



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

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Photo Credit: Robert Godden



EXECUTIVE SUMMARY

How is someone in forced labour?

The International Labour Organization (ILO) defines a situation of **forced labour** as **work for which a person has not offered him or herself voluntarily and which is performed under the menace of any penalty**. This definition is based on the legal standards in the *ILO Forced Labour Convention, 1930* (No. 29).

As per the ILO guidelines, an individual is counted as being in **forced labour** if they are experiencing **both involuntariness and menace of penalty** in any **one of these three dimensions** of forced labour: **unfree recruitment, work and life under duress and impossibility of leaving**. These dimensions correspond with the various stages of MDWs' employment.

How is someone trafficked for the purpose of forced labour?

This study considers an individual to be **trafficked for the purpose of forced labour** if they have experienced **both involuntariness and menace of penalty** in **at least two** of the three dimensions of forced labour, and one of these dimensions must be **unfree recruitment**. This is because the worker shows forced labour along the migration path. These individuals are a subset of the total of those counted as being in forced labour. This is explained in more detail on page 36.

What is this research about?

This report presents the findings from a year-long primary research project carried out from March 2015 - March 2016. It is the first study of its kind to employ quantitative methods to estimate the prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers (MDWs) in Hong Kong. The findings of the study provide evidence of the need for policy and law reform to ensure that MDWs are protected from exploitation and to combat forced labour and human trafficking in Hong Kong.

Justice Centre regards this research as an important contribution to the discussion of MDW rights in Hong Kong. It is the first research project to examine the extent to which forced labour and trafficking for the purpose of forced labour are present within the general population of MDWs currently employed in Hong Kong. Moreover, in measuring prevalence, Justice Centre has developed a replicable framework for assessing whether the cumulative experiences in recruitment and/or working life in Hong Kong are constitutive of forced labour and/or trafficking for the purpose of forced labour.

Why has Justice Centre done this research?

As of July 2015, there were over 336,000 registered MDWs in Hong Kong from a variety of Asian countries, but mainly from Indonesia and the Philippines. Despite the fact that the Hong Kong Government asserts that there are adequate regulations in place to protect MDWs in the HKSAR territory, a number of recent high-profile incidents have thrown light on the serious abuse of some MDWs.

While these cases may be at the extreme end of the spectrum of mistreatment, Justice Centre conducted this research to estimate - for the first time - the scale of exploitation experienced by the general MDW population in Hong Kong, and the extent to which this exploitation amounts to forced labour or even human trafficking for the purpose of forced labour.

HKSAR has no comprehensive legislation or policies to tackle forced labour or trafficking for the purpose of forced labour.

HKSAR has no comprehensive legislation or policies to tackle forced labour or trafficking for the purpose of forced labour. The government often denies that the territory is a source, destination or transit area for human trafficking and forced labour; until now, there has been no large-scale data to prove otherwise and help build a case for policy and legislative reform.

How was the study conducted?

The study used a mixed methods approach over a period of one year. The first part of the study was a survey in questionnaire form, carried out in April - May 2015. It involved quantitative data collection and analysis to examine the experiences of MDWs in both their home countries and Hong Kong in relation to: recruitment practices, recruitment debt, salaries, working hours, food, working and living conditions, treatment by their employer and other issues. **Over 1,000 MDWs from eight countries of origin were surveyed across the HKSAR territory**, all of whom were in employment in Hong Kong at the time of participating in the survey.

The general findings from the survey were then analysed by our researchers against indicators of forced labour, according to a theoretical framework based on the 2012 ILO publication *Hard to See, Harder to Count*,¹ but adapted by Justice Centre to the Hong Kong context. Key results were then discussed and validated with MDWs through a series of five qualitative focus groups with 46 participants from five countries of origin organised in collaboration with NGOs, trade unions and migrant rights groups.

Note: All findings in the report have been rounded to one decimal place.

What does the research show about forced labour?

17.0% of MDWs surveyed display all the indicators required to be counted in forced labour. That's 1 in 6 MDWs in Hong Kong.

14.0% of these MDWs in forced labour have been trafficked into it.

66.3% of MDWs surveyed show strong signs of exploitation but do not trigger enough indicators to be counted as being in forced labour.

11.3% of MDWs surveyed show medium signs of exploitation.

Only 5.4% of MDWs surveyed do not show any signs of exploitation or forced labour.

Who is most vulnerable to forced labour?

The findings indicate that those in forced labour tend to be on their **first contract, new to Hong Kong** and have **significant recruitment debt**. For example, **MDWs on their first contract are 2.7 times more likely** than those with previous experience in Hong Kong. **MDWs who secured their contract outside Hong Kong are 15.4% more likely** than those who secured their contract in Hong Kong.

MDWs with excessive recruitment debt are six times more likely to be in forced labour.

MDWs with excessive recruitment debt (debt that is at least 30% of annual income) **are 6 times more likely** to be in forced labour than those with lower debt levels. MDWs in forced labour have a **mean monthly repayment of recruitment debt of HK\$1,278**, whereas those not in forced labour have a mean monthly repayment of recruitment debt of HK\$322.

MDWs in forced labour are also **more likely to be from Indonesia** and **young**. **MDWs from Indonesia are 70.5% more likely** than non-Indonesians to be in a situation of forced labour. **MDWs younger than 30 are 52.8% more likely** than those older than 30. **MDWs less than 24 are 15 times more likely** than those older than 24.

What does the research show about MDWs' working conditions?

Aside from significant levels of forced labour, the findings also reveal that certain exploitative practices are pervasive across the general MDW population.

For example, MDWs, on average, report working **11.9 hours a day, six days a week**, which is equivalent to **71.4 hours per week**. And while the majority of MDWs are awarded one day off per week as a rest day, **36.7%** have to work before they leave and after they return to their employer's home on their rest day, **not getting the full 24 hours' rest** as mandated under Hong Kong employment law.

Working hours, rest time, accommodation arrangements and privacy for MDWs are significantly negatively impacted as a result of the **"live-in"** requirement enforced by the Hong Kong Government, which makes it compulsory for MDWs to live with their employers.

39.3% of the MDWs surveyed **do not have their own room to sleep in, 35.2% share a room with a child or the elderly and 2% sleep in a kitchen or communal living space.**

Note: To read the key findings in detail, see page 40.

In terms of wages, the findings reveal that rather than the Minimum Allowable Wage (MAW) being treated as a minimum floor, it is seen as the norm. Only **6.1% of employers** were reported to be **paying above the set MAW** at the time of the survey. The situation is even more stark with food. Of those receiving a food allowance in lieu of food in-kind, **57.7%** reported **receiving less than the set Minimum Allowable Food Allowance (MFA)** at the time of the survey.

31.9% of respondents state that they **do not feel free to quit their job**. Of these MDWs, 0.6% said they could not leave their job because their employment agency still held their passport, 2.2% were told by their employment agency that they had to stay in the job and **5.9%** did **not feel free to quit because they still had recruitment debt**.

MDWs were also concerned about the Hong Kong Government's attitude towards MDW-initiated contract terminations ("job-hopping") as **37.5%** were worried that it **"looks bad" to change employers**.

Finally, **55%** said they did not feel free to quit because they felt all jobs in Hong Kong are like this – that terminating their contract would make no difference in their working and living conditions.

55% said they did not feel free to quit because they felt all jobs in Hong Kong are like this.

A call for action

The findings show that although Hong Kong has a highly regulated temporary migration scheme for MDWs in comparison to other countries, particularly in the Asia-Pacific region, MDWs' rights are being systematically violated.

Existing labour provisions and enforcement measures currently in place are not enough to protect MDWs from the risk of generalised labour exploitation, forced labour, or trafficking for the purpose of forced labour. Indeed, they may even be a contributing factor in increasing MDWs' vulnerability to exploitation.

The findings from this study provide strong evidence for legislative and policy reform around forced labour and human trafficking. Justice Centre calls upon the Hong Kong Government to take proactive measures to protect MDWs from exploitation and abuse and offer more assistance to MDWs who fall victim. With this in mind, Justice Centre makes the following recommendations to the Hong Kong Government:

On steps to combat human trafficking and forced labour in the HKSAR territory

1. **Conduct a formal review** in the Hong Kong Legislative Council (LegCo) to assess the adequacy of current laws, policies and efforts to combat human trafficking and forced labour in Hong Kong, and examine the root causes of human trafficking and forced labour, in consultation with relevant stakeholders, including civil society and taking stock of international developments and best practices.
2. **Build the capacity and authority** of relevant government departments at the front-line, including the Police, Immigration Department, Labour Department, Department of Justice and Social Welfare Department, to proactively identify and assist victims of forced labour and human trafficking.
3. **Develop an Inter-departmental National Plan of Action** as a roadmap for concrete action from the prevention, prosecution and protection perspectives, in order to expand and improve enforcement of existing legislation and foster inter-agency and civil society cooperation.
4. **Seek extension of the *UN Trafficking Protocol* (*The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*)** to Hong Kong and incorporate a **comprehensive definition of human trafficking** into domestic legislation to combat human trafficking in all its forms, including for the purpose of forced labour.

5. **Introduce legislation to prohibit forced labour** as a standalone offence (in accordance with the *ILO Forced Labour Convention No. 29 (1930)* and paying due attention to the ILO Forced Labour Indicators) and vigorously prosecute offenders.
6. **Encourage victims of human trafficking and forced labour to come forward** by not prosecuting them for criminal or immigration-related offences as a result of being a victim of forced labour and/or human trafficking. Ensure that they have access to adequate rehabilitation and support services, legal advice and representation, temporary residence, the right to work, and effective redress.

On monitoring and regulation of recruitment and employment placement agencies

7. **Create and enforce robust, binding regulations** on employment agencies, rather than a voluntary code of conduct, and ensure meaningful consultation with all stakeholders, including labour and migrant rights' organisations.
8. **Improve dialogue and cooperation with sending governments** of MDWs through regular bilateral and multilateral engagement in the areas of recruitment, training, monitoring of employment agencies and support to MDWs.
9. **Strengthen the mandate and enforcement capacity of the Employment Agencies Administration (EAA)** to monitor and regulate employment agencies, provide harsher penalties for employment agencies engaging in unethical, deceptive, coercive, collusive or illegal practices, and facilitate MDWs' ability to file complaints to the EAA.

On MDWs' enjoyment of their right to just and favourable conditions of work

10. **Remove the "live-in" requirement** and give MDWs a choice whether to live with their employer or live out, ensuring those who live out receive an appropriate housing allowance or salary commensurate with the cost of living in Hong Kong.
11. **Stipulate in detail in the Standard Employment Contract (SEC)** what is considered suitable and unsuitable accommodation, suitable and sufficient food (where food is being supplied instead of an allowance), sufficient daily rest times and reasonable privacy, in line with relevant human rights standards.
12. **Develop and implement compliance mechanisms**, including measures for labour inspection, for the Labour

Department to be able to give more scrutiny to follow up and monitor that the terms submitted by employers in the SEC are being upheld, and investigate and prosecute cases where legal provisions on conditions of work, living arrangements and occupational safety are being violated.

13. **Provide compulsory, free and standardised training**, including periodic "refreshers" for both MDWs and their employers on Hong Kong's labour laws, each party's rights and responsibilities in the employer-employee relationship and where and how they may seek assistance from authorities where there is a dispute.
14. **Develop tracking mechanisms** of MDW contracts to monitor employers/households where contracts are terminated early or with high turnover of MDWs, and take proactive measures to prevent employers who have a negative track record of hiring MDWs from being able to procure future domestic services.
15. **Enact legislation on standard working hours** that stipulates maximum working hours, overtime and rest periods, and ensure that these statutory provisions are also applicable to the domestic work sector.
16. In conjunction with the Government of the People's Republic of China, **seek the adoption and application of ILO Convention No.189** to the territory and ensure that its provisions on domestic labour are in line with international standards, while also raising public awareness of the rights of MDWs.

On contract termination and the conditions of stay placed on MDWs in the HKSAR immigration regime

17. **Abolish the "two-week rule"** and implement conditions of stay, that do not tie MDWs' visas to an employer, but rather allow MDWs sufficient time to be able to secure alternative employment without first returning to their home country after termination of their contract.
18. **Expand the numbers of permitted reasons for changing employers** for MDWs working in households where the terms of the SEC are not being complied with; and so grant flexibility to change employers without having to depart Hong Kong.
19. **Enable MDWs to seek access to justice** by allowing those who pursue claims against their employer or employment agency to be granted the right to work while their case is being handled.
20. **Allow direct hire for all MDW contracts secured in Hong Kong**, regardless of the nationality of the MDW, in conjunction with sending country governments.





PART 1

INTRODUCTION

The report is laid out as follows:

Part 1 10 - 17

Sets out the rationale for the study as well as the terminology and operational definitions used in determining what constitutes forced labour and trafficking for the purpose of forced labour.

Part 2 18 - 29

Looks at the local and global landscape surrounding MDWs and their rights.

Part 3 30 - 39

Outlines the methodology and measurement framework employed by Justice Centre in conducting this research.

Part 4 40 - 61

Details the key findings of the research, including the estimates of the prevalence of forced labour and trafficking for the purpose of forced labour amongst MDWs.

Part 5 62 - 71

Outlines the conclusions Justice Centre has drawn as a result of this research and makes recommendations to the Hong Kong Government on ways forward.

Appendices Online

The survey instrument, a more detailed discussion of the methodology, the forced labour definitions, indicators and dimensions are all available as appendices online at www.justicecentre.org.hk/comingclean

OVERVIEW

This report presents the findings of a year-long mixed methods primary research project, carried out by Justice Centre Hong Kong from March 2015 to March 2016, to estimate the prevalence of forced labour and trafficking for the purpose of forced labour amongst migrant domestic workers (MDWs) in Hong Kong.

Justice Centre regards this research as an important contribution to the discussion of MDW rights in Hong Kong. It is the first research project to examine the extent to which forced labour and trafficking for the purpose of forced labour are present within the general population of MDWs currently employed in Hong Kong (as opposed to merely a subset of MDWs who have left their employer as a result of abuse and/or amongst MDWs who had problems and sought assistance from NGOs and shelters).

Moreover, in measuring prevalence, Justice Centre has developed a replicable framework for assessing whether the cumulative experiences in recruitment and/or working life in Hong Kong are constitutive of forced labour and/or trafficking for the purpose of forced labour. This measurement framework is based on the standards proposed by the International Labour Organization (ILO),² but adapted by Justice Centre to the Hong Kong context.

This is the first large-scale research project to examine the extent to which forced labour and trafficking for the purpose of forced labour are present within the general population of MDWs currently employed in Hong Kong.

RATIONALE FOR THE RESEARCH

Globally, there are 21 million people in “modern slavery” around the world; 14.2 million are victims of forced labour exploitation in economic activities, including domestic work.³

For Justice Centre, the objective of this research is clear; without robust evidence about the scale of forced labour in Hong Kong, it is difficult to garner the political will required for concerted action. It is Justice Centre’s aim that the findings from this study will provide much needed evidence to support advocacy calling for legislative and policy reform around forced labour and trafficking for the purpose of forced labour, as well as to urge the HKSAR Government to take proactive measures to protect MDWs from exploitation and abuse and offer mistreated MDWs more assistance.

HKSAR has no comprehensive legislation to prohibit either forced labour or human trafficking for the purpose of forced labour, and the Hong Kong Government often denies that these problems exist within Hong Kong’s borders.⁴ With limited data collection and monitoring of forced labour and trafficking for the purpose of forced labour by the government, Justice Centre seeks to fill the information gap with the findings from this report, and use it as an evidence base for policy and legislative reform.

HKSAR has no comprehensive legislation to prohibit either forced labour or human trafficking for the purpose of forced labour.

Any serious discussions of forced labour and trafficking for the purpose of forced labour amongst MDWs are sensitive and likely to generate intense emotional responses; this is especially true in a city like Hong Kong, which prides itself on its observance of the rule of law. The Hong Kong Government asserts that the city is one of the best places in the world to work as a domestic worker, and Hong Kong has many legal provisions in place said to protect MDWs, such as a Standard Employment Contract (SEC), the Minimum Allowable Wage (MAW) and a mandated rest day.

In the past few years, Hong Kong has been faced with a number of incidences of abuse against MDWs, most notably the much-publicised cases of Erwiana Sulistyarningsih,⁵ Kartika Puspitasari⁶ and Elis Kurniasih.⁷ Erwiana’s story has been held up by many as the quintessential example of modern day slavery and has marked an inflection point in Hong Kong on discussions about the treatment of MDWs in this city and around the world. Her case bears many of the markers of forced labour and trafficking for the purpose of forced labour, for example: isolation, withholding of wages, intimidation and threats, and degrading working and living conditions and abuse.⁸ Yet, none of the charges subsequently brought against Erwiana’s former employer reflect the totality of her experience as a potential victim of forced labour and/or human trafficking.

While the experiences of these women tell us a great deal about the trigger points of vulnerability and the nature of abuse and exploitation along the migration path for MDWs to Hong Kong, there is a risk that the focus on only the most extreme cases diminishes the very real experiences of forced labour and trafficking for the purpose of forced labour that do not involve (demonstrable) physical violence. Violence and other forms of abuse might be some of the tools of coercion, but they are not the only means by which labour is forced. Threats related to recruitment debt and immigration status (for example, withholding of wages, confiscation of passports or denunciation to authorities) can also be used to coerce workers. To appreciate the reality of forced labour and trafficking for the purpose of forced labour in Hong Kong, it is vitally important that we understand this.

It is necessary therefore to look at the full context of forced labour and trafficking for the purpose of forced labour and examine the extent to which the indicators of these are evidenced in the overall MDW population in Hong Kong. Are experiences like those of Erwiana and Kartika isolated cases and simply the result of “bad apple” employers and recruitment agencies?⁹ Or are they the “tip of the iceberg,”¹⁰ the extreme end of a larger scale of exploitation that is entrenched in the MDW labour market in Hong Kong? And to what degree do abusive practices cumulatively constitute forced labour or trafficking for the purpose of forced labour?

It is these questions that Justice Centre seeks to answer with this report.

DEFINING THE CONCEPTS

There is a clear need for data to determine the scale of forced labour and trafficking for the purpose of forced labour in Hong Kong: in order to understand if there is a problem and thus address it, we need to first be able to measure it. To do this, we must operationalise legal concepts into measurable indicators. And for this, precise definitions are crucial. The terms “human trafficking”, “modern slavery” and “forced labour” are often used interchangeably and conflated with each other. In fact, there are vigorous debates about whether these terms do reflect similar states and how to practically measure if, and the extent to which, they are happening to people around the world.¹¹

As a consequence of the increasing presence of human trafficking, forced labour and modern slavery on the global policy agenda, calls have been growing for more measurable, consistent and comparable data on forced labour, trafficking for the purpose of forced labour and modern slavery. In response, there have been a number of international efforts to develop standardised operational definitions of forced labour, trafficking for the purpose of forced labour and modern slavery for research purposes.¹²

While the *Palermo Protocol* provides a broad outline of **human trafficking** as constituted by three elements, the essence of which is exploitation, the Protocol itself does not clearly define exploitation, or other important terms like coercion and deception. The ILO argues that “without further clarification, there is a risk that interpretation of these terms may continue to diverge widely.”¹³ While the breadth of the definition in the protocol may provide an advantage in allowing for an inclusive approach to the definition, which can be adapted and evolved to fit context, there remains a need to develop an operational definition of human trafficking, particularly one that can then be measured - e.g. transformed into a series of questions for research purposes.

There is no legal definition of **modern slavery**. Slavery was originally defined by the League of Nations’ *Convention to Suppress the Slave Trade and Slavery* (1926) as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”¹⁴ With modern slavery, there is no standard definition, let alone an international protocol or convention outlining it in any detail. Instead, modern slavery is often used as an umbrella term to refer to many of the forms of coercion and exploitation included in the *Palermo Protocol* and in the *Forced Labour Convention*. Different NGOs, international bodies and experts have their own definitions to describe modern slavery.¹⁵

Figure 1

Definitions of key terms and relevant international legal standards

Human trafficking

Definition:

Human trafficking involves the three aspects of: (1) **an action** (such as recruitment or transferring of people) via (2) **a means** (such as deception or coercion), and for (3) **the purpose of exploitation** (which includes forced labour).

International standards:

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (Palermo Protocol or UN Trafficking Protocol)

Forced labour

Definition:

Forced labour is defined as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily.

International standards:

Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Protocol of 2014 to the Forced Labour Convention, 1930

Modern slavery

Definition:

Modern slavery is an umbrella term that can refer to several concepts, such as debt bondage, sale of children, forced marriage, human trafficking and descent-based slavery, amongst other practices.

International standards:

Although there are legal definitions of “slavery” under international law, such as the *1926 Slavery Convention* and the *1956 Supplementary Convention*, there is no international legal standard for “modern slavery.”

Forced labour is defined by the *ILO Forced Labour Convention No. 29* (1930) in greater detail “as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily.”¹⁶ The ILO notes that as defined, forced labour “encompasses situations such as slavery, debt bondage or serfdom,”¹⁷ all of which are also defined in other international instruments, including the *UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (1956).¹⁷

Human trafficking or forced labour?

For Justice Centre, where as forced labour refers to the **nature of exploitation, trafficking for the purpose of forced labour refers to the process through which the person comes to be in the exploitative situation (forced labour).**

People who are trafficked may well be trafficked for the purpose of labour exploitation, but not all victims of forced labour have necessarily been trafficked into that situation, as this would require a prior act (such as that of being recruited), and that this act was brought about by one of the specific means (such as with the use of deception or coercion, all of which must be carried out with the intention to exploit).

A **continuum of exploitation** ranges from decent work on one end of the spectrum, through progressively more serious labour law violations and sub-standard working conditions, to extreme exploitation in the form of forced labour – which may or may not be the result of human trafficking.¹⁸ People often get trapped into situations of forced labour gradually over time rather than from one day to the next. A seemingly minor labour offence, when compounded with other pre-existing vulnerabilities or human rights abuses, may be enough to push an exploited worker past the threshold of forced labour. A worker does not always fall victim to forced labour at the time of recruitment, but may become

so further along in the employment experience. Migrants in particular become increasingly vulnerable as they become subject to immigration control, incur a high debt burden or are removed from their social networks, for example.

