Those who have changed jobs in Hong Kong

2. Did the EA charge you for the services it provided linked to finding you new employment in Hong Kong (e.g. passport renewal, visa processing fee, health exam, administration fee, food and board, plane tickets, interpreters/ translators, etc.)? Yes / No

If "Yes", did you pay:

(a) Upfront? Yes / No

If "Yes", how much (specify currency):

(b) Through salary deductions (including payments via 7-11, etc.) for an amount above 10% of your 1st month salary? Yes / No

If "Yes":

- For how many months were deductions/payments made from your salary (or if ongoing, for how many months in total will the deductions/payments be for)?
- During this period, how much of your salary did you actually receive each month?
- What is/will be your monthly salary after this period?

(c) Other? Yes / No

If "Yes", specify: _____ and how much (specify currency)? _____

All interviewees

3. Did you pay the EA any fees or related costs before you started working or before your first month's salary was paid? Yes / No

4. Regarding the provision of accurate information when you were looking for a job:

(a) Was the total cost of securing the job the same as what you were initially told by the agency? Yes / No

If "No", was the amount: higher / lower?

(b) Were the terms or conditions of your job the same as you were promised (e.g. pay, number of households, place of employment, family size, rest days, holidays, food allowance, child vs. elderly, etc.)? Yes / No

If "No", specify: _____

(c) Did the EA provide you with any other information, which was not accurate? Yes / No

If "Yes", specify: _____

5. Did the work correspond to what you were promised/presented by the EA? Yes / No

6. Did the EA encourage you to take out a loan or borrow money from a financial institution or individual? Yes / No

7. Did the EA arrange for you to take out a loan or borrow money from a financial institution or individual? Yes / No

8. How long will it/did it take to repay the loan? (a) 3 or less months (b) 4-6 months (c) 7-12 months (d) more than 12 months (e) I did not take out a loan

9. How long will it/did it take to earn back the amount you had paid in agency fees? (a) 3 or less months (b) 4-6 months (c) 7-12 months (d) more than 12 months

10. Did the EA provide you with a receipt for the payments you made to the agency? Yes / No

If "Yes":

- Did the total amount in the receipt reflect all the different services that the agency charged you for? Yes / No

11. Did the EA provide you with a service agreement, which clearly states all the costs that the EA charged you for? Yes / No

12. Did the EA provide you with a sample SEC in your own language and ensure that you properly understood the contract before you signed it? Yes / No

13. Did you sign a Standard Employment Contract (SEC)? Yes / No

14. Did the EA clearly explain your rights under Hong Kong law, where you can seek assistance in case of disputes or complaints and provide you with information pamphlets from the Labour Department? Yes / No

15. Were any important documents (e.g. passport, HK ID, contract, bank/ATM cards, information leaflets on your rights, etc.) withheld at any time before or since taking up your current job? Yes / No

If "Yes":

- Who took the documents? EA: Yes / No; Employer: Yes / No
- Which document(s)? (Circle all answers that apply.)

(a) passport (b) contract (c) HK ID card (d) bank/ATM card (e) other:

- Did you ask for them back? Yes / No

If "Yes":

- Did they return the document(s) in reasonable time? Yes / No

16. Have you been threatened, punished or mistreated (verbal, physical or sexual abuse, deprivation of food, etc.) by your:
- Employer: Yes / No
- EA: Yes / No

17. Were you paid within 7 days after the end of the wage period every month? Yes / No / Most of the time / Sometimes

18. Were you paid in full every month? Yes / No
- If "No", did you complain to the EA? Yes / No
- If "Yes", did they take satisfactory action to try and resolve this problem? Yes / No

19. Do you get one rest day per week? Yes / No / Most of the time / Sometimes
- If "Yes", is the rest day a full 24 hours? Yes / No

20. Have you been given a day off for all statutory holidays? Yes / No
- If "No", do you receive some statutory holidays off? Yes / No

21. Are you free to leave your employer's home during rest periods or days off?
- Yes / No / Most of time / Sometimes

22. Does your employer provide you with food or food allowance? Food / Food allowance
- If food is provided, are you given enough to eat? Yes / No / Most of the time / Sometimes

23. Did you complain to the EA regarding any work-related problems you had? Yes / No / I did not have any problems

If "Yes":

- specify problem(s): _____
- Did the EA try to help you resolve the problem(s)? Yes / No
- Was the EA successful in resolving the problem(s)? Yes / No

24. Did the EA make you sign any documents, which were not true (e.g. that you received your full wage when deductions were made; agreed to your documents being held by the employer/EA when you did not want this; or had been briefed on your rights and received a sample SEC and relevant publications when you had not)? Yes / No

25. Did the EA mention the CoP in any discussions with you? Yes / No

Appendix 2: HKSAR Standard Employment Contract for migrant domestic workers

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.