Decent work, the opposite of forced labour, is characterised by free will and choice; equality of opportunity; meaningful, fair and productive work; personal growth and development; security and dignity and bargaining power in the employer-employee relationship. According to the ILO, decent work “sums up the aspirations of people in their working lives.”¹⁹ The ILO “Decent Work Agenda” was developed in 1999 and rests on four pillars: standards and rights at work, employment creation and enterprise development, social protection and social dialogue.²⁰ The labour standards of decent work for domestic workers in particular were set out in the *ILO Domestic Workers Convention 2011* (No. 189), which entered into force in 2013.²¹ So far, 22 states have ratified this new convention.²²

Sustainable Development Goals

The Sustainable Development Goals (SDGs), recently adopted by the United Nations General Assembly on 25 September 2015, set out the international community’s agenda for development and social change by 2030. Goal 8 of the SDGs calls for the promotion of “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.” Target 8.7 under this goal requires states to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking.”²³

THEY TREAT ME AS
PART OF THE **WORKING**
FAMILY **MONDAY TO FRIDAY**

ENOUGH TIME TO GO TO CHURCH AND DEVELOP MYSELF

LISTENING TO MY OPINION **SHORTER**

MY EMPLOYER'S **CHILDREN**
TELL ME THAT I AM THE **WORKING HOURS**
BEST JIE JIE **A LOVING RELATIONSHIP**

IN THE WHOLE WORLD WITH MY EMPLOYER'S FAMILY

GETTING **RESPECT ME** **BEING ABLE TO**
ENOUGH **AS A PERSON** **VISIT MY FAMILY**
SLEEP **A CONSIDERATE AND**
SUPPORTIVE EMPLOYER

IN THE WORDS OF MIGRANT DOMESTIC
WORKERS: WHAT DOES DECENT WORK LOOK LIKE?

Note: Based on responses from MDW participants in the qualitative focus groups of the study.

ILO HARD TO SEE, HARDER TO COUNT GUIDELINES

The theoretical underpinning of this research, as well as the final calculation of prevalence rates of forced labour, is based on the 2012 ILO publication, *Hard to See, Harder to Count (Hard to See)*, one of the most recent international efforts to create survey guidelines to estimate forced labour as defined by the *ILO Forced Labour Convention*. While the *Hard to See* measurement framework was chosen as the basis for this study, the ILO makes it clear that it is a general tool which must be adapted to the context of the country where the survey is implemented.”²⁴ Therefore, Justice Centre adapted *Hard to See* to the specificities of the Hong Kong context.

Not every labour violation constitutes forced labour and certainly not necessarily trafficking for the purpose of forced labour. Instead, forced labour and trafficking for the purpose of forced labour involve an accumulation of exploitative practices (that may also amount to human rights abuses), rather than just individual violations of labour laws. This study estimates the prevalence of forced labour and trafficking for the purpose of forced labour in Hong Kong by measuring the extent to which exploitative and/or abusive practices, when taken cumulatively, are tantamount to forced labour or trafficking for the purpose of forced labour.

“

This measurement framework is a general tool which must be adapted to the context of the country or the survey is implemented. Indicators may vary according to the type of forced labour to be surveyed in the national legal framework. [Hard to See] is a general tool which must be adapted to the context of the country where the survey is implemented.

”

ILO Hard to See, Harder to Count survey guidelines to estimate forced labour of adults and children²⁵

A HUMAN RIGHTS-BASED APPROACH

Justice Centre approaches the issues of human trafficking, forced labour, and modern slavery from the standpoint of human rights, which should be at the heart of any analysis, and all recommendations pursuant to that analysis. A human rights perspective is based on the understanding that human rights abuses, poverty, discrimination and social exclusion are both a cause and a consequence of human trafficking, forced labour and modern slavery.²⁶

Interventions from authorities, policy responses and legislation on human trafficking and forced labour should therefore not merely focus on a criminal or immigration law enforcement perspective, but rather be firmly grounded in a human rights framework centred on protecting migrants’ rights, and addressing the underlying determinants and structural conditions that make people vulnerable to exploitation. States have a key responsibility to respect, protect and fulfil the human rights of all victims or people at risk of forced labour and human trafficking, irrespective of their country of origin.

“

In order to effectively eradicate such exploitation in all its forms, governments and other stakeholders must address the root causes of poverty, social exclusion and all forms of discrimination.

”

Ms. Gulnara Shahinian, former UN Special Rapporteur on contemporary forms of slavery²⁷





PART 2

LOCAL AND GLOBAL CONTEXT

THE LANDSCAPE FOR MIGRANT DOMESTIC WORKERS IN HONG KONG

Globally, there are 53 million domestic workers (a 60% increase since the 1990s), 41% of whom are found in Asia.²⁸ HKSAR has one of the highest densities of MDWs in the world. The functioning of Hong Kong's economy relies on the abundant availability of affordable domestic work for a substantial proportion of the care economy, particularly in the absence of sufficient government provision of care services for children and the elderly.²⁹

As of July 2015, there are over 336,600 MDWs in Hong Kong, the overwhelming majority of whom are women.³⁰ Historically, domestic workers in Hong Kong were Chinese. In the 1970s, the Hong Kong Government created a scheme for other migrants to become domestic workers. MDWs arrived first from the Philippines, followed by Indonesia and Thailand. In recent years, other countries have begun to participate, with MDWs arriving from Nepal, Sri Lanka, Myanmar and Bangladesh, amongst others.³¹

There are 336,600 MDWs in Hong Kong. They comprise 4.4% of the total population and 10% of the total working population in 1 in 3 households with children in Hong Kong employs a MDW.³²

Figure 2 Total population of MDWs in Hong Kong (1992-2014)

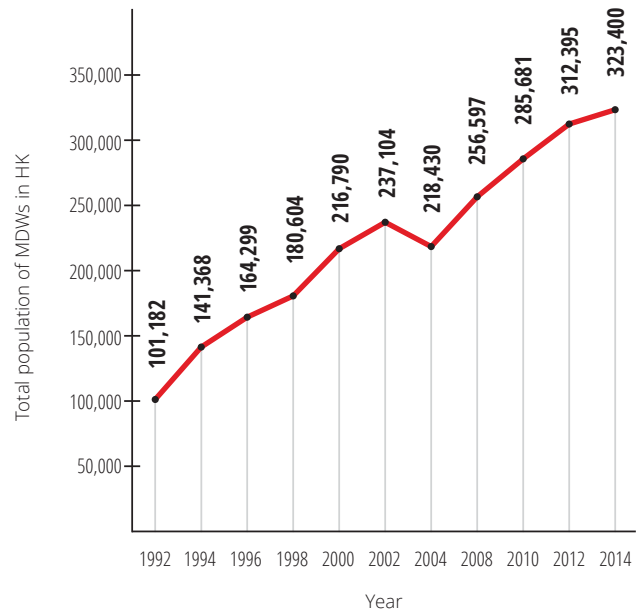
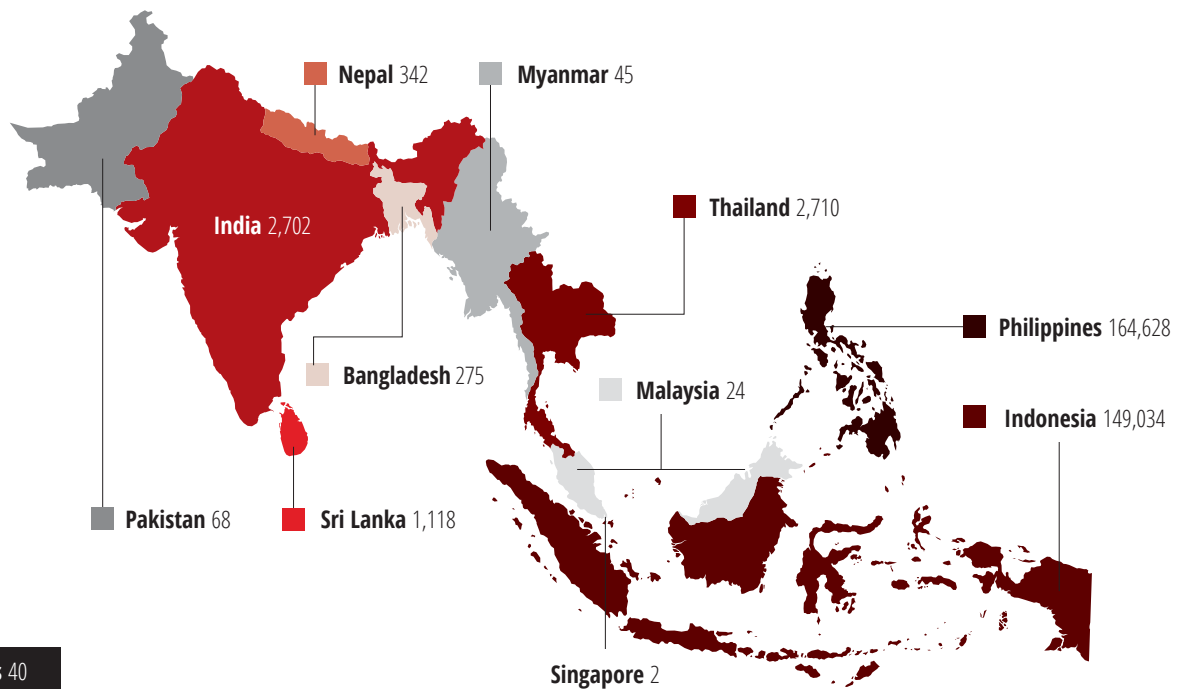


Figure 3 Key countries of origin of MDWs in Hong Kong (2013)³³



In 2004, the Asian Migrant Centre estimated that the economic contribution of MDWs to Hong Kong amounted to around HK\$13.8 billion – about 1% of the total GNP at the time the study was conducted and likely much higher now. This contribution included: consumption spending by MDWs; amount saved in child, disabilities and elderly care work that MDWs undertake; the money paid by MDWs to recruitment agencies in Hong Kong; the Employees Retraining Levy (since abolished by the government); amount paid by employers of MDWs to the Hong Kong Government; and the amount saved by employers who use MDWs to work illegally in shops, business or other households.³⁴ MDWs also play a substantial role in allowing parents to participate in the labour market. In remittances, their contribution to their home economies is clear: global overseas remittances from nationals account for 10% and 0.8% of the GDPs of the Philippines and Indonesia, respectively.³⁵

While Hong Kong’s median monthly income rose over 15% between 1998 and 2012, to HK\$20,700 a month, the minimum wage for MDWs only rose 3.9% (HK\$150) during the same period.³⁶

On paper, Hong Kong is regarded as one of the best places in the region to work as a MDW. Unlike many other jurisdictions, Hong Kong has a formal temporary labour migration scheme for domestic workers. Hong Kong also has one of the most liberal visa regimes in the world,³⁷ and there is no set limit for the number of visas issued to MDWs.³⁸ The Hong Kong Government states that it “attaches great importance to protecting the employment rights and benefits of Foreign Domestic Helpers (FDHs) in Hong Kong.”³⁹

The government argues that there are a number of statutory regulations in place to protect MDWs, such as: a minimum 24-hour rest period per week, a monthly MAW (distinct from the Statutory Minimum Wage for other workers) and a monthly Minimum Food Allowance (MFA). Employers must also provide free healthcare for their MDWs and take out a relevant insurance policy to cover their liability under the Employee’s Compensation Ordinance and common law.

Employment agencies recruiting and placing MDWs in Hong Kong must be registered with the Labour Department, and the fees they can charge workers are capped at 10% of their first month’s wages. MDWs must sign a Standard Employment Contract (SEC), which must then be submitted for approval to the Immigration Department (ImmD) and their respective consulates, and by law, the MDW must also be given a copy of his or her own contract.

Figure 4

“Helper” or “Worker”: Is there a difference?

The Hong Kong Government’s official terminology for migrant domestic workers is “Foreign Domestic Helper” or “FDH”. This is also most commonly used in the media and by society in Hong Kong.

However, the ILO employs the term “domestic worker.” This recognises domestic workers as workers with workers’ rights. The ILO also employs the term “migrant domestic worker” for domestic workers outside their country of origin.

A 2015 survey conducted by the HK Helpers Campaign with 83 domestic workers found that 72% preferred the term “domestic worker” over “domestic helper.”⁴⁰

Justice Centre employs migrant domestic worker (MDW) throughout this report. This term reflects MDWs status as both migrants and workers.

Figure 5 HKSAR provisions and regulations pertaining to MDWs⁴¹

Working hours: HKSAR currently has no statutory provision stipulating general maximum working hours. Compared to other sectors, MDWs are particularly vulnerable to excessive working hours given the nature of the work and “live-in” arrangements, where work and rest boundaries may be blurred.⁴² This can result in MDWs being “on-call”, with open-ended hours, lack of influence over working time arrangements, insufficient rest time and uncertainty of hours worked.⁴³

Weekly rest: A MDW is entitled to at least one rest day in every period of seven days. A rest day may be changed but another day of rest must be granted in lieu within the same month or within 30 days. An employer must not compel a worker to work on a rest day. The rest day must include 24 hours of continuous rest. Employers must not compel a MDW to perform duties on his or her rest day, but a MDW may volunteer to work on a rest day. This is in line with general labour law provisions for other workers.

Statutory holidays: Like other workers, a MDW is entitled to 12 statutory holidays in a year. If a statutory holiday falls on a rest day, a holiday should be granted on the day following the rest day. Payment in lieu of granting a statutory holiday is not permitted. If an employee must work, then the employer must arrange an alternative holiday within 60 days before or after the statutory holiday.

Paid annual leave: A MDW is entitled to paid annual leave after serving every period of 12 months with the same employer at the following rate: seven days each for the first and second year of service; and starting from the third year, the number increases by one day per year up to a maximum of 14 days.

Paid sick leave: A MDW is entitled to two paid sick leave days for each completed month of service in the first 12 months of their contract and four paid sick leave days for each completed month of service thereafter. The daily rate of sick leave pay is equal to four-fifths the average daily wages.

Minimum Allowable Wage: Because of the requirement to live-in with their employers, MDWs are excluded from the Minimum Wage Ordinance enacted in 2010, which is based on an hourly rate currently set at HK\$32.50 per hour. Their salaries are regulated, rather, by the Minimum

Allowable Wage for Foreign Domestic Helpers, currently set to HK\$4,210 per month (as of 1 October 2015). At the time of the survey, the Minimum Allowable Wage was HK\$4,110.

Parental leave and protection: Like other female workers, female MDWs are entitled to 10 weeks’ maternity leave. Maternity pay is equal to four-fifths of normal wages. It is unlawful for the employer to dismiss a pregnant MDW after she has served a notice of pregnancy, except in cases of serious misconduct. Like other male workers, male MDWs are entitled to three days paid paternity leave for each confinement of his partner or spouse. Paternity leave pay is equal to four-fifths of normal wages.

Food Allowance: Food must either be provided during employment or an allowance must be given in lieu. If food is in-kind, it must be free of charge. If an allowance is given instead, it should be no less than HK\$995 per month (as of 1 October 2015). At the time of the survey, the Minimum Food Allowance was HK\$964.

Accommodation: Under the SEC, an MDW is mandated to live in the home of their employer. The employer must provide a MDW with “suitable accommodation” and “reasonable privacy” within their home and it must be free of charge. Although there is no specification that a private room must be granted, the employer must declare the type of accommodation and facilities to be provided to the MDW in the SEC.

Insurance: Employers must take out an insurance policy to cover his or her liabilities under the Employees’ Compensation Ordinance and common law for injury at work in respect of an employee.

Travel Allowance: Upon commencement, termination or expiry of a MDW contract, the employer should provide a MDW with free passage to or from Hong Kong to their home country, usually an air ticket covering airport tax, and a daily food and travelling allowance of HK\$100 per day from Hong Kong to destination. There is no statutory provision related to compensation or an allowance for work-related travel in Hong Kong.

However, laws and policies on paper do not always translate into practice. A growing number of research reports have raised serious concerns about the exploitation and abuse of MDWs in Hong Kong. The scope of these studies has included examining the impact of the controversial “live-in” requirement and the “two week-rule”; analysing debt levels of MDWs and employment-related illegal practices; assessing long working hours, MDWs’ experiences of abuse with their employers, unlawful dismissal and pregnancy-related issues; MDWs’ knowledge of their rights and barriers they face in accessing justice, amongst other areas of concern.

For example, a 2012 report by Mission for Migrant Workers found that of the 3,000 MDWs surveyed, 58% had suffered verbal abuse, 18% physical abuse and 6% sexual abuse.⁴⁴ Likewise, the Equal Opportunities Commission (EOC) conducted a questionnaire in 2014 with 60 MDWs, that found that 6.5% of the respondents had experienced sexual harassment or discrimination.⁴⁵ In November 2013, Amnesty International produced a report based on 97 qualitative interviews with Indonesian MDWs who had experienced problems during recruitment and employment. The report argued that Indonesian MDWs are at risk of forced labour and that recruitment agencies in Indonesia and Hong Kong are complicit in trafficking MDWs to Hong Kong. This was the first report to make an explicit argument that the experiences of many Indonesian MDWs in Hong Kong are constitutive of trafficking for the purpose of forced labour.⁴⁶

In October 2013, a report was produced by the Alliance of Progressive Labour and the Progressive Labour Union of Domestic Workers in Hong Kong, based on a survey of 1,500 Filipina MDWs, that found that recruitment costs collected by agencies in both Hong Kong and the Philippines exceeded legal limits, going against both the Hong Kong regulation that employment agencies may only charge placement fees not exceeding 10% of the first month’s wages and the “zero placement fee” policy of the Philippines.⁴⁷

Figure 6 Controversial HKSAR policies pertaining to MDWs

Two-week rule: This provision dictates that MDWs are required to leave Hong Kong upon completion of their contract or within 14 days from the date of termination of their contract, whichever is earlier. Critics note that this means that MDWs must scramble to find alternative employment in Hong Kong within this limited timeframe. However, the government asserts that the rule is not designed to allow MDWs to find new employment, but rather, for MDWs to prepare for their departure from Hong Kong back to their home countries. The government says that the “two-week rule” was put into place to prevent MDWs from “job-hopping”, but critics suggest that the rule puts MDWs in a disadvantageous situation and makes them prone to exploitation from employers and employment agencies, as fear of termination makes them hesitant to leave or report an abusive situation.

“Live-in” requirement: This rule, introduced in 2003, dictates that MDWs must work and reside in the employer’s residence in Hong Kong. This is Clause 3 of the SEC, making both employers and MDWs liable for breaches. The government’s rationale for it is to prevent MDWs from taking on secondary or part-time work, which they say would compete with the local domestic workforce. With Hong Kong’s small living quarters, it is often difficult for employers to find suitable space in their homes. And, while employers must submit in the SEC a description of the accommodation they will provide for the MDW, there is no inspection undertaken at any point by either the Labour or Immigration Departments to verify that the provided accommodation is suitable or in line with the original submission. Critics say this requirement opens MDWs to abuse and excessive working hours due to the blurring of work and rest time, and also note that MDWs often are denied appropriate living quarters and privacy. They also point out that the “live-in” requirement is often a burden on employers as well, who themselves may prefer live-out arrangements.⁴⁸

No right of abode: Whereas “professional” migrant workers who work continuously for seven years in Hong Kong have the possibility to be granted permanent residency, MDWs are ineligible for this status under the Immigration Ordinance. A judgment handed down by the Hong Kong Court of Final Appeal in 2013 confirmed that, due to the nature of MDWs’ contracts and visa arrangements, they could not be considered to be “regularly residing” in Hong Kong.⁴⁹

INTERNATIONAL CONCERN ABOUT THE SITUATION OF MDWS IN HONG KONG

At the international level, Hong Kong has been criticised by several UN human rights treaty bodies for its treatment of MDWs and its lack of measures and laws to combat human trafficking and forced labour, to which MDWs are particularly vulnerable.

In November 2014, the **UN Committee on the Elimination of Discrimination against Women (CEDAW)** called on the Hong Kong Government to strengthen its mechanisms to protect MDWs from discrimination and abuse by employers and recruitment and placement agencies; to extend the time interval of the “two-week rule”; to revise the “live-in” requirement to be optional; and to adopt legislation fulfilling the requirements under the *ILO Domestic Workers Convention 2011* (No. 189). In large part, these recommendations simply reiterated those made by CEDAW to the Hong Kong Government in its previous review of the HKSAR territory in 2006. CEDAW also called on the Hong Kong Government to adopt comprehensive anti-human trafficking legislation.⁵⁰

In April 2014, the **UN Committee on Economic, Social and Cultural Rights (CESCR)** likewise regretted that the Hong Kong Government had “not taken any concrete measures to repeal” the “two-week rule” and “live-in” requirement since its last review. It also urged the Hong Kong Government to establish a comprehensive law to regulate domestic work and ensure MDWs enjoyed the same conditions as other workers; to provide effective mechanisms for reporting abuse and exploitation; and establish an inspection mechanism to monitor the conditions of work.⁵¹

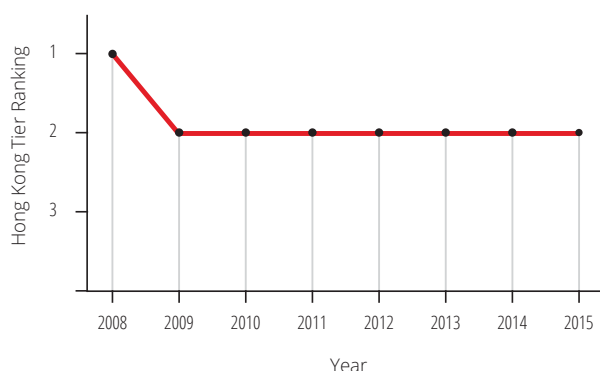
In March 2013, the **UN Human Rights Committee (HRC)** also raised concerns about the discrimination and exploitation faced by MDWs and lack of adequate protection and redress provided for them, again calling on the Hong Kong Government to consider repealing the “two-week rule” and “live-in” requirement. Moreover, it recommended that the inclusion of certain practices regarding MDWs should be added to the definition of the crime of human trafficking.⁵²

The **UN Committee against Torture (CAT)** reviewed the Hong Kong Government in November 2015 at its 56th session. The issues of trafficking in persons and forced labour amongst MDWs were of such great concern that the Committee included specific recommendations directly calling on the government to address them. The Committee noted “regret that HKSAR continues to maintain immigration policies that could contribute to the risk of forced labour, such as the “live-in” requirement in the employing household and the

“two-week rule” [...]. It also noted concern that “victims of trafficking or forced labour continue to be prosecuted for illegal stay.”⁵³

CAT recommended that the Hong Kong Government do the following: adopt a trafficking definition in line with the *Palermo Protocol*; abolish the “two-week rule”; allow MDWs to live out; make more efforts to eliminate excessive fees and arrangements akin to debt bondage; and, enforce the existing legislative framework to prosecute and punish trafficking and forced labour offenders, with appropriate penalties. It also recommended that more attention be given to offering training to frontline workers for the identification of victims of trafficking; that effective remedy be provided to victims of human trafficking and forced labour, as well as sufficient psychological, medical and welfare support; and lastly, that bilateral, regional and international cooperation be strengthened between the Hong Kong Government and MDW-sending country governments, particularly with regards to excessive agency fees, debt bondage and aggressive loan agreements.⁵⁴ Indeed, these are the main reasons why HKSAR has ranked at Tier 2 in the US Trafficking Persons Report for eight consecutive years, with the 2015 report noting that, “Hong Kong’s laws do not specifically prohibit all forms of trafficking.”⁵⁵

Figure 7 Hong Kong tier ranking (2008-2015) in the US State Department’s *Trafficking in Persons* (TIP) Report



Tier 1: Countries whose governments fully comply with the Trafficking Victims Protection Act’s (TVPA) minimum standards.

Tier 2: Countries whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

Tier 3: Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

THE HONG KONG GOVERNMENT'S RESPONSE

On concerns about the situation of MDWs

In reaction to international criticism, the Hong Kong Government continues to assert that “cases of wounding and serious assault” are typically “very rare.”⁵⁶ To support this contention, the Hong Kong Administration points to the regulations around the temporary labour migration programme and argues that existing legislation is more than sufficient to address forced labour and human trafficking. A recent Labour Department submission to the Legislative Council (LegCo) Panel on Welfare Services asserted: “Hong Kong is a place that upholds the rule of law and will not tolerate violence of any kind. All people in Hong Kong, including [MDWs] are protected by the laws of Hong Kong.”⁵⁷

The HKSAR Government also notes that the purpose of the much criticised “two-week rule”, introduced in 1987, is to “allow sufficient time for FDHs to prepare for their departure; it is not to assist them to find new employers,” arguing that the policy is “essential for maintaining effective immigration control and helps prevent FDHs from changing employers frequently or taking up illegal work in Hong Kong after contract termination.”⁵⁸ However, rights advocates state that the “two-week rule”, by being so restrictive, may actually encourage illegal working and discourage victims of exploitation from reporting abuse as they are fearful of being left without a job while having to shoulder a high debt burden. They also argue that the job-hopping arguments have little evidential basis, that it is not in the MDWs’ interest to do so, and that there is no corresponding measure to protect MDWs against employers who switch domestic workers with high frequency.⁵⁹

The government states that the “live-in” requirement is “the cornerstone of Hong Kong’s liberal regime for importing helpers,”⁶⁰ and any change to it, would “go against the rationale for importing FDHs and the fundamental policy that local employees should enjoy priority in employment,” with the assumption that MDWs would take other part-time jobs away from locals.⁶¹ The government argues that it does not tolerate unlawful acts by employers and will take stringent enforcement and prosecution, encouraging MDWs to make a complaint with the Labour Department if they are being denied their rights and benefits.⁶² Once again, activists point out that the “live-in” requirement makes MDWs prone to excessive working hours, poor living conditions, as well as more susceptible to physical, sexual and verbal abuse. They note that many MDWs, particularly the most vulnerable, may not be aware of their rights or empowered to make a complaint, and that there are a host of barriers they face in seeking redress.⁶³

In the aftermath of the Erwiana Sulistyaningsih case, Secretary for Labour and Welfare Matthew Cheung Kin-chung announced many measures to strengthen protection of MDWs, such as vowing to launch more training to educate newly arrived MDWs about their rights in Hong Kong, stepping up publicity materials and increasing surveillance of the employment agencies. The Hong Kong Government has reiterated that “FDHs who feel aggrieved should come forward and report their cases to the authorities which will take follow-up enforcement action promptly.”⁶⁴ But in the two years since the case of Erwiana, little has been done to amend the policies and laws that civil society groups, lawyers and human rights experts say are at the heart of the problem of human trafficking, forced labour and exploitation in Hong Kong.

A 23-year old MDW from the Philippines came forward to the authorities in January 2016 with allegations that she was taken to mainland China from Hong Kong by her employer for 10 days to work illegally at the residence of her employer’s friend. She claims she originally thought the trip would simply be a visit, but when she arrived, she was asked to work and told that if she did not comply, she would be sent back to the Philippines. She claims that upon return at the Hong Kong border, she gave a note to a customs officer asking for help, but that the official took no action and only gave her back her passport. She then filed a complaint with ImmD the same day upon her return to Hong Kong.⁶⁵ The case is now under criminal investigation with the police and the ImmD is also conducting its own internal review into the handling of the request for help.⁶⁶

On human trafficking and forced labour

The Hong Kong Government has not sought extension of the *Palermo Protocol* to Hong Kong from the People's Republic of China,⁶⁷ despite repeated recommendations to do so by UN human rights bodies. Although the protocol has not been extended to the Hong Kong territory, the *ILO Forced Labour Convention 1930* (No. 29), was ratified by the British Government in 1931 and extended to the Hong Kong territory in 1957. The *Forced Labour Convention* is therefore legally binding in the territory. Moreover, the *Hong Kong Bill of Rights Ordinance* (HKBORO), which domesticates the *UN International Covenant on Civil and Political Rights* (ICCPR), stipulates in Art. 4 that “no one shall be held in slavery or servitude or be required to perform forced or compulsory labour.”

The Hong Kong Government insists that existing legal provisions are sufficient, providing “a solid framework underpinning our robust efforts to combat human trafficking.”⁶⁸ However, as noted in a 2014 report jointly written by Justice Centre and Liberty Asia, which gave a legal and policy stocktake of trafficking for the purpose of forced labour in the HKSAR territory,⁶⁹ Hong Kong’s domestic legal framework is limited; current legislation merely prohibits human trafficking into and out of Hong Kong “for the purpose of prostitution,” (per Section 129 of the Crimes Ordinance)⁷⁰ but not for forced labour or other forms of trafficking.⁷¹

As a result of this narrow definition, Hong Kong would only consider someone to be a victim of human trafficking were she or he to cross borders into or out of Hong Kong for the purpose of prostitution. Recent experience shows that only a handful of human trafficking victims are identified by Hong Kong authorities each year.⁷² Hong Kong does not have a national plan of action or even a concerted anti-human trafficking or forced labour strategy; rather, legislation is scattered across different ordinances, leading to significant legislative gaps and critical difficulties with enforcement.

The HKSAR Government, in demonstrating its efforts, often relies heavily on the Department of Justice’s (DoJ) recent introduction of a new paragraph on “human exploitation cases” into the Prosecution Code in September 2013 as a positive example of its commitment. According to the DoJ, the paragraph “aims to provide guidance to our prosecutors in handling cases against persons who make a credible claim that they are victims of trafficking.”⁷³ However, this code is not a substitute for legislation and, at the time of the writing of this report, the DoJ had confirmed with our researchers in an email reply that “it does not routinely keep record of the

exact number of instances in which such claims (whether substantiated or not) are made” and as such “was not in a position to provide statistics in this regard in relation to human exploitation cases.”

In July 2015, a South Asian man claiming to be a victim of human trafficking issued an application for a judicial review that sought to challenge the Hong Kong Government’s failure to pass laws and policies to protect victims of forced labour and human trafficking. It is a landmark case. The man claims he was brought to Hong Kong to work as a domestic worker but was instead made to work in an office in conditions of forced labour. When he tried to seek assistance from various government authorities, including the Police, the Labour Department and ImmD, he alleges that they failed to investigate his case. His claim invokes Art.4 of the HKBORO.⁷⁴ The outcome of this judicial review, heard in January 2016, will have important implications for determining whether or not the government may need to amend existing legislation and policies if these are deemed to be inadequate by the courts.

The Hong Kong Government frequently contends that it has demonstrated “an unflinching commitment and continuous efforts in the fight against human trafficking.” It states that law enforcement departments work closely with other relevant government agencies on prosecution, prevention and victim support in human trafficking cases and that the revised Prosecution Code provides a stronger linkage between the various laws and approaches in Hong Kong being used to combat human trafficking. The government says that it has also provided training for frontline Police and ImmD officers on both anti-human trafficking enforcement and victim identification, and that relevant guidelines have been widely distributed to frontline officers.⁷⁵ However, no

information is publicly available on the demonstrable impact of these measures.

The government's ultimate answer is that: "there is no evidence [that the territory is] a destination, transit and source territory for men, women, and children subjected to sex trafficking and forced labour," and it argues that recent crimes are a "rare occurrence."⁷⁶ This phrase has been used by the Hong Kong Government repeatedly in media statements and policy responses on human trafficking, despite mounting evidence to the contrary and continued criticism and calls for more concerted action.⁷⁷

Hong Kong legislation only prohibits human trafficking in and out of Hong Kong "for the purpose of prostitution," but not for forced labour or other forms of trafficking.

“

There is no evidence [that Hong Kong] is a destination, transit and source territory for men, women and children subjected to sex trafficking and forced labour.

”

Hong Kong Government, "Response to US report on Trafficking in Persons", 27 July, 2015⁷⁸

“

The first step to taking action is taking this crime seriously. Governments must ratify and effectively implement the UN Convention against Transnational Organized Crime and its Protocol on trafficking, to protect trafficking victims, promote cooperation between countries and ensure that criminal traffickers, wherever they are, are brought to justice.

”

United Nations Secretary-General Ban Ki-moon, message on World Day against Trafficking in Persons, 30 July 2015⁷⁹



Photo Credit: Xyza Cruz Bacani

THE CASE OF ERWIANA SULISTYANINGSIH

“

Justice. This is also what I want for others.

I am not the only one. There are many more like me out there. Many women migrant workers like me also suffer in Hong Kong and I hope that you can also attend to them, help them.

While I know that people are generally good, it is the policies and laws that put us, especially migrant domestic workers, in bad situations.

We can only have justice if no one is treated badly or like a slave here in Hong Kong or anywhere.

”

Statement of Erwiana Sulistyaningsih on the sentencing of her former employer

27 February 2015

On 27 May 2013, a 21-year old woman from Indonesia – a self-described “simple village girl”⁸⁰ – landed in Hong Kong to begin her first contract as a MDW in the hope that she would then be able to afford to continue her education later in college. Her name was Erwiana Sulistyaningsih, and she would go on to make headlines the world over, named in TIME Magazine’s list of 100 Most Powerful People in 2014.

Erwiana’s experience as a MDW started in her home country, when her recruitment agency placed her in “training” before she made the journey to Hong Kong to work. In Indonesia, Erwiana said that she was forced to work for several households without pay. In Jakarta, she said that she looked after an elderly woman who often hit her and that she had been warned by the agency that she would not be sent to Hong Kong if she complained, so she kept quiet.⁸¹

Soon after arriving in Hong Kong, Erwiana was placed in the household of Ms. Law Wan-Tung for employment. Unbeknown to Erwiana, two previous MDWs had left this employer after being subjected to abuse and gruelling working conditions.⁸² After a month, Erwiana tried to escape by asking a security guard in her building for a phone to call her employment agency, Chan’s Asia Employment Centre. Erwiana still had five months of repayments before her recruitment debt would be paid off.⁸³ A representative from the employment agency came to meet with her but took Erwiana back upstairs to her employer. She would go on to endure another six months of severe abuse, exploitation, and in her own words “torture.”⁸⁴

Erwiana was made to work more than 20 hours a day, was not allowed to leave the house and was barred from having a mobile or using the home phone line. She was not paid any of her salary. She endured degrading and egregious verbal and physical abuse by her employer, including: repeated punches and beatings to the head and other parts of her body with items as various as a mop handle, the tube of a vacuum cleaner and coat hangers; being deprived of the toilet and forced to wear nappies; and being stripped, humiliated and made to sleep on the floor. Her employer also threatened to kill her family back home if she told anyone about the abuse and refused to let her see a doctor to treat the wounds she had sustained as a consequence.

When she became so physically ill that she was unable to work, “a shadow of her former self,”⁸⁵ Erwiana’s employer terminated her contract, dressed her up to mask her injuries and escorted her to Hong Kong Airport on 10 January 2014. She then checked Erwiana in for a one-way flight to Indonesia, accompanied her to the security checkpoint,

once again threatened her if she said anything about her treatment to anyone and then abandoned her, leaving her with HK\$60 for passage back to her rural home. This would be the only money Erwiana would receive to account for her entire ordeal in Hong Kong.

The immigration official who screened Erwiana mentioned later in court that he had assumed she had a skin disease, and that “he wouldn’t stop a person travelling even if they look ill.” He said that he’d only question them or stop them if he “suspected they had contravened any immigration rule or law.”

While waiting at the departure gate, another domestic worker travelling on the same flight noticed her condition and offered her help, taking photos of her wounds and, once in Indonesia, accompanied her to a hospital. The graphic pictures she took of Erwiana’s physical state went viral online, sparking international outrage, and prompted street demonstrations, campaigns and support from around the globe.⁸⁶ Originally filed as a “miscellaneous case”, the police later re-classified it to assault,⁸⁷ and in an unprecedented move, a six-member task force comprised of Hong Kong police and labour officials visited Indonesia to investigate the allegations.⁸⁸

In February 2015, Erwiana’s employer was criminally prosecuted and found guilty of 18 charges, including, amongst others, various assaults, criminal intimidation, failure to pay wages, and failure to grant statutory holidays or rest days.⁸⁹ She was sentenced to six years’ imprisonment and fined HK\$15,000.⁹⁰ In delivering her verdict, Judge Amanda Woodcock commented that Erwiana had been a “simple young lady who tried to financially better her life and that of her family.”⁹¹ She noted that the “[employer’s] attitude towards [Erwiana] was contemptible” and that she had considered Erwiana as “beneath her.” She commented that Erwiana had become “totally subservient” and “compliant” to whatever her employer ordered her to do. Judge Woodcock also added that Erwiana was “for want of a better word, a prisoner.” But none of the crimes that Erwiana sought legal remedy for fully captured the totality of her experience as a victim of forced labour in Hong Kong, leading many commentators to point out that Hong Kong laws are fragmented.⁹²

Outside the District Court where the trial was conducted, domestic worker and migrant rights groups demonstrated in support of Erwiana, holding up signs that read: “No to modern day slavery!” “End slavery” and “Stop modern slavery.” Erwiana has become both a symbol and an advocate for the movement calling for better human rights protections and decent work for MDWs in Hong Kong. In the course of a year, she moved from victim to survivor to claim her rights, seek redress and speak up.

She is “the migrant who fought back.”⁹³





PART 3

METHODOLOGY

This section outlines the methodology used to estimate the prevalence of forced labour and trafficking for the purpose of forced labour amongst MDWs in Hong Kong. This was a mixed methods study that included a large-scale quantitative survey with 1,003 MDWs who were currently employed in Hong Kong at the time of being interviewed, followed by qualitative focus groups with MDWs to discuss and validate some of the key quantitative findings. The survey as well as the appendices with more information on the methodology can be found online at www.justicecentre.org.hk/comingclean

SURVEY DEVELOPMENT

In order to estimate the prevalence of forced labour and trafficking for the purpose of forced labour amongst the general population of MDWs in Hong Kong, Justice Centre first developed a quantitative survey instrument in conjunction with Farsight,⁹⁴ a social enterprise that specialises in global migration research.

The survey instrument was comprised of 114 closed-ended questions covering MDWs' demographics, their recruitment experiences, and their working and living conditions in Hong Kong. Because the study sought to estimate the prevalence of forced labour and trafficking for the purpose of forced labour amongst the general population of MDWs who are currently working, it only targeted MDWs who were employed at the time of interview. Most questions related to the respondents' current contract, but where a respondent had worked more than one contract in Hong Kong, eight additional questions were asked about their previous work experiences. Questions were routed depending on whether respondents reported that they had secured their contract in Hong Kong or in their home country. The researchers strove to keep the survey completion time to within 40 minutes to minimise the burden on MDWs and to maximise response rates.

To ensure the survey contained the most targeted and appropriate questions to capture the continuum of abusive and exploitative recruitment and employment practices, in advance of the survey, Justice Centre undertook a series of key informant interviews with representatives from migrant rights groups and trade unions, NGOs supporting or providing frontline services to MDWs, experts from international organisations, academics, lawyers and other stakeholders.⁹⁵ Some of these key informants also reviewed drafts of the survey instrument. International technical guidance about the theoretical grounding of the measurement framework and the survey instrument was also sought from the ILO and the United Nations Action for Cooperation against Trafficking in Persons (UN-ACT).

The survey was administered by ORC International,⁹⁶ a leading market research and insights company in Hong Kong that has undertaken a number of large-scale research projects for a variety of clients, including government agencies and the MTR. ORC also provided advice on how best to ensure neutral phrasing of the survey questions to minimise interviewer bias, and provided technical support in the data analysis.


For the full survey instrument, see Appendix 1, available at www.justicecentre.org.hk/comingclean.

SAMPLE SIZE

As of July 2015 there were 336,600 MDWs registered in Hong Kong. For this population size, Justice Centre established a target sample size of 1,000 respondents, allowing to draw statistically-significant findings which can be extrapolated to the general population of MDWs in Hong Kong with a margin of error of plus or minus 3.1% and a confidence level of 95%.

In addition, quotas were set for the inclusion of different nationalities of MDWs according to their respective proportion of the MDW population. A sample size of 1,000 allowed for meaningful sub-analysis by country. 1,003 MDWs were surveyed from eight countries of origin. The samples for respondents from Indonesia (n=464) and the Philippines (n=506) were large enough for sub-analysis. The sample of respondents from other countries (n=33) was large enough for some analysis, but not meaningful sub-analysis by country.

Figure 8 Countries of origin of MDW survey respondents (n=1003)

	Philippines	51%	506
	Indonesia	46%	464
	Others	3%	
	Thailand		5
	India		4
	Sri Lanka		6
	Nepal		14
	Bangladesh		2
	Myanmar		2
	Total	100%	1003

SAMPLING METHODS

In addition to considerations around sample size, in order to create a representative sample, it was vital to ensure that the sample was as random as possible to minimise bias. There are a number of different techniques for increasing randomness. While simple random sampling is the preferred method, it requires a full list of the target population (which is very difficult to procure in the instance of MDWs in Hong Kong) and can be very costly.

Without a full list of MDWs in Hong Kong, the research team chose instead to employ a combination of two other random sampling techniques: **cluster sampling** and **systematic sampling**. Cluster sampling is used when the target population is impossible or impractical to fully compile. Instead, clusters consisting of natural groupings are adopted. In this instance, the research team based the sample on 11 geographic areas or “clusters” across the HKSAR territory. Survey clusters were based on areas where MDWs were known to congregate, as well as locations with large private housing estates where households would more likely employ MDWs.

The study sought a good distribution across the HKSAR territory, bearing in mind that some locations are likely to include MDWs from across the territory on weekends when many MDWs are granted rest days. A guide for the number of surveys to be completed in each cluster was set, with a focus on providing a reasonable distribution of respondents across the HKSAR territory, while ensuring the quotas for different nationalities of MDWs according to their respective proportion of the MDW population. A complete list of sites and dates where the survey was administered, as well as the number of surveys completed at each site can be found in Appendix 2 at www.justicecentre.org.hk/comingclean.

Within the clusters, the research team then employed systematic sampling. To ensure a random selection process within the clusters, data collection points were divided up into zones so that sampling would be spread evenly across the zones and a maximum number of interviews conducted in each. Interviewers were assigned different starting points for approaching respondent groups within the zone. Potential respondents were intercepted every 15 minutes until the sampling quota was completed. If an MDW approached was in a group, only one individual was invited to participate. This technique helped reduce the influence of the decision of any particular person to participate or not on other potential respondents nearby and avoids friends or respondents all from the same home town/district/province being interviewed together.

If a potential respondent gave his or her consent to participate in the survey, the interview took place in a location away from peers. If the invited person declined to participate, no more interviews were conducted until the next pre-determined time interval. Potential respondents were also screened according to the quota on each nationality and, as eligibility for participation was restricted to MDWs who are currently employed, for employment status.

The sample size, combined with the quota on nationality, the cluster sampling, and the systematic sampling within clusters helped ensure that the overall sample was as representative as possible so as to draw findings that can be generalised to the total population of MDWs in Hong Kong.

QUANTITATIVE SURVEY ADMINISTRATION

Within the geographical clusters, field research teams targeted places of leisure as well as venues where MDWs might be running errands, like food markets, from 8:00 am to 8:00 pm on both weekdays and weekends. By employing diverse locations, days and times, the research team sought to reach MDWs whose movements outside the house may be more restricted or who might not have much leisure time.

Field research teams consisted of trained market researchers who were paid employees of ORC International. In addition to their standard interview training, the team was given a full briefing on the nature and purpose of the research and the survey instrument in advance, and received WHO guidelines for interviewing human trafficking victims.⁹⁷ An ethics protocol and a written list of NGOs to contact for help was also given to the survey team to enable them to refer people whose answers indicated that they might currently be in abusive situations for assistance.

The survey was completely anonymous and respondents were given the flexibility to take as long as they needed to complete the survey or to reschedule the survey to another more convenient time for them. After giving their consent, participants used e-tablets to complete the survey in quiet spaces. Participants could choose the language in which they completed the survey, with a text-to-speech function for anyone with limited literacy. Written information in the native language and native speakers were also available to explain the study in more detail and answer any questions. On average, the survey questionnaire took between 20 and 40 minutes to complete.

The response rate for the survey was 11%, mainly due to people declining to participate at first approach, rather than dropping out. That is, of those MDWs who were approached and who were eligible to participate, 11% consented to participate. While this is a low response rate, it is not surprising given the particular time constraints of this population group, the sensitivity of the topic, and potential respondents' concerns over the purpose of the research and how the data might ultimately be used.