I.D. 407 (10/2003)

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 prescibed 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

KEY RESEARCH DATA

96%

Interviewees' employment agencies not fully compliant with crucial elements of the CoP.

74%

Interviewees' employment agencies who did not comply with four or more key standards in the CoP.

57%

New arrival interviewees who were charged illegal fees by employment agencies in Hong Kong.

24%

Interviewees who had their personal documents withheld.

Number of migrant domestic workers surveyed: **452**

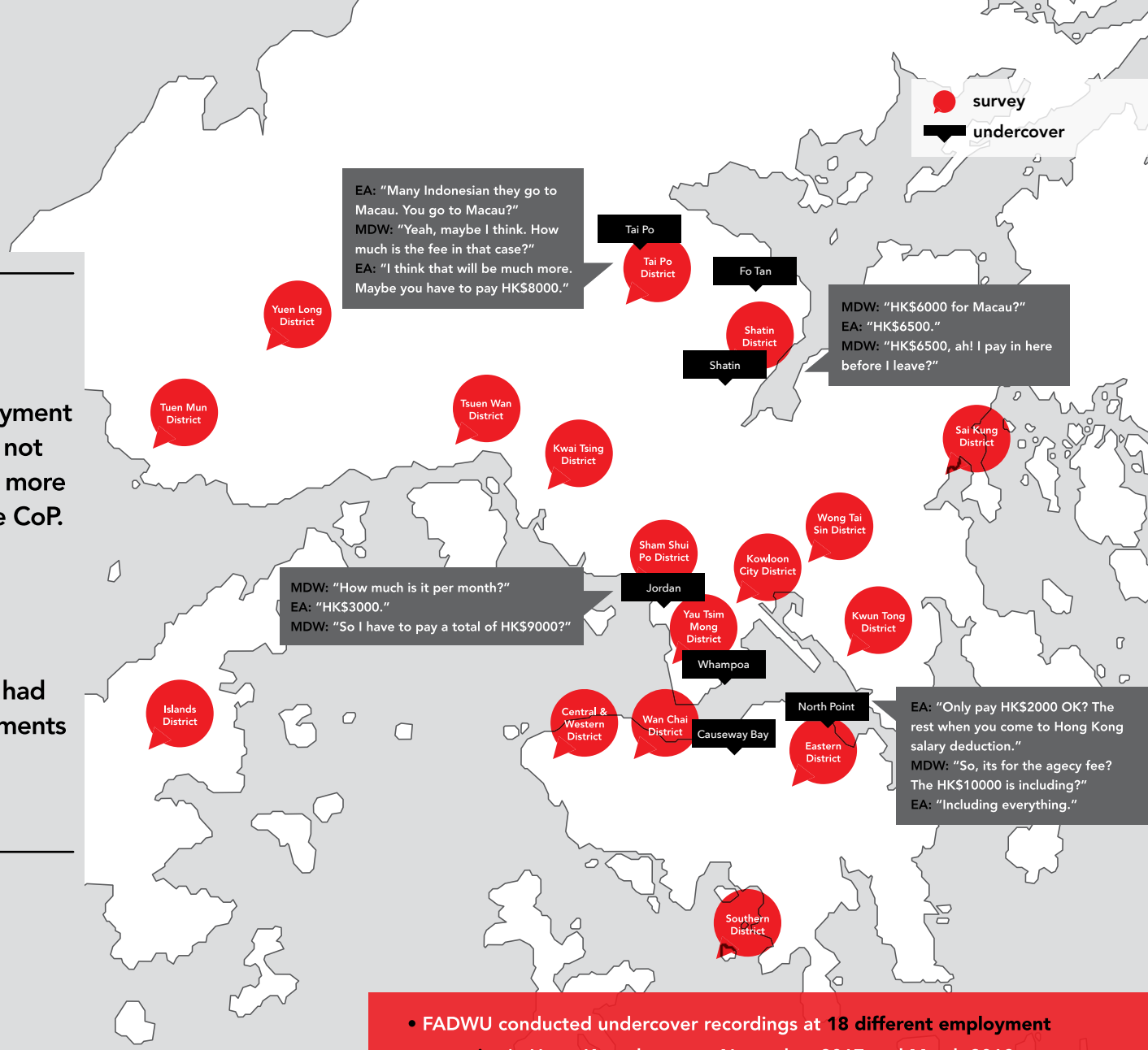
Number from the Philippines: **381**

Number from Indonesia: **71**

Age range: **22-60 years old**

Sex: **Women**

Survey dates: **July 2017-March 2018**



- FADWU conducted undercover recordings at **18 different employment agencies** in Hong Kong between November 2017 and March 2018.
- Seven of the agencies stated they would charge **HK$3500 to HK$10000** to find a new employer. The current legal limit is **HK$441**.
- **Six of the agencies** stated that a deposit was required, despite this being illegal.