Data quality was ensured through continuous on-site supervision and checking. For every four researchers on site at a location, there was one supervisor monitoring data quality.

QUALITATIVE FOCUS GROUPS

After the survey findings were analysed, a series of five focus groups were held between August and October 2015 with 46 MDWs and Justice Centre research staff to discuss and validate selected research findings, investigate questions that had arisen from the survey results and to allow MDWs to outline the changes they wanted to see in Hong Kong. Justice Centre partnered with five NGOs and each hosted a two-hour focus group and recruited participants amongst their service users.⁹⁸ Countries of origin of participants included the Philippines, Thailand, Nepal, Sri Lanka and Indonesia. Interpretation, consent forms and verbal and written information about the study and Justice Centre were provided to ensure participants understood the purpose of the research and the terms of their involvement.

Note: Throughout this report, the names of the focus group participants have been changed to protect their identity.

The sample size, combined with the quota on nationality, the cluster sampling, and the systematic sampling within clusters helped ensure that the overall sample was as representative as possible so as to draw findings that can be generalised to the total population of MDWs in Hong Kong.

METHODOLOGICAL FRAMEWORK

After the data from the survey was gathered and preliminary analysis conducted, Justice Centre interrogated the information further for indicators of forced labour. Justice Centre’s analytical approach to measuring forced labour and trafficking for the purpose of forced labour is based on the ILO’s guidelines, *Hard to See, Harder to Count* (2012) – the most recent operational guidance on how to measure forced labour. These guidelines were derived from the indicators of trafficking for labour and sexual exploitation, developed by the ILO in collaboration with the European Commission (EC) in 2009.⁹⁹

According to the ILO guidelines, there are three dimensions of forced labour: (1) **unfree recruitment**, (2) **work and life under duress**, and (3) **impossibility of leaving**. These dimensions reflect the different stages of employment. Under each of these dimensions, there are indicators of forced labour (77 in total), weighted medium or strong, which fall under two categories: (1) indicators of **involuntariness** or (2) indicators of **menace of penalty**.

According to the ILO, to be counted in a dimension, a worker needs to trigger at least one indicator of **involuntariness** and at least one indicator of **menace of penalty**, and at least one of these indicators needs to be **strong**. A worker is then considered to be in forced labour if they **are positive in at least one of the three dimensions: unfree recruitment, work and life under duress or impossibility of leaving**.

As the ILO makes clear, while poverty and the desperate need for income might indicate a situation of involuntariness on the part of a worker, this on its own is not sufficient to classify the worker as experiencing forced labour. For there to be forced labour, a third party (such as an employer, broker or recruitment agency for example) must be exploiting the vulnerability of the worker to force them to take the job, impose restrictive working and living conditions or prevent them from leaving the job.¹⁰¹

Figure 9

Definition of involuntariness and menace of penalty

Involuntariness

Involuntariness refers to those elements of recruitment or employment to which a worker has not freely consented. For example, a recruiter may deceive a worker about the actual conditions of employment. This would constitute involuntariness because, had the worker known the actual conditions, they may not have accepted the job. Another example of involuntariness is when a worker is required to perform tasks which are illegal or in breach of their contract to which they are not in a position to say no.

Menace of penalty

Menace of penalty includes those elements of coercion used to force a worker to accept a job or conditions of employment or tasks, or to prevent a worker from leaving a job. Menace of penalty includes violence or threats of violence against a worker or their family; the confiscation of identity documents; the withholding of wages; the restriction of a workers’ movements, or threats to do all these things.¹⁰⁰

The ILO guidelines define a situation of forced labour as “work for which a person has not offered him or herself voluntarily (concept of “involuntariness”) and which is performed under the menace of any penalty (concept of “coercion”) applied by an employer or third party to the worker” as it is affected during the recruitment process (unfree recruitment), during the working process (work and life under duress) and during any potential processes in which the worker tries to leave the job (impossibility of leaving).¹⁰²

JUSTICE CENTRE ADAPTATION OF ILO INDICATORS

While the ILO guidelines were chosen as the theoretical basis for the Justice Centre research, the ILO makes it clear that it “is a general tool which must be adapted to the context of the country where the survey is implemented.”¹⁰³

Justice Centre has, therefore, adapted some of the ILO indicators to the specificities of MDWs in the Hong Kong context, including: taking into account of the “live-in” requirement and the dependence this creates on the employer; incorporating additional indicators from earlier ILO/EC 2009 Guidelines around abuse of specific types of vulnerabilities; and adjusting an indicator to assess excessive recruitment debt. A full description of the Justice Centre adaptation of indicators can be found in Appendix 3 at www.justicecentre.org.hk/comingclean and the Justice Centre table of indicators can be found in Figure 11.

Based on the ILO guidelines, Justice Centre developed two analytical classifications for the purpose of this study: MDWs in forced labour and MDWs trafficked for the purpose of forced labour. The assessment of whether the experiences of a MDW were constitutive of one of these classifications was based on the series of indicators, triggered through answers to survey questions. All questions that triggered indicators related to the respondent’s current contract.

Although the ILO makes it clear that the forced labour guidelines can be used to measure the full spectrum of human trafficking abuses (with the exception of trafficking for organ removal, forced marriage or adoption unless they result in forced labour),¹⁰⁴ Justice Centre made the decision to distinguish between “trafficked” and “non-trafficked” forms of forced labour.

Justice Centre felt it was important to highlight MDWs who had experienced involuntariness and menace of penalty during their recruitment and movement to Hong Kong as well as involuntariness and menace of penalty during their work in Hong Kong, in order to further understand the degree of vulnerability and exploitation along the migration path.

For Justice Centre, where forced labour refers to the nature of the exploitation, trafficking for the purpose of forced labour refers to the process through which that person comes to be in the exploitative situation (forced labour). The respondents classified as trafficked for the purpose of forced labour are therefore a subset of those in forced labour.



Strong and medium exploitation

As well as estimating forced labour and trafficking for the purpose of forced labour, Justice Centre also assessed the numbers and circumstances of MDWs who were experiencing strong or medium indicators of forced labour, but who would not be counted as being in situations of forced labour. These are respondents who are experiencing strong or medium indicators of involuntariness or menace of penalty, but not both. These MDWs would therefore not meet the criteria to be counted in forced labour, but would, however, be experiencing some elements of forced labour.

To assess **strong levels of exploitation**, Justice Centre counted the number of respondents who triggered just one strong indicator of either involuntariness or menace of penalty (but who did not trigger a medium or strong indicator in the other category, because this would classify them as in forced labour) in either unfree recruitment, work and life under duress or impossibility of leaving dimension.

Justice Centre's assessment of strong exploitation excludes the indicator "being under the influence of the employer". Given that living in the employer's household is mandatory in Hong Kong, Justice Centre anticipated that most, if not all, survey respondents would indicate that they "lived in" and would therefore be positive for the indicator of "being under the influence of the employer." Justice Centre would argue that this is precisely why the live-in policy is so dangerous, but in terms of the research, if this indicator were included in this assessment, no additional information would be revealed.

To assess **medium levels of exploitation**, Justice Centre counted the number of respondents who only triggered medium, but not strong, indicators of forced labour, be they indicators of involuntariness and/or menace of penalty. As with the assessment of strong exploitation, the assessment of medium exploitation necessarily excludes the indicator "being under the influence of the employer."

Figure 11 Justice Centre indicators of forced labour (adapted from ILO)¹⁰⁵

A MDW is counted as being trafficked for the purpose of **forced labour** if they are positive in at least two of the three dimensions of forced labour, and one of these dimensions must be unfree recruitment.

To be positive in a dimension, a MDW needs to trigger at least one indicator of involuntariness and at least one indicator of menace of penalty, and at least one of these indicators needs to be strong.

Indicators marked (*) are adapted to the Hong Kong context.

Dimensions	No.	Involuntariness indicators	Menace of penalty indicators	No.
		Aspects of employment about which a MDW has been deceived or which have been hidden from the MDW so they cannot be said to have freely or knowingly consented.	Acts of coercion which have been used to force a MDW to accept a job, conditions related to a job, or prevent them from leaving a job.	
Unfree recruitment	1.1	Deception about the nature of the work	Physical violence during recruitment	1.3
	1.2	Coercive recruitment (abduction, confinement during recruitment process)	Sexual violence during recruitment	1.4
	1.7	Deceptive recruitment (regarding working conditions, housing and living conditions, legal documentation, job location or employer, wages/earnings, loans)	Threats against family members	1.5
	1.8	Excessive recruitment debt*	Confiscation of identity papers or travel documents	1.6
	1.10	Abuse of lack of education (language)*	Abuse of difficult family situation*	1.9
	1.11	Abuse of lack of information*	Abuse of economic vulnerabilities*	1.12
	1.13	False information about law or attitude of authorities*		
	Work and life under duress	2.1	Being under the influence of employer or people related to employer for housing and non-work life*	Confiscation of identity papers or travel documents
2.2		Excessive working days or hours	Isolation	2.7
2.3		Forced to work on call (day and night)	Locked in workplace or living quarters	2.8
2.4		Degrading living conditions	Sexual violence in workplace (threat or actual)	2.9
2.5		Limited freedom of movement and communication	Physical violence in workplace (threat or actual)	2.10
2.16		Hazardous work*	Other forms of punishment (deprivation of food, water, sleep, etc)	2.11
2.17		No respect of labour laws*	Confiscation of mobile phones	2.12
2.18		No social protection*	Denunciation to authorities (threat or actual)	2.13
2.19		Wage manipulation*	Threats against family members	2.14
2.20		Forced engagement in illicit activities (including forced work for other people)	Withholding of wages	2.15
2.21		Forced tasks	Informing family, community or public about worker's current situation (blackmail)	2.22
Impossibility of leaving employer	3.1	Reduced freedom to terminate labour contract after debts incurred with Hong Kong placement agency*	Denunciation to authorities	3.3
	3.2	No freedom to resign in accordance with legal requirements	Threats against family members (violence or loss of land or jobs)	3.4
			Exclusion from future employment	3.5
			Financial penalties (including perceived financial penalties resulting from unpaid recruitment debts and fees of new recruitment debt being accrued)	3.6

Strong
Medium

Strong
Medium

Strong
Medium

LIMITS OF THE RESEARCH

Cluster sampling

While Justice Centre attempted to maximise the randomness of the sample employed for this survey through the use of cluster and systematic sampling techniques, for the purposes of this research, the study assumes that all clusters would have equal prevalence rates of forced labour amongst MDWs. Accordingly, this study has not weighted the clusters or adjusted the analyses to take into account any other factors resulting from the design of the survey which may have impacted the results. It would be possible to test the assumption of equality of prevalence amongst the clusters using this data set and there may be scope for further research based on these tests.

Who is the trafficker?

When calculating trafficking for the purpose of forced labour, the measurement framework did not attempt to establish a relationship between the three dimensions of forced labour. The *Palermo Protocol* details the three interrelated requirements for meeting the definition of human trafficking. All three must be established: one of the specified forms of acts must have been carried out; this act must have been brought about via one of the identified means; And lastly, this must have been done for the specific purpose of exploitation. This therefore requires that the individuals or organisations involved in the act (in this case recruitment) have the knowledge/intention to seek to exploit. However, data from individual respondents to the survey cannot establish whether the parties to the recruitment knew that the eventual employer in Hong Kong would exploit the MDW.

Establishing such a causal relationship would require in-depth and individual interviews with MDWs, which is beyond the scope of this study. As a result, Justice Centre is not in a position to identify conclusively any particular parties that may be culpable as “traffickers.” Despite this limitation, Justice Centre believes that employing the discourse of “human trafficking” and making a distinction between forced labour and the experience of being trafficked for the purpose of forced labour is worthwhile. This distinction has allowed us to highlight the prevalence of MDWs in Hong Kong who have experienced exploitation/abuse in their recruitment processes and in their eventual employment.

Legality of recruitment debt

While the study identified levels of recruitment debt, as well as the different types of recruitment costs that were incurred (such as placement fees, medical examination expenses, certification expenses, passport fees, etc.), it is beyond the scope of this study to ascertain conclusively whether and to what extent these costs were “illegal” in source countries and/or Hong Kong. It should also be noted that not all respondents who indicated that they had incurred debt during recruitment shared the details of their debt. In addition, the survey questionnaire did not assess the level of recruitment costs incurred where those costs were paid for from savings. Respondents were only asked about the amounts of borrowing. Given these limitations, there is scope for further research to look in more detail at costs paid by MDWs (whether through savings or borrowing or a combination thereof) in securing employment in Hong Kong and the impact this has on their decision-making.

A conservative estimate

Finally, while this research study set out to estimate the prevalence of MDWs in forced labour or trafficked for the purpose of forced labour in Hong Kong, the most vulnerable MDWs and those experiencing the most egregious forms of abuse and exploitation are also the most difficult to reach and the least likely to be available for a survey conducted outside their workplaces. Despite the actions taken in the study to try to reach MDWs who may not have had a rest day or whose movements were restricted, the street-intercept survey used for this study is unlikely to capture MDWs who are unable to leave their employers’ residence at all, as was the case with Erwiana Sulistyarningsih, or whose movements are severely restricted or monitored. In addition, there are limits to the accuracy of self-reported data, especially with regards to questions about the experience of violence or sexual harassment, and particularly in a brief one-off survey completed in the presence of a stranger. It is likely in this research that these issues will be under-reported.

These findings should therefore be interpreted as a conservative estimate of the scale of the problem.



為**ELIS**爭取公義!
JUSTICE FOR ELIS!
不改革，就沒有公義! **NO REFORMS, NO JUSTICE!**
JBMI | AMCB | IMA





PART 4

KEY FINDINGS

SURVEY RESPONDENT DEMOGRAPHICS

1,003 MDW's SURVEYED

1,000 3 MEN WOMEN

53% HOME TOWN RURAL

2.7 AVERAGE NUMBER OF CONTRACTS

4.5 YEARS AVERAGE TIME WORKING IN HONG KONG

47% HOME TOWN URBAN

36% HAD WORKED IN ONE OR MORE OTHER COUNTRIES AS A MDW BEFORE COMING TO HONG KONG

SINGAPORE 58.2%

TAIWAN MALAYSIA 6.6%

20.8% OTHER MIDDLE EAST

6.4% DUBAI 6.1%

SAUDI ARABIA 2.5% KUWAIT 2.5% OTHER COUNTRIES 2.8%

94.3% COMPLETED AT LEAST SECONDARY EDUCATION

SECONDARY 58.3%

VOCATIONAL 7.8% COLLEGE

ELEMENTARY 5.6% **23.9%**

UNIVERSITY 4.2%

NO COMPLETED FORMAL EDUCATION 0.1% POSTGRADUATE 0.1%

REASONS WHY BECAME A DOMESTIC WORKER

TO EARN A HIGHER INCOME **64%** SECURED THEIR CONTRACT IN HONG KONG

BECAME MDWS TO SUPPORT THEIR FAMILIES

SECURED THEIR CONTRACT IN THEIR HOME COUNTRY **27.2%** **72.8%**

TO FIND WORK **19%** TO REDUCE DEBT **3%** ON AVERAGE, 3.3 PEOPLE DEPENDED ON THEIR REMITTANCES

80%

1% TO HAVE AN ADVENTURE/EXPERIENCE TRAVEL 1% TO LEAVE AN UNHAPPY / DIFFICULT PERSONAL LIFE

GENERAL FINDINGS

The findings below relate to some of the significant individual experiences reported by MDWs who participated in the survey. Where the findings show elements of exploitation and/or abuse, these are not necessarily on their own sufficient for the respondent to be classified as positive for forced labour. As outlined in the methodology, a combination of indicators of involuntariness and indicators of menace of penalty (where at least one indicator is strong) in a dimension is necessary for a respondent to be classified as positive for forced labour. An analysis of the respondents who were classified as being in forced labour is found in the Forced Labour Findings section on page 52-55.

Recruitment experience

Of the total number of respondents, **27.2% (273) had secured their current job while they were still in their home country**, and therefore were asked questions about their experiences in training facilities. Of these, **93.4% had spent time in a recruitment training facility** and **the majority (63.1%) were not allowed to leave the premises of the training facility**, even when they were not in classes or training. **32.9% of those who spent time in a training facility had their passports taken from them** there. **2.9% (8 respondents) had experienced some form of violence or the threat of violence while in the training facility.**

13.9% of respondents **felt that their working conditions were worse than the information they had received** about it beforehand during recruitment. This related predominantly to the information MDWs were given about their working hours and rest time once they started working in Hong Kong.

It is a common assumption that MDWs wouldn't agree to work in Hong Kong if they knew what the real conditions were like vis-à-vis working hours, underpayment, living conditions, et cetera. However, the survey showed that **86.1%** of respondents reported that they **had been given accurate information about the jobs that they were being recruited for** in Hong Kong and knew what to expect, even if those jobs and working conditions turned out to be bad (and sometimes tantamount to forced labour).

However from the feedback from the qualitative focus groups, MDW participants expressed concern that MDWs did not really understand what living and working in Hong Kong as a MDW would be like.

“There is a misconception in social media because some [MDWs] wear beautiful clothes and go to many places. So we think ‘wow, Hong Kong is a beautiful place and relaxing’. But in fact it is very different and difficult.”

Maria, MDW from Philippines, focus groups participant

“The agency will of course say good things. Most of them are lies. The contract said ‘you will have your own room.’ The reality is sleeping in the kitchen or living room. [I have been] sleeping in the living room for four years.”

Rose, MDW from Indonesia, focus group participant

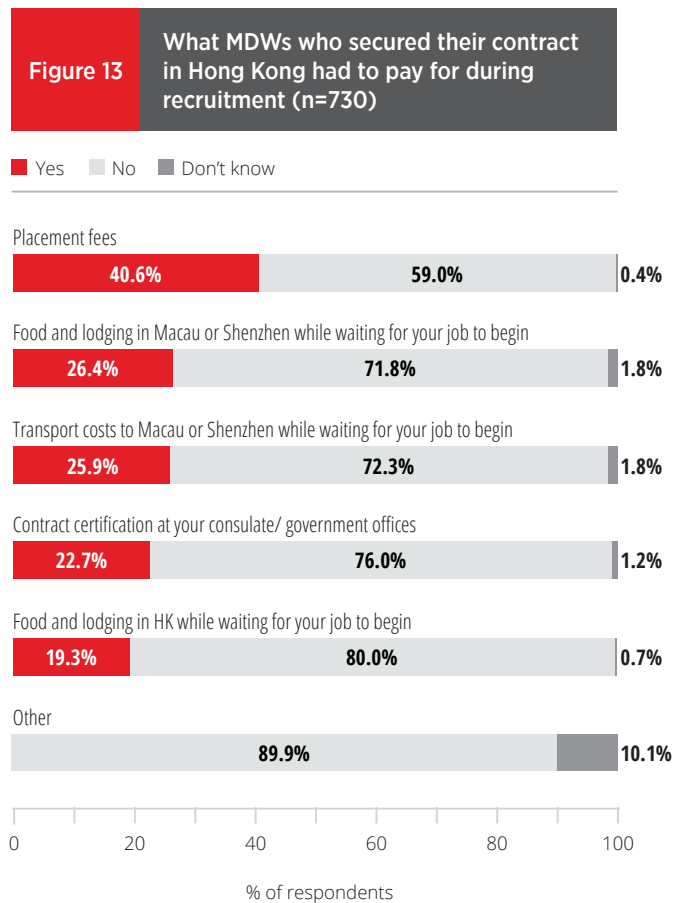
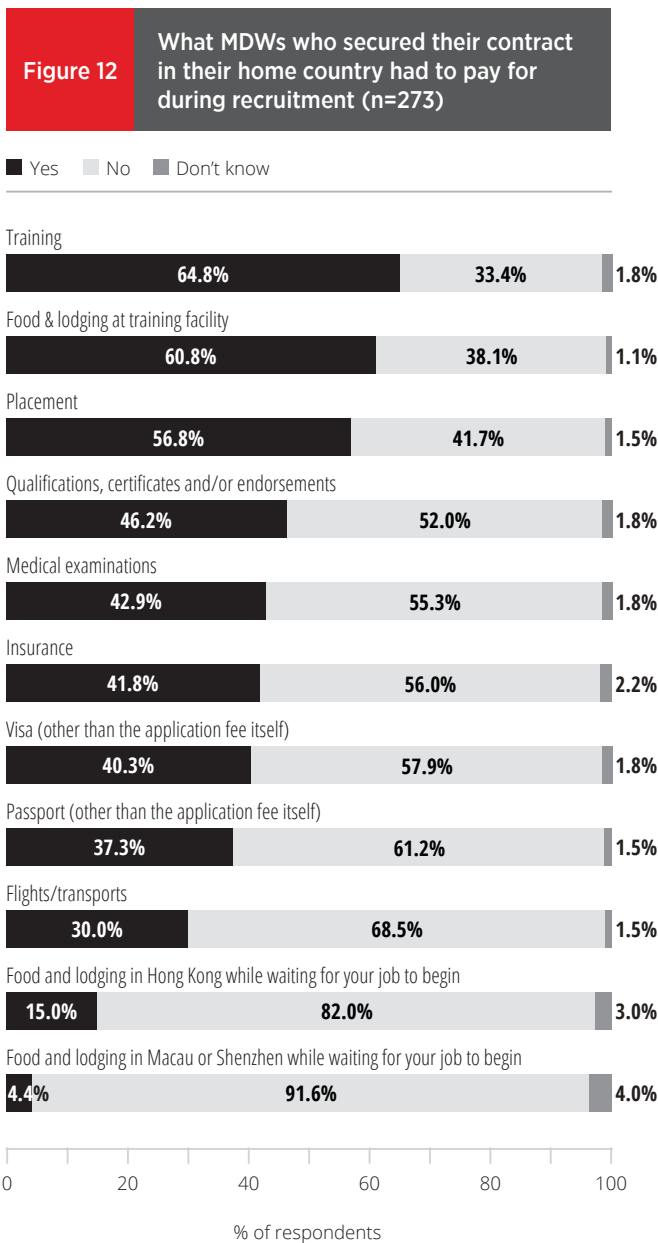
Recruitment debt

Many of the respondents to this survey had to pay for some form of assistance from a third party to enter the migration process. **Of the 730 respondents who secured their contract in Hong Kong, 85.5% used an employment agency.** Of the 273 respondents who secured their contract while still in their home country, all used some form of formal assistance. Overall, **54.5% of the total respondents had to pay to secure their contract.** What these findings show is that, in effect, many MDWs are paying to work in Hong Kong.

Of the respondents who secured their contract in their home country, **81% had to pay for some services in securing their contracts and 79.6% of these MDWs had to borrow in some form to cover the costs.** Some MDWs paid for services while still in their home country and some paid on

their arrival in Hong Kong. **11.4% of respondents indicated that they had paid in their home country and after they arrived in Hong Kong.**

Of the respondents who secured their contract in Hong Kong, 44.7% had to pay for services in the process of securing their contract and 39.9% of these MDWs had to borrow in some form to cover these costs. Costs ranged from placement fees to food and lodging in Macau or Shenzhen when respondents had to wait before their contracts formally commenced. **26.4% of respondents who secured their contract in Hong Kong incurred costs for accommodation and food in Macau or Shenzhen. 85.5% of respondents who secured their contract in Hong Kong used employment agencies in Hong Kong.**



In total, 49% of the respondents borrowed money in some form to facilitate their recruitment process.

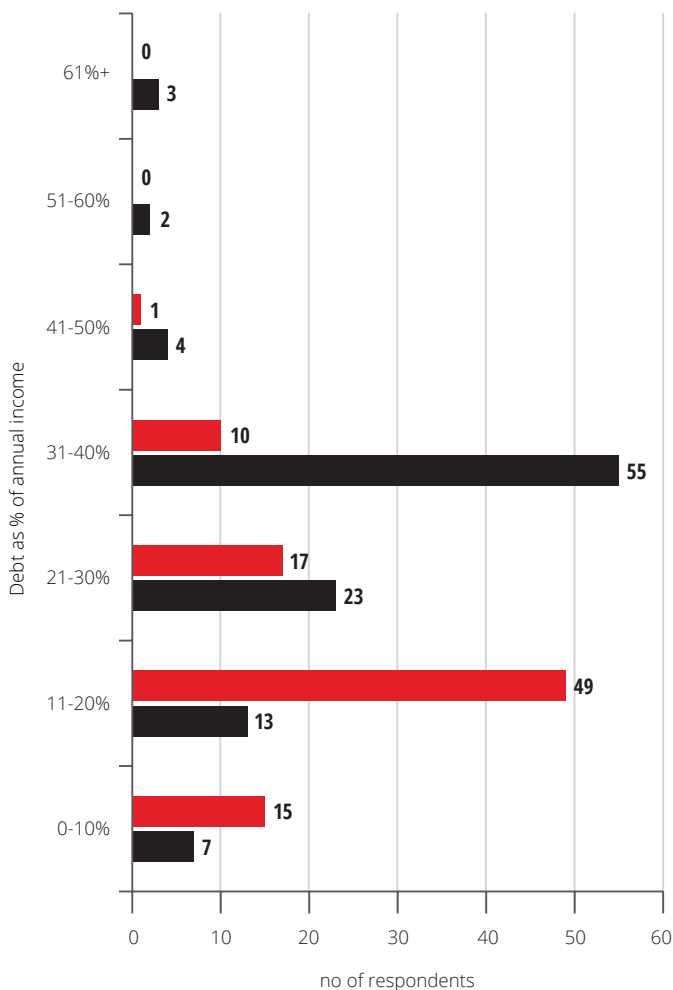
In total, 49% of the respondents borrowed money in some form to facilitate their recruitment process. Justice Centre defined debt burden as excessive when the total amount borrowed by the MDW (whether it was paid off in the home country or in Hong Kong or in both countries) was equal to or greater than 30% of the annual income of the MDW in Hong Kong (debt-to-income ratio).¹⁰⁶ Not all of those respondents who reported that they took loans to cover their costs shared the details of these loans. Of those who did, 35.1% had debt-to-income ratios equal to or in excess of 30% of their reported annual income. Those respondents who secured their contracts in their home country had significantly higher levels of recruitment debt.

Of those who were contracted in their home country and who borrowed to pay in their home country, the average payback time on their recruitment debt was 7 months and the average monthly instalment was HK\$2,360, amounting to a total average recruitment debt burden of HK\$16,520. This represents 33% of their annual income if they were earning the current MAW at the time of this research (HK\$4,110). Of those who were contracted in their home country, but who borrowed money in Hong Kong, the average payback period was 6 months with an average repayment instalment of HK\$2,496 per month, amounting to a total average debt burden of HK\$14,976. This translates to 30% of their annual income.

Figure 14

Recruitment debt (borrowed from a broker, employment agency or finance company) as a percentage of annual income (n=199)

■ Secured contract in HK ■ Secured contract in home country



Recruitment debt in the extreme

One respondent from Indonesia reported that she incurred recruitment debt in Indonesia, which she repaid over 6 months in instalments of HK\$2,500 per month. On arrival in Hong Kong, she was charged more recruitment costs which she repaid over 6 months in instalments of HK\$2,400 each. In total she paid HK\$29,400 to secure her contract. This represents 60% of her reported annual income.

Recruitment costs compared to Hong Kong and sending country governments' policies and laws

Although many of the sending countries and the Hong Kong Government have caps or limits on paper as to how much a MDW can be charged for recruitment costs, our findings show that in practice, many MDWs incur debts that exceed these limits.

Given the policy of the Government of the **Philippines** that Filipino MDWs should not be paying any placement fees, it is worthwhile to note that of the MDWs who secured their contract in the Philippines, **79.5% (71 respondents) paid to secure their contract and 73.2%** of these reported that they paid placement fees. Of those who took loans to cover these costs (54.6% of those who paid) and reported the amounts they paid, **the average total debt amount was HK\$16,700**. The policy of the Philippines allows for the option of direct hire (although in practice, most MDWs use employment agencies).¹⁰⁷ Thus, of the 14.5% who secured their contracts without going through an employment agency, 79.2% of them were from the Philippines.

For Indonesians, a Ministerial Decree in May 2012 by the Government of **Indonesia** set the maximum total fee that employment agencies can charge domestic workers coming to Hong Kong at IDR 14,780,400 or equivalent to HK\$8,420, the currency conversion at the time of the study.¹⁰⁸ The findings show that, of the MDWs from Indonesia who secured their contract back home and took out a loan to pay for the costs of securing employment (and reported what they paid), **90.8% paid more than the said cap**. Of these MDWs, **the average amount of debt that they accumulated was equivalent to HK\$15,454**.

Even those who secured their contracts while already in **Hong Kong** were likely to have to paid towards this contract. **40.5% of respondents who were in Hong Kong when they secured their contract paid placement fees**. And **26.4% had to pay for food and lodging in Macau or Shenzhen** while they were waiting for their new job to begin or in order to fulfil the requirement to leave Hong Kong after the completion of a contract. Of those who were contracted in Hong Kong and borrowed in Hong Kong to cover their recruitment costs, **the average pay back time was 6 months and the average monthly cost was HK\$1,515**. This represents **18.4% of their annual income** if they are earning the MAW at the time of the research (HK\$4,110).¹⁰⁹

This is also significantly more than the fees recruitment agencies in Hong Kong are legally entitled to charge. Hong Kong-based recruitment companies can charge MDWs a maximum of 10% of their first month's wage (which would have been HK\$411 at the time of this research). But there are additional requirements that can increase these costs.

For example, by law, the contracts of Indonesian MDWs are required to be processed through Indonesian-registered employment agencies, even where the MDW has not returned to Indonesia.¹¹⁰

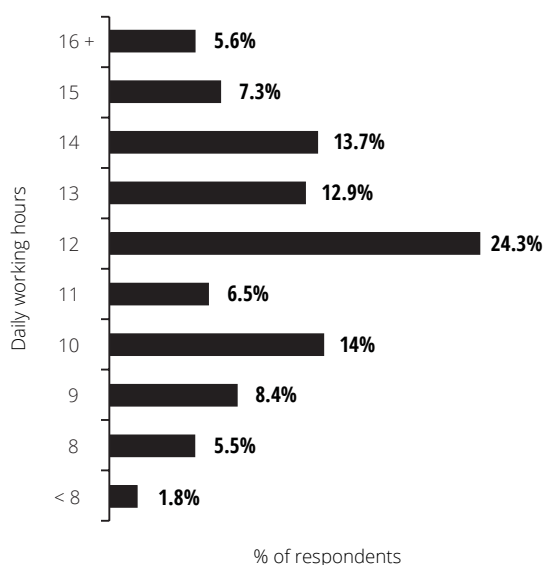
Given these costs, it is not surprising that 32.5% of surveyed MDWs felt that they had no choice but to keep working in Hong Kong because of the amount of money they had paid and/or the debt they had accumulated to secure their contract.

Working hours and rest

The study shows that the **average working hours were 71.4 hours a week** (11.9 hours a day, six days a week). **Two-thirds of respondents (63.7%) work 12 or more hours a day**. 12.9% work for 15 or more hours a day. Only 74 respondents (or 7.4%) reported working 8 hours or less per day (the common global benchmark of a 48-hour work week).¹¹¹

Taking the MAW of HK\$4,110 a month at the time the survey was conducted, this would translate to a salary of **HK\$14.39 an hour, just equal to 44.3% of the minimum wage for other workers in Hong Kong** (the statutory minimum wage is currently HK\$32.50, although workers who earn this amount have to pay for their own food and accommodation from their earnings).

Figure 15 Average daily working hours of MDWs (n=1003)



Over a third of respondents were not given a full 24-hour rest period as per the requirements under Hong Kong law.

4.5% (45) of respondents indicated that they were not given at least one day off per week, as per the requirements under Hong Kong law. Of those respondents who were not awarded at least one day off per week, 88.9% indicated that they were compensated on a pro-rata basis in return for their work, but **62.2% felt they were not in a position to say “no” to their employers when asked to work on their day off.** Although some employers may be willing to compensate MDWs for their extra labour, it should be noted that it is illegal for them to do so. According to S40A(1) of the Employment Ordinance “no payment can be made in lieu of the granting of a holiday.”

While the overwhelming majority of MDWs in Hong Kong are awarded one day off a week as per Section 17 of the Employment Ordinance, 352 respondents (36.7%) noted that they are working before and after they leave their employer’s house on their rest day.¹¹² **Over a third of respondents were not given a full 24-hour rest period as per the requirements under Hong Kong law.**

MDWs in the focus groups reported that, not wanting to displease their employers and create tension in the household, MDWs perform a form of “voluntary” work. This work is illegal according to Hong Kong law and is ultimately exploitative. But because MDWs must “live-in” and do not want to displease their employers, they “consent” to the exploitative labour. Focus group participants also spoke of a “ritual” performance on Sundays with regards to tasks in the house. The “voluntary” work can be induced by comments from their employers regarding the state of the household: “How come the kitchen is so dirty?” “Why is there hair on the floor?” “Can you please just help me with this?” Or it can simply be an unspoken expectation on the part of the employer that the house be in a certain state at all times, even if it is technically not a working day for the MDW.

7.7% respondents reported that their employers woke them up during the night to work on a regular basis. This was an issue also returned to again and again in focus groups. When asked what decent domestic work looks like to them, most of the participants believed that “enough sleep” was a key component. One focus group participant noted that her employer would come into her room and shake her awake to ask for the water. She also remembered the time her employer woke her at 2am to clean the ceiling fan.

Employers

The survey asked a series of questions about the types of behaviour or abusive practices respondents’ employers practised or threatened to carry out towards their MDW.

7.7% of respondents indicated that they had been threatened by their employers in some way. Threats ranged from wage deductions to the confiscation of mobile phones. 40 respondents reported that their employers threatened or cut off their access to the household phone and the internet. 27 respondents reported that their employers threatened them with degrading language and 13 respondents indicated that their employers yelled or screamed at them. Another 10 respondents indicated that their employers had either threatened to or had withheld food from them in punishment. One respondent indicated that her employer had sexually abused her. 2.8% of respondents reported that their employers did not allow them access to their passports.¹¹³ In addition, 4.2% of respondents indicated that their movement outside of the house was restricted by their employer and 1.7% that they did not get enough to eat.

Discussions with MDWs in the focus groups showed that many felt like they were entering into a lottery upon signing up to become a MDW in Hong Kong. If they are “lucky” they will find a “good” employer. If they are “unlucky”, they will be contracted for two years with a “bad” employer.

Living conditions

It is mandatory for MDWs in Hong Kong to live in the home of their employer. But as Hong Kong has one of the most expensive property markets in the world, living quarters are often small. All of the respondents to the survey reported that they live-in with their employers, as per the legal requirement.

In terms of the quality of the living quarters, **39.3% of respondents reported that they do not have any personal space** (their own separate room). 35.2% reported sharing a room with a child or an elderly person. Another 2% reported living in a kitchen or shared living space. One person reported sharing a bed with a child. Overall, 4.3% of the respondents reported that they felt they lived in degrading living conditions.

Questions were also asked in the focus groups about living arrangements. Most of the focus group participants noted a preference to live with the employer if given a choice, mentioning the high cost of rent and the commuting time living out would entail (assuming that these costs would not be covered by the employer through direct payment or a wage increase).

Food

18.3% of respondents reported that they were receiving a food allowance in lieu of food in-kind. Of these, **57.7% reported receiving less than the MFA** set at HK\$964 a month (at the time of the survey), but this finding should be considered in context. There is no legal obligation for an employer to increase a MDW's food allowance mid-contract in line with an increase in the MFA, if the new food allowance level was set after a contract had already commenced (MDW contracts run for two years).

Of the 819 respondents who indicated that they received food from their employers, **2.1% reported that they didn't get enough food to eat**. In the focus groups, many participants noted that they often had to eat the leftovers of the meal after the family had finished, and that the amount that was left was not always enough to ensure they were not hungry.

57.7% reported receiving less than the minimum food allowance.

Figure 16 Sleeping arrangements for MDWs (n=1003)

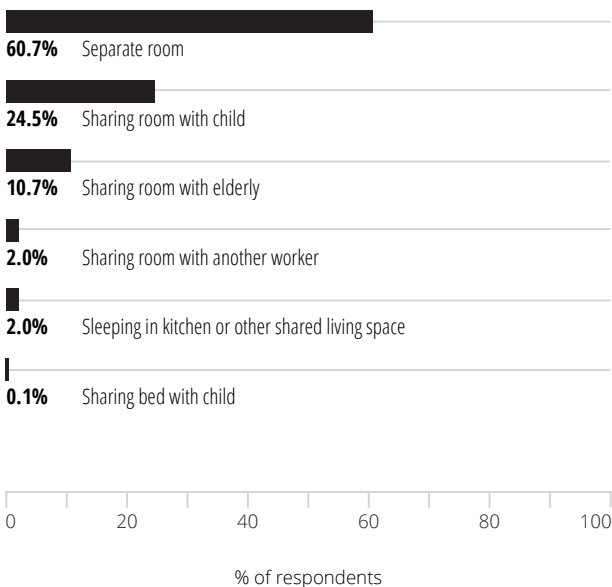
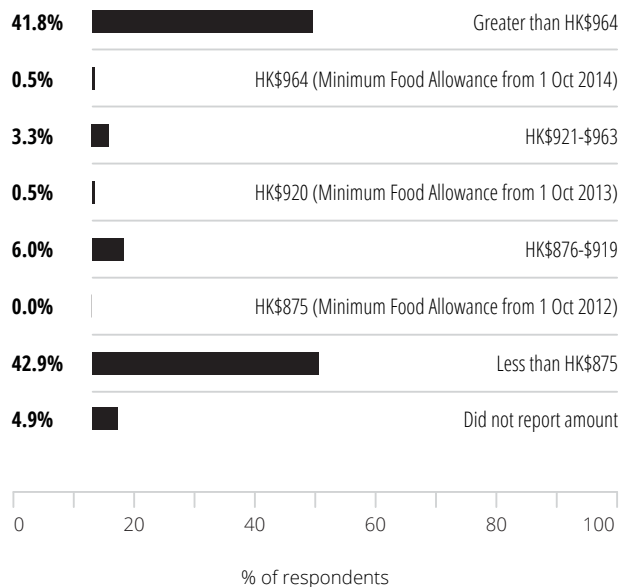


Figure 17 Monthly food allowance amounts of MDWs (n=184)



“[With] my second employer in Hong Kong, I have to get up at 6am and sleep at 12 midnight. I cannot take a shower in the house; I need to go down to the swimming pool to take [my] shower. For the meal, I only get leftover [food], like half a bowl of rice. I cannot stand it so after four months, I terminate[d] the contract. They didn’t want to give me the air ticket [home].”

Karina, MDW from Indonesia, focus group participant

“It really depends on the employers. Some will consume all your energy but some are very generous.”

Josie, MDW from Philippines, focus group participant

“I thought that if my employer was a Westerner, it would be much better. Then I had a Western employer. I must care for their daughter. I don’t have time to take a rest. The daughter sleeps during the day. When she sleeps, I have to do the chores. The husband and wife come home at 3am drunk, they keep pushing me and asking me why I am sleeping. I do not get a day off. So in the fourth month, I took a day off without telling them when they were still sleeping. They texted me and said they would terminate the contract. They also didn’t want to pay the termination fee. I brought this case to the Labour Department. It has been seven months and until now they have not paid.”

Aishi, MDW from Indonesia, focus group participant

“[We are] told to wear those clothing and not that, not wear something very short. I have to get permission for every little thing.”

Aadi, MDW from Nepal, focus group participant

“Some employers are very rich but we sleep on top of the toilet.”

Dang, MDW from Thailand, focus group participant

“[My] employers only give me one piece of bread or an egg, or after [my] employers finishes eating, and then they give a little bit of food to us.”

Hathai, MDW from Thailand, focus group participant

“They give me a portion to eat, half a bowl of leftover rice and two pieces of vegetable because I am the last one to eat.”

Setia, MDW from Indonesia, focus group participant

“I never say ‘no’ to my employer. I do not dare to say no. I am worried I will be terminated or scolded. If I say no, I will get less food at the next meal.”

Rimba, MDW from Indonesia, focus group participant

Salaries

71.8% of respondents reported that they were earning less than the MAW (HK\$4,110 at the time of the survey), but, as with the food allowance, this finding should be considered in context. There is no legal obligation for an employer to increase a MDW's wage mid-contract in line with an increase in the MAW, if the new MAW was introduced after a contract had already commenced (MDW contracts run for two years). Still, this does mean that only 6.1% of employers were reported to be paying above the minimum, demonstrating that rather than the MAW being treated as a minimum floor, the rate at which the minimum floor is set is seen as the norm.

Remittances

96.8% of the respondents surveyed send remittances back home. The majority of these MDWs (71.7%) have 3 or more people dependent on these remittances. In terms of the share of their income that remittances account for, 87.8% of the MDWs surveyed send more than 40% of their monthly earnings back home in remittances, and 43.9% sent more than 60%.

Figure 18 Monthly salary levels of MDWs (n=1003)

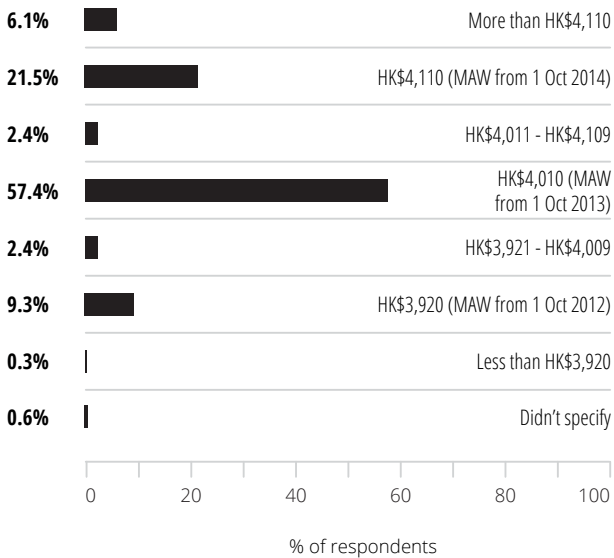


Figure 19 Remittances as a % of monthly salary (n=971)

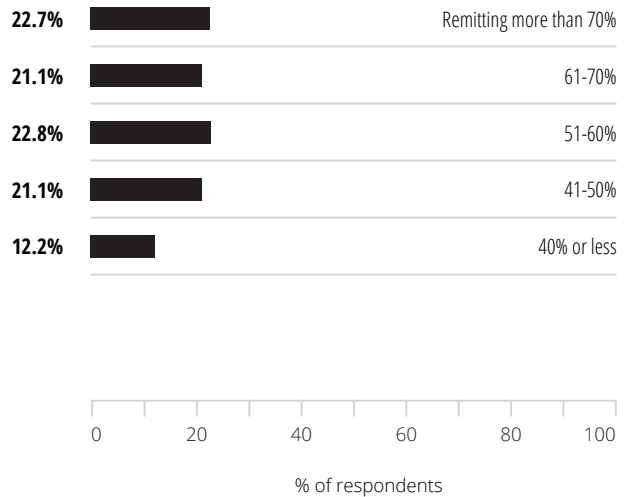
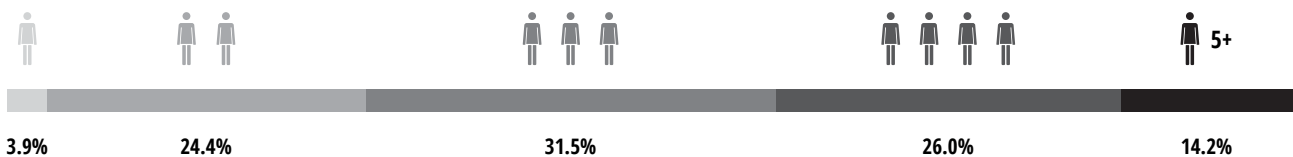


Figure 20 Number of people back home dependent on remittances (n=971)



Freedom to quit

31.9% of respondents indicated that they did not feel free to quit their jobs. Of those who did not feel free to terminate their contracts, 0.6% said they could not leave their job because their employment agency still held their passport, 2.2% were told by their employment agency that they had to stay in the job and 5.9% did not feel free to quit because they still had recruitment debt.

In addition to fearing possible repercussions by their employment agencies if they were to terminate their contracts, MDWs were also concerned about the Hong Kong Government's attitude towards MDW-initiated contract terminations, which is often referred to in Hong Kong as "job-hopping."¹⁴ **37.5% of those respondents who did not feel free to quit their job were worried that it "looks bad" to change employers.**

Finally, **55% said they did not feel free to quit because they felt all jobs in Hong Kong are like this** – that terminating their contract would make no difference because all domestic work in Hong Kong is the same.

"My second employer, after I work[ed] for one year, [went] to Italy for a holiday and [asked] me to live outside. I just found out this is illegal. When they left, I have to live outside and they don't pay my salary because I am not working. I [made] a mistake washing the blanket, so they took HK\$3,000 from my salary. When I [decided] to terminate the contract, the passport is kept by my employer. They said they will give it to my agency. I [took] the case to the Labour Department but [my employment] agency scared me off and [told me] that the employer has somebody they know in the Labour Department."

Tasya, MDW from Indonesia, focus group participant

Figure 21

Reasons why MDWs do not feel free to quit their job (n=320)



Note: Respondents could choose multiple responses.

ESTIMATES OF THE PREVALENCE OF FORCED LABOUR, TRAFFICKING FOR THE PURPOSE OF FORCED LABOUR AND EXPLOITATION

Forced labour

Reminder: The experiences of exploitation and abuse outlined in the general findings are not, of themselves, enough for a respondent to be classified as in a situation of forced labour.

To be counted **in forced labour**, a respondent must be positive in **at least one of the three dimensions** of forced labour: **unfree recruitment, work and life under duress or impossibility of leaving.**

To be **positive in a dimension**, a respondent needs to trigger **at least one indicator of involuntariness and at least one indicator of menace of penalty, and at least one of these indicators needs to be strong.**

1 in 6 MDWs surveyed display all the indicators required to be counted in forced labour

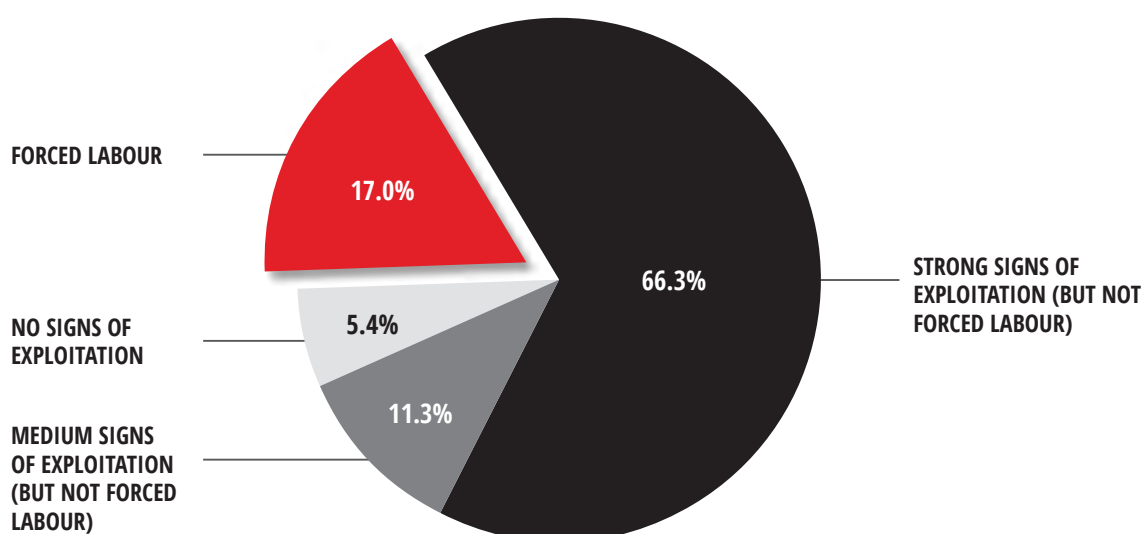
Of the **1,003 MDWs** surveyed, Justice Centre identified **171** respondents who were in forced labour. **This represents 17.0% of the total sample.**

Extrapolated to the entire population of MDWs (336,600) in Hong Kong, we can infer that there are currently **over 50,000 MDWs in forced labour in Hong Kong.**¹¹⁵

The majority of MDWs in forced labour are **young women under 30 years old**, who are on their **first contract**, having **secured it outside of Hong Kong** in their home country. **Indonesian MDWs are far more likely** (70.5% more) to be in a situation of forced labour than non-Indonesians.

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

Figure 22 Prevalence of forced labour and exploitation amongst MDWs (n=1,003)



How did Justice Centre get to these findings?

92 respondents triggered involuntariness indicators and menace of penalty indicators in the unfree recruitment dimension. 100 respondents triggered involuntariness indicators and menace of penalty indicators in the work and life under duress dimension. 4 respondents triggered involuntariness indicators and menace of penalty indicators in the impossibility of leaving dimension.

Although a respondent needs to be positive in at least one dimension to be counted in forced labour, it is possible for a respondent to be positive in more than one dimension. There were **171 respondents** who were positive in at least one dimension and who were therefore counted as being in forced labour.

More information on the forced labour dimensions up close can be found in Appendix 4 at www.justicecentre.org.hk/comingclean

Trafficking for the purpose of forced labour

Reminder: For the purpose of this study, Justice Centre determined that to have been **trafficked for the purpose of forced labour**, a respondent needs to be **positive in at least two dimensions and one of them must be unfree recruitment**.

To be positive in a dimension, a respondent needs to trigger **at least one indicator of involuntariness and at least one indicator of menace of penalty**, and **at least one of these indicators needs to be strong**.

Figure 23

Prevalence of forced labour (by dimension) (n=171)

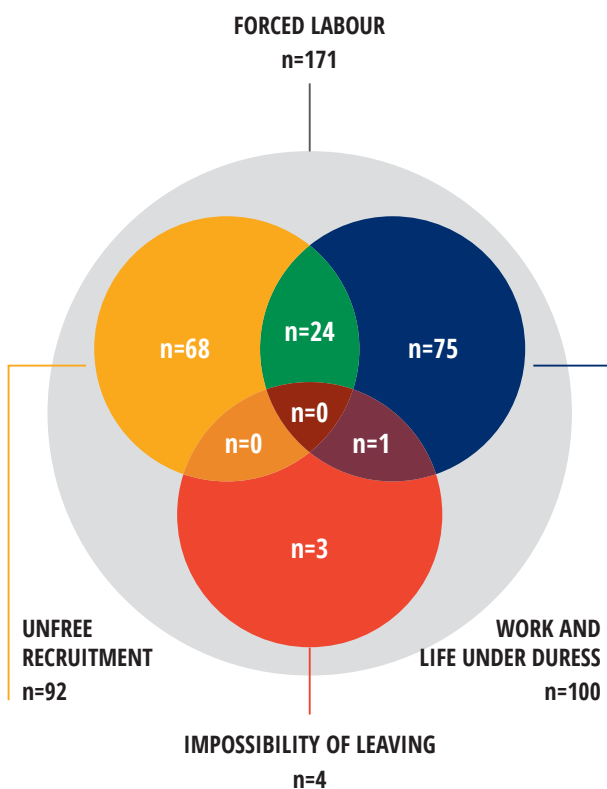


Figure 24

Prevalence of trafficking for the purpose of forced labour as a subset of forced labour (n=171)



Trafficked for the purpose of forced labour. 14.0% of those in forced labour.

1 in 7 MDWS in forced labour in Hong Kong have been trafficked into it.

Of the **1,003 MDWs** who took part in the quantitative survey, Justice Centre identified **24 respondents** who had been trafficked for the purpose of forced labour.

This represents **14.0% of those in forced labour** and **2.4% of the total sample size**.

Exploitation (but not forced labour)

66.3% STRONG SIGNS OF EXPLOITATION
(BUT NOT FORCED LABOUR)

Strong signs of exploitation

Of the **1,003 MDWs** surveyed, Justice Centre identified **665** respondents who were **experiencing 1 strong indicator** from the menace of penalty or involuntariness categories in at least one of the three dimensions of forced labour but who were not in forced labour because they did not have at least a medium indicator in another category. This represents **66.3%** of the total sample. Extrapolated to the entire population of MDWs in Hong Kong, we can therefore infer that there are over **220,000 MDWs** in Hong Kong who are showing strong signs of exploitation, but are not in forced labour.

These respondents were primarily triggering strong involuntariness indicators, mainly in the work and life under duress dimension. The answers of 128 respondents triggered a strong indicator in unfree recruitment and the answers of 10 respondents triggered a strong indicator in impossibility of leaving. By contrast, the answers of 641 respondents triggered a strong indicator in the work and life under duress dimension.

The most frequently triggered indicator was 2.2 *excessive working days or hours*, a strong indicator of involuntariness. Should the employers of such respondents decide to (or threaten to) confiscate their mobile phones (*indicator 2.12 strong penalty*) or threaten to inform their family about their behaviour (*indicator 2.22 medium penalty*), for example, these respondents would then be positive for work and life under duress and therefore in forced labour. These respondents are not yet in forced labour but they are vulnerable to the cumulative effect of multiple labour and human rights violations.

11.3% MEDIUM SIGNS OF EXPLOITATION
(BUT NOT FORCED LABOUR)

Medium signs of exploitation

Of the **1,003 MDWs** surveyed, Justice Centre identified **113** respondents who were **experiencing at least 1 medium indicator** from the dimensions of forced labour but who were not in forced labour because they were not experiencing any strong indicators from either the menace of penalty or involuntariness categories. This represents **11.3%** of the total sample. Extrapolated to the entire population of MDWs in Hong Kong, we can therefore infer that there are over **35,000 MDWs** in Hong Kong who are showing medium signs of exploitation, but are not in forced labour.

These respondents were primarily triggering medium involuntariness indicators in the work and life under duress dimension. 101 respondents were positive for medium indicators of involuntariness in the work and life under duress dimension. These indicators included the manipulation of wages through the underpayment of food allowances and work related transport costs. 12 respondents were positive for medium indicators of unfree recruitment and 14 were positive for medium indicators of impossibility of leaving.

Of those respondents experiencing medium indicators of unfree recruitment, they were spread between indicators of involuntariness (for example, 1.10 *abuse of lack information*) and indicators of menace of penalty (for example, 1.9 *abuse of difficult family situation*). Of those respondents experiencing medium indicators of impossibility of leaving, all 14 respondents were positive for medium menace of penalty indicators, the most frequent being *indicator 3.5 exclusion from future employment*.

WHO IS IN FORCED LABOUR IN HONG KONG?

WHERE ARE THEY FROM? ^{THE PHILIPPINES} 43.3% **INDONESIA** 54.4%

FROM? ^{FROM OTHER COUNTRIES} 2.5% ^{FROM URBAN AREAS} 46.2% ^{FROM RURAL AREAS IN THEIR HOME COUNTRIES} 53.8%

EXPERIENCE 44.4% ^{WERE ON THEIR FIRST CONTRACT IN HONG KONG}

37.4% ^{HAD WORKED AS A MDW IN OTHER COUNTRIES} **AGE** 30-34 **31%** 35-39 **17%** 40-45 **8.8%**

24-29 **39.2%** 18-23 **3.5%** 46-50 **0.6%**

62% ^{HAD SECURED THEIR CONTRACT IN THEIR HOME COUNTRY}

EDUCATION **27.2%** ^{HAD ATTENDED COLLEGE OR UNIVERSITY} **96%** ^{HAD ATTAINED A SECONDARY SCHOOL EDUCATION OR HIGHER} **62%** ^{HAD ATTENDED ONLY ELEMENTARY SCHOOL}

THOSE IN FORCED LABOUR HAVE A MEAN MONTHLY REPAYMENT OF DEBT OF **HK\$ 1,278**



HK\$ 322

THOSE NOT IN FORCED LABOUR HAVE A MEAN MONTHLY

REPAYMENT OF DEBT OF **DEBT** **REPAYMENT OF DEBT OF**

MDWS ON THEIR FIRST CONTRACT **LIKELIHOOD OF BEING IN**

ARE 2.7 X MORE LIKELY THAN THOSE WITH PREVIOUS EXPERIENCE IN HONG KONG **FORCED**

MDWS WITH EXCESSIVE DEBT ARE **MDWS YOUNGER THAN 30 ARE** **LABOUR**

6X MORE **52.8% MORE**

LIKELY THAN THOSE WITH LOWER DEBT LEVELS **LIKELY THAN THOSE OLDER THAN 30**

MDWS FROM INDONESIA ARE **MDWS LESS THAN 24 ARE**

70.5% MORE LIKELY THAN **15X MORE**

NON-INDONESIANS TO BE IN **LIKELY THAN THOSE OLDER THAN 24**

A SITUATION OF **FORCED LABOUR**

MDWS WHO SECURED THEIR CONTRACT OUTSIDE OF HONG KONG ARE

15.4% MORE LIKELY THAN THOSE WHO SECURED THEIR CONTRACT IN HONG KONG



Photo Credit: Xyza Cruz Bacani

CASE STUDY 1: WHAT DOES FORCED LABOUR LOOK LIKE IN HONG KONG?

Note: None of the people in the images correspond with the actual people featured in the case studies.

INDAH, 29, from Indonesia¹¹⁶

Indah is a 29-year-old Indonesian woman who has finished high school and is married with children. She has worked in Hong Kong for seven years with three different employers. She sends approximately 50% of her monthly salary home in remittances. She secured her current job through a Hong Kong employment agency and paid HK\$7,500. This covered placement fees, as well as paying for food and lodging in Hong Kong while waiting for her new job and for a visa run to and from Macau. Because of the recruitment debt she has incurred, she says she feels she has no choice but to keep working. In the past, she has had to take on other jobs to pay off her previous recruitment debts.

While she is paid the minimum allowable wage (HK\$4,110 at time of survey), she only receives HK\$100 per month as a food allowance (the minimum allowable food allowance was \$964 at time of survey). She works on average 20 hours a day and her employer regularly wakes her during the night to work. On her mandated one-day off per week, she has to work before and after she leaves the house. Her employer takes away her time off work if she does something wrong.

Her employer keeps her passport and Indah is unable to access it. Her employer also forces her to work for other people and she is not allowed to practise her religion. She does not feel like she can quit her job because she believes all work is like this in Hong Kong.

How is Indah in forced labour?

Although she has her own room, Indah is forced to live with her employers (*indicator 2.1 strong involuntariness*).

She works 20 hours a day and is woken from her sleep at night regularly to work (*indicator 2.2 strong involuntariness and indicator 2.3 strong involuntariness*).

She also works before and after she leaves the house on her rest day so does not get the full 24 hours' rest that she is legally entitled to (*indicator 2.2 strong involuntariness*).

She is paid substantially less than the current minimum allowable food allowance (*indicator 2.19 medium involuntariness*).

Her passport has been confiscated by her employer (*indicator 2.6 strong menace of penalty*).

Her employer punishes her by taking away her day off, her one time to rest (*indicator 2.11 strong menace of penalty*).

Her employer forces her to work for other people, a breach of her employment contract and therefore a breach of her immigration status in Hong Kong (*indicator 2.20 medium involuntariness*).

Indah is experiencing both strong involuntariness and menace of penalty in her work and life in Hong Kong. She is therefore positive for the dimension work and life under duress. She is therefore in forced labour.



Photo Credit: Xyza Cruz Bacani

CASE STUDY 2: WHAT DOES TRAFFICKED FOR THE PURPOSE OF FORCED LABOUR LOOK LIKE IN HONG KONG?

MARY, 26, Philippines¹⁷

Mary is a 26-year-old, college-educated single woman from a medium-sized city in the Philippines who decided to become a MDW to help her family repay their debts. She came to Hong Kong in 2014 and is still working on her first contract. She sends at least 30% of her salary home as remittances to four members of her family, who are dependent on them. A broker in the Philippines helped her arrange almost all the aspects of her job, and she feels this broker took advantage of her difficult situation as she borrowed money from the broker to help pay for the costs of securing the job while she was still in the Philippines. On her arrival in Hong Kong, she borrowed more money from a finance company to cover the rest of her costs. She did

not disclose to our research team what she paid to either the broker or the finance company in Hong Kong. She did not understand the terms of the loan agreement from the finance company at the time she signed it, and she was not given a copy afterwards. Mary feels she has no choice but to keep working in Hong Kong because of the amount of money she has paid to secure her job.

Before she left the Philippines, Mary spent time in a recruitment training facility. She was not allowed to leave the premises and her passport and ID were confiscated. She was physically and sexually abused at the training facility and her family was threatened. Staff at the training facility

also told her not to go to the Hong Kong authorities or her consulate if she ever had a problem, and they did not give her any information about her rights as a MDW in Hong Kong. She could read and understand the employment contract she signed, but was not given enough time to go through it in detail. Following her experiences in the training facility, Mary decided that she did not want to become a MDW, but she felt compelled to go because of the debt she had accumulated.

Once in Hong Kong, Mary discovered that her living conditions, welfare and benefits, and holidays were worse than the staff

at the recruitment training facility and the broker had told her and her weekly rest hours were much worse. She has to share a room with another worker and feels that her living conditions are overcrowded with no privacy. She works 14 hours a day. She is awarded her weekly rest day but must work before and after she takes her rest. Her employer also threatens to deduct her salary and cut off her access to the internet and the house phone. Although she is unhappy about her working conditions, Mary doesn't feel she can terminate her contract because she is still in debt, and to repay these more quickly, Mary has done other work in Hong Kong.

How has Mary been trafficked for the purpose of forced labour?

Her broker exploited her need to repay her family's debts (*indicator 1.9 medium menace of penalty*).

She was confined in a recruitment training facility and not free to leave (*indicator 1.2 strong involuntariness*).

Her passport and other identity papers were confiscated in the training facility (*indicator 1.6 strong menace of penalty*).

Mary was physically and sexually abused at the recruitment training facility (*indicators 1.3 and 1.4 strong menace of penalty*).

Her family was threatened while she was in the recruitment training facility (*indicator 1.5 strong menace of penalty*).

She was not given any time to go through her employment contract before she signed it (*indicator 1.11 medium involuntariness*).

While in the recruitment training facility she was also warned not to contact authorities in Hong Kong if she had any problems (*indicator 1.13 medium involuntariness*).

And she was not given any information about her rights as a migrant domestic worker in Hong Kong in her own language (*indicator 1.11 medium involuntariness*).

She was not given a copy of her loan agreement (*indicator 1.11 medium involuntariness*) and she did not understand what she was signing or the terms of the agreement (*indicator 1.10 medium involuntariness*).

Aspects of her actual contract (*living conditions, weekly rest hours, welfare and benefits and paid holidays*) were worse

than what she had been promised (*indicator 1.7 strong involuntariness*).

She is forced to live with her employers (*indicator 2.1 strong involuntariness*) and has no private space to sleep and rest (*indicator 2.4 strong involuntariness*).

She works 14 hours a day (*indicator 2.2 strong involuntariness*) and must complete work tasks before and after her weekly rest time (*indicator 2.2 strong involuntariness*).

Her employer threatens to deduct her salary (*indicator 2.15 strong menace of penalty*) and cut off her access to the internet and the house phone (*indicator 2.7 strong menace of penalty*).

She does not feel free to quit her job because of her recruitment debt (*indicator 3.6 medium menace of penalty*).

Mary experienced both strong involuntariness and menace of penalty in her recruitment. She is therefore positive for the dimension unfree recruitment. Mary is experiencing both strong involuntariness and menace of penalty in her work and life in Hong Kong. She is therefore positive for the dimension work and life under duress. Mary has therefore been trafficked for the purpose of forced labour.



Photo Credit: Xyza Cruz Bacani

CASE STUDY 3: WHAT DOES TRAFFICKED FOR THE PURPOSE OF FORCED LABOUR LOOK LIKE IN HONG KONG?

AMALIA, 28, Indonesia¹¹⁸

Amalia is a high-school educated 28-year-old woman who is married without children from a rural area in Indonesia. She has been working in Hong Kong for almost four years and has had three different employers. She sends approximately 50% of her salary home in remittances each month. She found her current job through a private recruitment company after she returned to Indonesia from Hong Kong upon terminating her previous contract. She paid for her recruitment costs by taking out a loan with a finance company after she got to Hong Kong and paid HK\$15,576 in total. She expected to pay money to secure her current contract and to take out a loan, but she was not given a copy of the loan agreement. Although she had

worked in Hong Kong before, Amalia's recruitment company made her attend a recruitment training facility again before she left Indonesia. Her passport was confiscated and she was not free to leave the facility, even when she was not in classes or training.

In her current job, Amalia works 14 hours a day and is only given a day off every three weeks. Her employer compensates her for working on her rest days but she does not feel she has a real choice to say no to working on her day off. She is paid HK\$4,010 a month but her employer does not pay for all her work-related transport costs. Amalia does not have her own room and sleeps

in the kitchen. If she does something that upsets her employer, her employer punishes Amalia by taking away her phone and cutting off her access to the internet and the home phone. She also yells and screams at Amalia and uses degrading language. Amalia's employer restricts her movement outside of the house and does not allow her to practise her religion. Amalia would like to quit her job, but her employment agency has told her that she cannot leave until she pays off her debt. She also believes that her employment agency would deduct her future salary as punishment if she leaves.

How has Amalia been trafficked for the purpose of forced labour?

Amalia was confined in the training facility and not free to leave (*indicator 1.2 strong involuntariness*).

Her passport was also confiscated in the training facility (*indicator 1.6 strong menace of penalty*).

Her recruitment debt (HK\$15,576) is 32.4% of her annual income (HK\$48,120) (*indicator 1.8 medium involuntariness*).

She was not given a copy a copy of her loan agreement (*indicator 1.11 medium involuntariness*).

She is forced to live with her employers (*indicator 2.1 strong involuntariness*) and has no private space to sleep and rest (*indicator 2.4 strong involuntariness*).

She works 14 hours a day (*indicator 2.2 strong involuntariness*) and is only allowed to take a rest day every three weeks (*indicator 2.2 strong involuntariness*).

Her employer does not pay for all her work costs (*indicator 2.19 medium involuntariness*).

As punishment, her employer confiscates her mobile phone (*indicator 2.12 strong menace of penalty*), cuts off her access to the internet and the home phone (*indicator 2.7 strong menace of penalty*) and yells and screams at her (*indicator 2.11 strong menace of penalty*).

Amalia is also being prevented from leaving her job. Her employment agency has told her she cannot terminate her contract (*indicator 3.2 strong involuntariness*).

Amalia experienced both strong involuntariness and menace of penalty in her recruitment. She is therefore positive for the dimension unfree recruitment. Amalia is experiencing both strong involuntariness and menace of penalty in her work and life in Hong Kong. She is therefore positive for the dimension work and life under duress. Amalia has therefore been trafficked for the purpose of forced labour.





PART 5

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The “live-in” requirement makes MDWs uniquely vulnerable to abuse, exploitation and forced labour.

All workers have the right to enjoy just and favourable conditions of work, including safe and healthy working conditions, and sufficient rest, leisure and limitation of working hours, amongst other labour rights. They also have a right, in their free time, to take part in civic, cultural and social life. Our study has shown that many provisions on paper aimed at protecting MDWs’ rights are being violated in practice – 35.1% said they had to work on their mandated day off; for those who received a food allowance, 57.7% reported that they received less than the minimum allowable amount (resulting in the effective underpayment of minimum wages); 35.2% had to share a room with a child or the elderly; and 2% were sleeping in a kitchen or shared living space.

The study shows that the average working hours were 71.4 hours a week (11.9 hours a day by six days a week). Two-thirds of respondents (63.8%) to the survey work 12 or more hours a day. 12.9% work for 15 or more hours a day. Only 74 respondents (or 7.4%) reported working 8 hours or less per day. Taking the MAW of HK\$4,110 a month at the time the survey was conducted, this would translate to a salary of HK\$14.39 an hour, just equal to 44.3% of the minimum wage for other workers in Hong Kong (the statutory minimum wage is currently HK\$32.50). Even taking into account that suitable accommodation and food should be provided to MDWs by their employers, this finding indicates that MDWs are underpaid and undervalued for their work in the care economy, particularly given that recent increases to their wage have been lower than the rate of inflation.¹¹⁹

Our study gave significant weight to the impact the “live-in” requirement has on creating multiple forms of dependency on the employer for work and non-work life. Based on our findings and discussions, these range from the hours that MDWs work, to where they sleep and at what times, what food they may eat, what to wear and many other aspects that blur the boundaries of work/home life. The most common complaint from MDWs in focus group discussions was the number of hours that they worked and their inability to get sufficient rest, and the impact this has on their health, happiness and sense of privacy, and as one of the participants put it – “time for myself.” Essentially the “live-in” requirement creates a carte blanche for excessive working hours.

A compounding challenge is that Hong Kong has no legislation on maximum working hours or laws on overtime work for any workers. However, the Standard Working Hours



The distinctive working pattern - round-the-clock presence, provision of service-on-demand and the multifarious domestic duties expected of live-in domestic workers - makes it impossible to ascertain the actual hours worked so as to determine the wages to be paid.



**Mr Matthew Cheung Kin-chung,
the Director of Labour and Welfare¹²⁰**

Committee was set up in April 2013 to deliberate on whether and how working hours should be regulated; MDWs have so far been excluded from the discussions.¹²¹ To not include domestic work in these debates is unacceptable, as this is precisely the sector that is most vulnerable to excessive working hours and would be most likely in need of legislation on standard working hours and overtime work.

The “live-in” requirement entrenches power inequality between MDWs and their employers, establishing working arrangements that are inherently disadvantageous and makes MDWs uniquely vulnerable to exploitation, abuse and domestic violence. By being compulsory, the live-in rule puts a strong pressure on MDWs with debt to accept abusive working conditions or inadequate living arrangements. Even where employers themselves would prefer their employee MDW to live-out, this is not allowed. The government’s rationale for the “live-in” requirement - to prevent MDWs from taking on secondary or part-time work - is largely speculative, and is a disproportionate measure against the demonstrable negative effects on MDWs in creating an environment where exploitation and abuse can more readily occur.



In my view, such conduct could be prevented if domestic workers were not forced to live in their employers’ homes [...]. The choice would make all the difference.



**The Honourable Judge Amanda Woodcock, presiding over
the case of the employer of Erwiana Sulistyaningsih¹²²**

MDWs who risk living out face the uncertainty of police and immigration raids cracking down on violators, where they may be then deported and/or blacklisted.¹²³ It is doubtful that removing the “live-in” requirement would have a significant impact on the living arrangements between MDWs and their employers as, based on focus group discussions many MDWs may prefer to live-in anyway. However, the option would allow MDWs and their employers greater choice to seek alternative accommodation if the space and facilities available in the employer’s home are not adequate.

The government’s rationale for the “live-in” requirement - to prevent MDWs from taking on secondary or part-time work - is largely speculative, and is a disproportionate measure in comparison to the demonstrable negative effects on MDWs by creating an environment where exploitation and abuse can more readily occur.

Currently, the employment and living conditions are entirely self-reported by the employer on the contract at the time of application, without any follow-up by authorities. Although it is technically an offence to furnish false information on the SEC, (considered as “false representation to Immigration Officers, and liable to prosecution,)¹²⁴ there is no monitoring of MDWs’ living and working conditions (unless a MDW is reported as being in breach of his or her conditions of stay). Thus there is no follow-up to check that what employers have promised is being upheld. Some MDWs must live in shared areas of the household with little or no privacy, and even for those who have a separate room as accommodation, there have been reports about quarters (in relatively wealthy households in new property developments) being extremely cramped such as arrangements where the MDW has a bed located above a toilet or a room too small for a single bed.¹²⁵

The ILO has developed guidelines on how to monitor and ensure compliance to workplace and accommodation standards, including through labour inspections, in the domestic work sector.¹²⁶ Nonetheless, as noted earlier in this report, numerous UN human rights bodies have called on the Hong Kong Government to abolish the “live-in” requirement and allow MDWs a choice of whether to live in or live out legally. A precedence for this may be seen in the area of food allowance where it is possible to either choose food in-kind or a food allowance in lieu. Should the “live-in” requirement be lifted, consideration would likewise need to be given as to the costs of living out and a salary or stipend offered commensurate with the cost of living in Hong Kong.

Ultimately, the starting point of MDW policies should be that domestic work is work. In the focus groups, MDWs noted their desire for domestic work to be considered like

any other work, and their contributions and efforts through their labour to be recognised by their employers, Hong Kong society and their own home governments. The Hong Kong Government should, in discussion with the Chinese Government in Beijing, encourage the adoption of the ILO Convention No. 189 and its application to the HKSAR territory, and ensure its domestic labour provisions are in line with international labour standards.

The pervasiveness of excessive debt burden amongst MDWs points to rampant overcharging by employment agencies

Of the 730 respondents who obtained their contract in Hong Kong, 44.7% had to pay for various costs to secure the job, and 25.2% had to borrow money from a broker, finance company or employment agency to cover their costs. Many times, the Hong Kong Government treats excessive agency fees as a problem of source countries, but our findings show that 61.2% of MDWs who secured their contract in their home country paid for their recruitment costs after they got to Hong Kong, paying off an average debt of HK\$2,496 a month in instalments over a period of six months.

Had there existed better tracking of employment agencies and employers with high worker turnover, “bad apple” cases like Erwiana’s, where the agency continued to provide workers regardless of previous ill-treatment of MDWs by the employer, could be avoided.

Employment agencies, directly or indirectly, play an important role in whether MDWs will leave an abusive situation or not. For many MDWs, particularly early on in their contract, if they are left without a job, their debt may go unpaid (often directly borrowed from the employment agency), and they may need to take out even more loans to pay for yet another placement to find future employment. Nonetheless, it is beyond the scope of this study to conclusively establish whether the existence of debt bears a role in the MDW’s choice to remain with an abusive employer, or the influence that the recruitment agency exerts on a worker to remain with an abusive employer. Had there existed better tracking of employment agencies and employers with high worker turnover, “bad apple” cases like that of Erwiana Sulistyarningsih’s, where the agency continued to provide workers regardless of her previous ill-treatment of MDWs, to the same employer, could be avoided.

The Labour Department regulates employment agencies pursuant to Part XII of the Employment Ordinance (Cap. 57) and the Employment Agency Regulations (Cap.

57A). In 2014, the Employment Agencies Administration (EAA) of the Labour Department received 170 complaints against employment agencies, most of which related to overcharging the MDW, however, only four of these agencies were convicted that year.¹²⁷ In 2015, the Labour Department prosecuted 12 agencies and 9 of them were convicted of overcharging job-seekers.¹²⁸

Clearly, the conviction rate is low.¹²⁹ MDWs filing a complaint to the EAA often have difficulty obtaining documentary proof, such as providing copies of receipts, particularly as the proof must be submitted no longer than six months after the act was committed, and some of the most egregious abusers do not give copies of receipts. This burden of producing material evidence within this time frame is a severe limitation for the most vulnerable to be able to have their complaint handled.

The EAA is not mandated to conduct self-initiated investigations, undercover operations or to respond to a tip-off from a third party and the success rate for filing a complaint in 2014 was 0.25%. Clearly this mechanism is not operating as it should, and moreover, the low level of convictions “fail to act as a deterrent” to the employment agencies.¹³⁰ Furthermore, the penalties that employment agencies face when convicted by the EAA are far from stiff – merely HK\$10,000 or HK\$45,000 in some recent examples¹³¹ – and in only a handful of cases, have licenses of agencies been revoked.

There have been some positive developments in the past two years. The Labour Department has increased the manpower of the EAA up to eight Labour Officers, and has increased the number of inspections of EAs from 1,300 to 1,800 each year.¹³² However, these measures have not translated into the reforms originally promised to better regulate the sector following the case of Erwiana Sulistyaningsih.¹³³ In addition to increased manpower, the mandate of the EAA should be strengthened.

The government had proposed that a draft Code of Practice (CoP) for employment agencies would be prepared and consulted on in the second half of 2016.¹³⁴ However, there is no information on the status of this code other than news that a consultation will be held in the first quarter 2016. Many groups consider that it would be preferable to legislate more stringent licensing conditions and regulations on employment agencies, as a CoP would likely be voluntary and therefore not legally binding. This being said, in January 2016, the Hong Kong Government stated that it would “review the need for turning the Code into statutory requirements” and that it did not rule out “bringing legislative amendments, including raising the maximum penalty, to tighten the regulation of EAs.”¹³⁵

Ultimately, the employment agencies exert a great deal of unchecked power. Many MDWs are forced to go through them for placement rather than direct hire, imposed by sending country governments. Many MDWs incur costs associated

with miscellaneous, contrived “fees” for placement, and acquire debt through collusion between money-lenders and the agencies, if not by taking out a loan directly from the agency. Lastly, many MDWs rely significantly on the information provided by agencies about their rights in Hong Kong, particularly when they first arrive, and agencies are often the first responders when MDWs have problems or find themselves in an abusive situation with their employer.

Better regulation of employment agencies cannot fall on the HKSAR Government alone, as agencies play a role in source countries as well. It is a positive development that the Hong Kong Secretary for Labour and Welfare, Mr. Matthew Cheung, has met with senior governmental counterparts from sending governments in recent months about the issue of recruitment fees and encouraged measures to reduce fees,¹³⁶ and that since 2014, the Hong Kong Government has strengthened its collaboration with MDW-sending governments through bilateral inter-departmental “regular liaison mechanisms.” However, these bilateral meetings are held somewhat infrequently, and there have been calls for more multilateral engagement. This study notes that an attempt in April 2015 to arrange a multilateral and multi-stakeholder Foreign Domestic Roundtable managed to get civil society actors, sending governments, academics, law firms, employer rights groups, trade unions and members of the private sector together, but was not attended by the Hong Kong Administration, despite invitation.¹³⁷

The conditions of stay placed on MDWs deter them from leaving abusive situations and impede their ability to seek redress

This study shows that, although Hong Kong has a highly regulated temporary migration scheme for MDWs in comparison to other countries, the restrictive conditions of stay imposed on MDWs contribute to their vulnerability. Our study found that most MDWs did not report experiencing explicit physical abuse. But those employers who do exploit workers have considerable free reign. This is because MDWs are discouraged from reporting abuse for fear of losing their job, the impact this may have on their immigration status under the “two-week rule” and, in many cases, their ability to repay their recruitment debts.

The “two-week rule” obliges MDWs to leave Hong Kong within 14 days of termination of a contract. The MDW migration scheme is a tied-visa scheme, where the immigration status of MDWs is attached to the employer who has signed their contract, and MDWs are not permitted to change employers without first leaving the country, except on a discretionary basis and under very specific circumstances. This restrictive condition may serve to trap workers who are in an abusive or exploitative situation, including cases tantamount to forced labour.

ImmD makes it clear that MDWs are admitted to Hong Kong “only for a specific job with a named employer, and for a limited period” and that applications “to change employers in the HKSAR within the two-year contract will not as a rule be tolerated save for a handful of circumstances.”¹³⁸ Increasingly tighter restrictions on the ability of MDWs to change employers are mirrored by open discussion of the risks of MDWs “job-hopping.”¹³⁹ In response to employer concerns about MDWs “job-hopping,” the Secretary for Security Lai Tung-kuok noted that “the [Immigration] department will monitor closely those foreign domestic helpers who have been frequently changing their employers in the past 12 months” in order “to prevent them from exploiting the arrangements under a premature termination of contact.”¹⁴⁰ Indeed, MDWs’ concerns regarding perceptions of “job-hopping” are revealed in this study. 37.5% of those respondents who did not feel free to quit their current contract said that “it looks bad” to change employers.

The “two-week rule” also creates an entire industry around MDWs with opportunities for employment agencies and moneylenders to extract profit by collecting more fees, such as for placement, visa-run travel expenses or boarding house costs. The “two-week rule” gives a disincentive to MDWs to terminate a contract, particularly those who shoulder a heavy debt burden, even if they are in an exploitative situation. This is due to the difficulties of finding another employer within two weeks and, if the MDW is not successful in finding another employer, the amount of money (and potential debt) that would need to be incurred to secure another contract after leaving Hong Kong. Compounding factors are the many economic barriers that MDWs face in accessing justice – all of which mean that abuse and exploitation is likely highly underreported by victims.

The Hong Kong Government has clearly stated that “it does not tolerate any exploitation or abuse of FDHs, nor does the Hong Kong community accept such misdemeanor. FDHs who feel aggrieved are encouraged to approach the authorities promptly.”¹⁴¹ The findings reveal that only four respondents reported enough markers to be positive in the forced labour dimension “impossibility of leaving.” While this may reveal that most MDWs are able to leave their employers if they are in a bad (enough) situation, obtaining redress for conditions which were contrary to those outlined in their SEC is another matter. In fact, MDWs often face steep barriers in seeking justice through the channels established by the Hong Kong Government.

Upon deciding to pursue a claim against their employer, the immigration status of a MDW immediately changes and he or she is unable to work. Thus, for those who do file a complaint in the Labour Tribunal, they must be prepared for the possibility that they will have to wait in Hong Kong jobless and without a source of income for a case that may take several weeks, if not months, to conclude. They must also apply and pay HK\$160 each time for a discretionary

visa extension of stay and must cover their own living costs to support themselves. While the specific experiences that MDWs face during Labour Tribunal proceedings – such as the quality of interpretation or lack of access to legal aid – is not within the scope of this study, it is clear that the costs of accessing justice and pursuing a claim are simply too high for many MDWs to afford acting as an effective financial penalty that disincentivises them from lodging a complaint and waiting for it to be settled. There is much scope for further research in this regard.

NGOs and advocates have noted instances where victims of forced labour or exploitation may actually be prosecuted themselves for immigration or illegal work-related offences, which would deter aggrieved victims from “approaching authorities” to report crimes. There is a report that in a court case in 2014, a person recruited 19 victims to pay contract fees for jobs in Hong Kong that did not exist upon arrival, leaving them without any money. Rather than investigating the recruiter for fraud, the response by the ImmD was to prosecute the victims for entering Hong Kong illegally with bogus contracts and to sentence them to 15-months’ imprisonment.¹⁴² Victims of trafficking and forced labour should not be penalised, but rather, protected, when they seek assistance from authorities.

Although Hong Kong has a highly regulated temporary migration scheme for MDWs, their stay is for a very specific and limited purpose, and these unique conditions of stay exclude them from the opportunities afforded to many other migrant workers in this city; while they may be able to make a living here, they may never make a life for themselves. The unequal footing with which the Hong Kong Government views MDWs compared to some other migrant workers comes out in several facets, but is no more apparent than in the “two-week rule”. With regards to loosening the restrictive “two-week rule”, the Hong Kong Government should consider *ILO Migrant Workers Recommendation 1975 (No. 151)*, which states, “A migrant who has lost his employment should be allowed sufficient time to find alternative employment.”¹⁴³ MDWs’ conditions of stay should also take into account average processing times of legal proceedings and the visa conditions upon termination.

The Hong Kong Government is failing to take steps to stop human trafficking and forced labour amongst MDWs

The evidence demonstrates that existing legislation and enforcement is falling short; however, the Hong Kong Government continues to deny that Hong Kong has a problem of forced labour or human trafficking for the purpose of forced labour. In many ways, the case of Erwana

Sulistyaningsih proved to be a tipping point in Hong Kong. Erwiana noted that the media spotlight had an impact on authorities' willingness to take her case seriously, stating that "before the attention, they had filed my case into 'miscellaneous' – afterwards, it became a 'priority' case."¹⁴⁴

For several years, the government's stance on forced labour and human trafficking has remained virtually unchanged, adopting the position that these situations do not happen within Hong Kong's borders and that existing laws and policies are adequate. The government asserts that although there are no international conventions on human trafficking that apply to HKSAR, the legislation "taken as a whole" prohibits the "constituent elements of conduct" referred to as "trafficking in persons" in the *Palermo Protocol*.¹⁴⁵ The government argues that it already has a "comprehensive legislative framework."

The estimates of the prevalence of forced labour and human trafficking for the purpose of forced labour found in this study point to the contrary; almost one in six MDWs is in a situation of forced labour in Hong Kong and 1 in 7 of these may have been trafficked into that situation. Even for those who do not reach this threshold, MDWs are uniquely vulnerable to exploitation – overworked, underpaid, often isolated and with little bargaining power in the employer-employee relationship. The accumulation of these vulnerabilities, one by one, moves them further along the continuum of exploitation and can tip them over into forced labour.

Moreover, those who were most vulnerable to forced labour in our study were women on their first contract secured outside of Hong Kong; these MDWs may face many cultural/linguistic barriers and may be less aware of their rights in Hong Kong and where to seek help. Although efforts have been made to increase training and publicity to new arrivals about their rights,¹⁴⁶ free and compulsory training may need to be provided periodically throughout their time in Hong Kong. Currently, no induction or orientation course is mandatory for employers to ensure that they are also aware of their rights and responsibilities, as well as those of their domestic worker employee.

Unfortunately, scattered legislation and policies that indirectly address the problem create little appetite for concerted and coordinated action and do not give victims sufficient options for legal redress to seek accountability for the gravity of what the crimes and rights violations against them merit. Hong Kong does not have any comprehensive anti-human trafficking legislation or laws that specifically criminalise forced labour. According to the 2015 US TIP Report, although 26 potential victims of human trafficking for sexual exploitation were identified in 2014, none were referred to facilities for care.¹⁴⁷

A judicial review on human trafficking for the purpose of forced labour in January 2016 examined Hong Kong's failure to pass laws and policies to protect victims. The man in this case alleges that he sought help from various government departments, such as the Police, Labour Department and ImmD, but did not receive protection.¹⁴⁸ At the time of this writing, the outcome of this review is still pending. Regardless, without comprehensive legislation to prohibit all forms of human trafficking, including for the purpose of forced labour, it is difficult for authorities to take concerted action. Legislative and policy reform would empower various departments to proactively take measures from the prosecution, prevention and protection dimensions.

Legislative and policy reform would empower various departments to proactively take measures from the prosecution, prevention and protection dimensions.

Although any one MDW in forced labour is one too many, we must also note that the results from this survey show that the majority of MDWs in Hong Kong are not in situations of forced labour. In the focus groups, we spoke with many MDWs who were very happy in their place of employment, and reported positive experiences of Hong Kong and their interactions with various authorities. Hong Kong's labour provisions for domestic workers are above the global norm in a sector where 30% of workers worldwide (and 61% in Asia-Pacific) fall outside the scope of national labour laws.¹⁴⁹ However, whether a MDW is placed into the hands of the "bad apples" cannot fall simply to fate; there must be robust protections against unscrupulous agencies or abusive employers as well as incentives and information for MDWs to come forward to get help and seek remedy.

Many times, human trafficking and forced labour are thought to exist outside the ambit of the law, in the black market or under a shadow of criminality. However, our study shows that forced labour and human trafficking can happen in even highly regulated temporary labour migration schemes, when those regulations increase the vulnerability of workers and when authorities turn a blind eye to exploitative practices and do not have ample enforcement capacity and mandate to punish those who circumvent the laws. Human trafficking and forced labour are not just about the relationship between "trafficker" and "victim" under criminal law, but about addressing the power imbalances, structural conditions and inadequate enforcement of labour rights that prevent MDWs from enjoying decent work and make them vulnerable to exploitation and abuse in the first place.

CLOSING NOTE

This study set out to estimate the prevalence of forced labour and human trafficking for the purpose of forced labour amongst MDWs in Hong Kong. Discussions of the conditions of MDWs in Hong Kong are highly polarised. The Hong Kong Government's assertions that abuse and exploitation are isolated cases are contrasted with continued claims from many civil society groups that these cases are simply the "tip of the iceberg." The Hong Kong Government bases its claim on the non-existence of human trafficking (including for the purpose of forced labour) on the argument that there is no evidence to the contrary. This study sought to build this evidence by providing data showing the extent to which forced labour and human trafficking are present amongst the general population of MDWs in Hong Kong.

Our results have found that 17% of respondents were in a situation of forced labour, based on the ILO forced labour indicators from *Hard to See, Harder to Count*. 14% of those in forced labour had been trafficked into it, as these respondents demonstrated involuntariness and menace of penalty along the migration path from recruitment to placement in Hong Kong. Many more were in situations of exploitation that, although not enough to meet the threshold of forced labour set in this study, were serious nonetheless. Forced labour amongst MDWs in Hong Kong is not rare or isolated. It is, unfortunately, too common.

Importantly, almost equal numbers of respondents were in forced labour because they had experienced involuntariness and menace

of penalty in the recruitment for their current contract as were in forced labour because they were experiencing involuntariness and menace of penalty in the work and life in Hong Kong. Indeed, 92 respondents were in forced labour because they were positive for "unfree recruitment, 100 respondents were in forced labour because they were positive for "work and life under duress." That is, the working and living conditions of MDWs in Hong Kong are as much (if not arguably more) of a problem as their recruitment experiences in their home countries.

Those MDWs who were most likely to be counted in forced labour were on their first contract, from Indonesia, young, and of greater significance, likely to have excessive recruitment debt burden.

With more political will to take concerted action, the Hong Kong Government has an opportunity to serve as an example in the region by ensuring that domestic workers enjoy conditions of decent work and do not fall prey to forced labour and human trafficking. Up until now, the legacies of Hong Kong's anti-human trafficking and forced labour efforts have been largely defined by a lack of action, but with more and more cases coming forward, the cracks in the system are increasingly exposed.

Hong Kong must come clean; the government can no longer afford to sweep these problems under the carpet.

RECOMMENDATIONS

Many of the recommendations set in this report have been called for before by a variety of actors advocating for MDW rights. The evidence presented in this research on the prevalence of forced labour and human trafficking for the purpose of forced labour amongst MDWs in Hong Kong echoes and supports these repeated calls. This study seeks to move the debate forward, reinvigorate the discussions and reinforce the accumulating calls for reforms.

In addition, with the evidence from the research, Justice Centre urges that all interventions, policies and changes to legislation in the area of human trafficking, forced labor and labour exploitation of MDWs do not solely focus on immigration or criminal law and legislation, but rather integrate a **human rights-based approach** and are in line with international human rights legal standards and recommended principles and guidelines on human rights and human trafficking.¹⁵⁰

On steps to combat human trafficking and forced labour in the HKSAR territory

1. **Conduct a formal review** in the Hong Kong Legislative Council (LegCo) to assess the adequacy of current laws, policies and efforts to combat human trafficking and forced labour in Hong Kong, and examine the root causes of human trafficking and forced labour, in consultation with relevant stakeholders, including civil society and taking stock of international developments and best practices.
2. **Build the capacity and authority** of relevant government departments at the front-line, including the Police, Immigration Department, Labour Department, Department of Justice and Social Welfare Department, to proactively identify and assist victims of forced labour and human trafficking.
3. **Develop an Inter-departmental National Plan of Action** as a roadmap for concrete action from the prevention, prosecution and protection perspectives, in order to expand and improve enforcement of existing legislation and foster inter-agency and civil society cooperation.
4. **Seek extension of the *UN Trafficking Protocol* (*The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*)** to Hong Kong and incorporate a **comprehensive definition of human trafficking** into domestic legislation to combat human trafficking in all its forms, including for the purpose of forced labour.
5. **Introduce legislation to prohibit forced labour** as a standalone offence (in accordance with the *ILO Forced Labour Convention No. 29* (1930) and paying due attention to the ILO Forced Labour Indicators) and vigorously prosecute offenders.
6. **Encourage victims of human trafficking and forced labour to come forward** by not prosecuting them for criminal or immigration-related offences as a result of being a victim of forced labour and/or human trafficking. Ensure that they have access to adequate rehabilitation and support services, legal advice and representation, temporary residence, the right to work, and effective redress.

On monitoring and regulation of recruitment and employment placement agencies

7. **Create and enforce robust, binding regulations** on employment agencies, rather than a voluntary code of conduct, and ensure meaningful consultation with all stakeholders, including labour and migrant rights' organisations.
8. **Improve dialogue and cooperation with sending governments** of MDWs through regular bilateral and multilateral engagement in the areas of recruitment, training, monitoring of employment agencies and support to MDWs.
9. **Strengthen the mandate and enforcement capacity of the Employment Agencies Administration (EAA)** to monitor and regulate employment agencies, provide harsher penalties for employment agencies engaging in unethical, deceptive, coercive, collusive or illegal practices, and facilitate MDWs' ability to file complaints to the EAA.

On MDWs' enjoyment of their right to just and favourable conditions of work

10. **Remove the "live-in" requirement** and give MDWs a choice whether to live with their employer or live out, ensuring those who live out receive an appropriate housing allowance or salary commensurate with the cost of living in Hong Kong.
11. **Stipulate in detail in the Standard Employment Contract (SEC)** what is considered suitable and unsuitable accommodation, suitable and sufficient food (where food is being supplied instead of an allowance),

sufficient daily rest times and reasonable privacy, in line with relevant human rights standards.

12. **Develop and implement compliance mechanisms**, including measures for labour inspection, for the Labour Department to be able to give more scrutiny to follow up and monitor that the terms submitted by employers in the SEC are being upheld, and investigate and prosecute cases where legal provisions on conditions of work, living arrangements and occupational safety are being violated.
13. **Provide compulsory, free and standardised training**, including periodic “refreshers” for both MDWs and their employers on Hong Kong’s labour laws, each party’s rights and responsibilities in the employer-employee relationship and where and how they may seek assistance from authorities where there is a dispute.
14. **Develop tracking mechanisms** of MDW contracts to monitor employers/households where contracts are terminated early or with high turnover of MDWs, and take proactive measures to prevent employers who have a negative track record of hiring MDWs from being able to procure future domestic services.
15. **Enact legislation on standard working hours** that stipulates maximum working hours, overtime and rest periods, and ensure that these statutory provisions are also applicable to the domestic work sector.
16. In conjunction with the Government of the People’s Republic of China, **seek the adoption and application of ILO Convention No.189** to the territory and ensure that its provisions on domestic labour are in line with international standards, while also raising public awareness of the rights of MDWs.
19. **Enable MDWs to seek access to justice**, by allowing those who pursue claims against their employer or employment agency to be granted the right to work while their case is being handled.
20. **Allow direct hire for all MDW contracts secured in Hong Kong**, regardless of the nationality of the MDW, in conjunction with sending country governments.

On contract termination and the conditions of stay placed on MDWs in the HKSAR immigration regime

17. **Abolish the “two-week rule”** and implement conditions of stay, that do not tie MDWs’ visas to an employer, but rather allow MDWs sufficient time to be able to secure alternative employment without first returning to their home country after termination of their contract.
18. **Expand the numbers of permitted reasons for changing employers** for MDWs working in households where the terms of the SEC are not being complied with; and so grant flexibility to change employers without having to depart Hong Kong.

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- ⁷¹ There are also relevant provisions under the Immigration Ordinance (Cap. 115) (mostly in relation to conditions of stay) and the Offences against the Person Ordinance (Cap. 212). The Employment Ordinance and the Employee's Compensation Ordinance (Cap. 282) govern local and migrant workers' rights and duties of employers and their rights, while the Sexual Discrimination Ordinance (Cap. 480) prohibits sexual harassment of foreign domestic workers by their employer and anyone living in the household.
- ⁷² Annual statistics are not periodically provided by the HKSAR Government, but can be found in the state party's report to CEDAW. HKSAR Government, Combined seventh and eighth periodic reports of States parties, UN Doc.: CEDAW/C/CHN-HKG/7-8, 17 January 2013, at para. 150.
- ⁷³ The Department of Justice has included in the Prosecution Code 2013 published on 7 September 2013 a new paragraph entitled "Human Exploitation Cases" which sets out the instructions and approaches prosecutors should be taking in this area, mandates prosecutors to handle human trafficking cases with the necessary understanding, skill and sensitivity. It specifically states that prosecutors can make reference to applicable international standards and practices concerning human trafficking victims.

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- ⁷⁵ HKSAR Government, "LCQ8: Combating human trafficking", Written reply by the Secretary for Security, Mr Lai Tung-kwok, to a question by the Hon Dennis Kwok in the Legislative Council", 12 February 2014, available at: <http://www.info.gov.hk/gia/general/201402/12/P201402120349.htm>
- ⁷⁶ Hong Kong Government, "Response to US report on Trafficking in Persons", Press Release, 27 July 2015, available at: <http://www.info.gov.hk/gia/general/201507/27/P201507271028.htm>; Lee, Danny, "US Human Trafficking Report Misleading, Says Hong Kong", *South China Morning Post*, 22 June 2014, available at: <http://www.scmp.com/print/news/hong-kong/article/1538010/us-human-trafficking-report-misleading-says-hong-kong>
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- ⁸² *HKSAR v Law Wan Tung* [2015] HKEC 242
- ⁸³ According to the court judgment, the debt was to be repaid in installments of HK\$2,543 per month for six months. "She received training for a period of 8 months in Jakarta. This included training in domestic duties and learning punti to communicate with employers in Hong Kong. She had never worked as a domestic helper prior to coming to Hong Kong. She knew she was to be paid \$3920 per month. She also knew she had to pay an agency fee to get a job in HK and receive training preparatory to arriving here. The fee was to be paid by instalments of HK\$2543.00 per month for 6 months." *HKSAR v Law Wan Tung* at para. 10
- ⁸⁴ Lau, Chris, "'I was tortured', Hong Kong maid Erwiana tells court as trial of employer begins," *South China Morning Post*, 8 December 2014, available at: <http://www.scmp.com/news/hong-kong/article/1657333/erwiana-hit-so-hard-she-was-knocked-out-high-court-told>
- ⁸⁵ *HKSAR v Law Wan Tung*, at para. 112
- ⁸⁶ For some examples of these, see: Justice for Erwiana and All Migrant Domestic Workers Committee at: <https://www.facebook.com/Justice-for-Erwiana-and-All-Migrant-Domestic-Workers-Committee-644008498993582/timeline/>, Hong Kong Helpers Campaign at: <http://hkhelperscampaign.com/>, Amnesty International petition calling on Hong Kong Government to act to protect migrant domestic workers at: <https://www.amnesty.org.hk/web/?p=7650&lang=en>, Walk Free Foundation Campaign to "Help End Modern Slavery in Hong Kong", <https://www.walkfree.org/hong-kong-domestic-workers/>
- ⁸⁷ Siu, Beatrice, "Police probe alleged torture of helper", *The Standard*, 15 January 2014, available at: http://www.thestandard.com.hk/news_detail.asp?we_cat=4&art_id=141507&sid=41324554&con_type=1&d_str=20140115&fc=4
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- ⁹⁶ ORC International is a global research agency specialising in social, customer, employee and strategy research. Clients include CNN, Hong Kong Jockey Club, the Efficiency Unit of HKSAR Government, MTR, Consumer Council, Hong Kong Convention and Exhibition Centre, Hong Kong Tourism Board, Hong Kong Towngas, Macau Water, CEM (Macao Electricity). <http://orcinternational.com> They are a member of the World Association for Social, Opinion and Market Research (ESOMAR) and abide by the ICC/ESOMAR International Code on Market and Social Research (<https://www.esomar.org/index.php>).

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- ⁹⁹ ILO, *Hard to See, Harder to Count*, p. 22.
- ¹⁰⁰ *Ibid*, pp. 14-16.
- ¹⁰¹ *Ibid*, pp. 14-16.
- ¹⁰² *Ibid*, p. 13.
- ¹⁰³ *Ibid*, p. 22.
- ¹⁰⁴ *Ibid*, p. 1.
- ¹⁰⁵ *Ibid*, pp. 23-25.
- ¹⁰⁶ Justice Centre only looked at debt in relation to recruitment. For a full discussion on the recruitment debt-to-income ratio the study used, please visit Appendix 3 at <http://www.justicecentre.org.hk/comingclean>.
- ¹⁰⁷ LegCo Secretariat, "Regulation of Domestic Helper Employment Agencies in Selected Places", Information Note IN07/13-14, available at: <http://www.legco.gov.hk/yr13-14/english/sec/library/1314in07-e.pdf>
- ¹⁰⁸ HKSAR LegCo Secretariat Research Office, "Information Note: Regulation of domestic helper employment agencies in selected places", No.: IN07/13-14, para. 4.5, available at: <http://www.legco.gov.hk/yr13-14/english/sec/library/1314in07-e.pdf>. Exchange rate based on Google exchange rate on 29 October 2015
- ¹⁰⁹ In October 2015 the Hong Kong Government increased the Minimum Allowable Wage to HKD 4,210. This is only enforceable for contracts signed after the increase. Since this research was undertaken before the latest increase, the previous MAW was used.
- ¹¹⁰ Amnesty, *Exploited for Profit, Failed by Governments*, 2014
- ¹¹¹ "Most countries have statutory limits of weekly working hours of 48 hours or less, and the hours actually worked per week in most countries are less than the 48-hour standard established in ILO conventions." International Labour Organization, "Working Time", available at: http://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_TIM_EN/lang-en/index.htm
- ¹¹² "(1) Subject to the provisions of this Part, every employee who has been employed by the same employer under a continuous contract shall be granted not less than 1 rest day in every period of 7 days. (Amended 71 of 1976 s. 3) (2) Rest days shall be in addition to any statutory holiday, or alternative holiday or substituted holiday, to which an employee is entitled under section 39. (Replaced 39 of 1973 s. 3)"
- ¹¹³ This indicator (a strong indicator of menace of penalty) was assessed in a two-step question. First, respondents were asked if their employers kept their passports (often referred to as "safe keeping"). Those who answered yes were then asked whether they had complete and free access to their passport whenever they wanted it. This process ensured that the indicator was not triggered for those respondents who asked their employer to keep their passport in a safe place but whose access to the passport was unrestricted.
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- ¹¹⁵ All calculations of the MDW population in Hong Kong are based on 336,600 MDW in Hong Kong as of July 2015. LC Paper No. CB(2)1925/14-15(01)
- ¹¹⁶ Case studies represent actual respondents to the survey. These are not their real names and some personal details have been changed to protect their identities. Respondent 21
- ¹¹⁷ As above. Respondent 312
- ¹¹⁸ As above Respondent 107
- ¹¹⁹ Ngo, Jennifer and Siu, Phila, "Domestic strife: Hong Kong helpers disappointed by HK\$100 pay rise that keeps them lagging behind inflation", *South China Morning Post*, 30 September 2015, available at: <http://www.scmp.com/news/hong-kong/economy/article/1862822/foreign-domestic-helpers-hong-kong-granted-hk100-salary-rise>
- ¹²⁰ HKSAR Government, "Government honours pledge to legislate for minimum wage", Press Release, 24 June 2009, available at: <http://www.info.gov.hk/gia/general/200906/24/P200906240220.htm>
- ¹²¹ Siu, Phila, "Hong Kong's domestic helpers 'never part of discussion' on working hours agreement", *South China Morning Post*, 15 November 2015, available at: <http://www.scmp.com/news/hong-kong/politics/article/1878943/domestic-helpers-ere-never-part-working-hours-agenda-hong>
- ¹²² *HKSAR v Law Wan Tung* [2015] HKEC 242
- ¹²³ "Dawn Raids See Domestic Workers Arrested for Living Outside Employers' Homes", *HK Coconuts*, 29 January 2015, available at: <http://hongkong.coconuts.co/2015/01/29/dawn-raids-see-domestic-workers-arrested-living-outside-employers-residence>; Lee, Danny, "Hong Kong Domestic Helpers Arrested in Crackdown on 'Live-out' Maids", *South China Morning Post*, 29 January, 2015, available at: <http://www.scmp.com/news/hong-kong/article/1694810/4-hong-kong-domestic-helpers-arrested-crackdown-live-out-maids?page=all>

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- ¹²⁶ See, for example: ILO, *Labour Inspection and Other Compliance Mechanisms in the Domestic Work Sector: Introductory Guide*, 2015, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_429836.pdf or ITC-ILO Curriculum on "Building modern and effective labour inspection systems" Module 1: Labour Inspection in Domestic Work", available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_308907.pdf
- ¹²⁷ One was for overcharging, two for unlicensed operations, and one for failing to notify the Labour Department of the change of management within the statutory timeframe. "Minutes of meeting held on Tuesday, 16 June 2015, at 4:30 pm in Conference Room 3 of the Legislative Council Complex", LC Paper No. CB(2)1870/14-15, LegCo Panel on Manpower, available at: <http://www.legco.gov.hk/yr14-15/english/panels/mp/minutes/mp20150616.pdf>
- ¹²⁸ HKSAR, "LCQ3: Regulation of the hiring of foreign domestic helpers", 2016
- ¹²⁹ For 48 of the 170 cases, the EAA did not have authority to take enforcement action as they fell out its scope. For the remaining 118 that were not convicted, it was because the Labour Department was either unable to contact the complainant to obtain further information; the complainant refused to act as a prosecution witness; the complainant had withdrawn the case; the prosecution time-bar had passed; or there was a lack of sufficient evidence. See: HKSAR Government, "LCQ21: Handling Complaints against Employment Agencies by the Employment Agencies Administration, question filed by Hon Emily Lau and a written reply by the Secretary for Labour and Welfare, Mr Matthew Cheung Kin-chung in the Legislative Council", 8 July 2015, available at: http://www.lwb.gov.hk/eng/legco/08072015_2.htm
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- ¹³⁴ This Code of Practice would list out "acts that are allowed and those that should be avoided by EAs (e.g. EAs should not be involved in the financial or loans affairs of FDHs) so as to strengthen the regulation of EAs." See: HKSAR Government, "LCQ13: Protecting the rights of foreign domestic helpers", written reply by the Secretary for Labour and Welfare, Mr Matthew Cheung Kin-chung to a question by the Hon Emily Lau in the Legislative Council, 11 February 2015, available at: <http://www.info.gov.hk/gia/general/201502/11/P201502110463.htm>
- ¹³⁵ HKSAR Government, "LCQ11: Regulation of employment agencies", 2016
- ¹³⁶ Cheung, Karen, 2015
- ¹³⁷ On this front, in April 2015, a domestic worker roundtable was hosted at The University of Hong Kong's Centre for Comparative and Public Law to offer the first such multilateral discussion to foster dialogue and concerted action on domestic worker issues. The roundtable was attended by several NGOs, migrant rights groups, academics, law firms, employer rights groups, labour unions, members of the private sector and representatives from sending states, including the Governments of Indonesia, Philippines, Sri Lanka, Thailand, Bangladesh, India, Nepal and Myanmar. While some LegCo members attended, in a disappointing move, representatives of the Hong Kong Administration, notably Secretary for Labour and Welfare Matthew Cheung, declined the invitation. It was the first time such a diverse array of stakeholders came together on these issues. See: HKU Legal Scholarship Blog, "Domestic Workers' Roundtable Hosted by CCPL (24 April 2015)", 28 April 2015, available at: <http://researchblog.law.hku.hk/2015/04/domestic-workers-roundtable-hosted-by.html>
- ¹³⁸ There are only a handful of circumstances in which the Immigration Department states it will approve a change of employer: "transfer, migration, death or financial reasons of the ex-employer, or if there is evidence suggesting that the FDH has been abused or exploited." In these cases, "the applicant must provide proof to satisfy [Immigration] that his/her application meets the above circumstances in order to be approved to change employers." Added to the very limited ability of MDW to change employers is the perception of MDW "job hopping" between employers in order to access the return trip home costs. In response, the Immigration Department states that it will "closely scrutinise" the "number of and reasons for premature contract termination" of MDWs "with a view to detecting any abuse of arrangements."
- See: HKSAR Government, "LCQ4: Foreign domestic helpers", Reply by the Secretary for Security, Mr Lai Tung-kwok, to a question by the Hon Chung Kwok-pan in the Legislative Council, 19 February 2014, available at: <http://www.info.gov.hk/gia/general/201402/19/P201402190578.htm> and ImmD, Foreign Domestic Helpers, http://www.immd.gov.hk/eng/services/visas/foreign_domestic_helpers.html?vm=r
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- ¹⁴³ ILO, *Reports on Unratified Conventions and Recommendations, Migrant Workers Recommendation, 1975 (No. 151)*, para. 31, available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:51:0:::P51_CONTENT_REPOSITORY_ID:3236912
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- ¹⁴⁵ HKSAR Government, "The Hong Kong Special Administrative Region (HKSAR) Government's Response to the List of Issues adopted by the United Nations Committee against Torture in relation to the sixth periodic report of the People's Republic of China, Part Two: Hong Kong, China", para. 4.5, available at: http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/Response_to_LOI_CAT_e.pdf
- ¹⁴⁶ HKSAR Government, "LCQ13: Protecting the rights of foreign domestic helpers"
- ¹⁴⁷ US TIP Report, p. 180
- ¹⁴⁸ Carvalho, Raquel, 2015
- ¹⁴⁹ ILO, "Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection", 2013, at pg. 50, available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf
- ¹⁵⁰ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, available at: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

ACRONYMS AND ABBREVIATIONS

CAT	UN Committee against Torture
CEDAW	UN Committee on the Elimination of Discrimination against Women
CESCR	UN Committee on Economic, Social and Cultural Rights
CoP	Code of Practice
DoJ	HKSAR Department of Justice
EA	employment agencies
EAA	HKSAR Employment Agencies Administration
EC	European Commission
EOC	Equal Opportunities Commission
FDH	Foreign Domestic Helper
GNP	Gross National Product
HKBORO	Hong Kong Bill of Rights Ordinance
HKSAR	Hong Kong Special Administrative Region
HRC	UN Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
ILO	International Labour Organization
ImmD	HKSAR Immigration Department
LegCo	HKSAR Legislative Council
MAW	Minimum Allowable Wage
MDW	Migrant Domestic Worker
MFA	Minimum Food Allowance
MTR	Mass Transit Railway
n=	sample size
OHCHR	UN Office of the High Commissioner for Human Rights
Palermo Protocol	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
PH	public holiday
SDGs	Sustainable Development Goals
SEC	Standard Employment Contract
TIP	United States State Department Trafficking in Persons Report
UN	United Nations
UN-ACT	UN Action for Cooperation Against Trafficking in Persons
UNODC	United Nations Office of Drugs and Crime
WHO	World Health Organization

ABOUT JUSTICE CENTRE HONG KONG

Justice Centre Hong Kong Ltd. is a non-profit human rights organisation working fearlessly to protect the rights of Hong Kong's most vulnerable people: refugees, other people seeking protection, survivors of torture, human trafficking and forced labour.

Launched in 2014, Justice Centre was formerly Hong Kong Refugee Advice Centre (HKRAC), which over seven years helped more than 2,000 refugee men, women and children on the road to a new life.

At our centre, people seeking protection in Hong Kong receive free and independent legal information, and specialised legal and psychosocial assistance.

Justice Centre advocates with and for forced migrants, bringing their voices into the public debate. We campaign for legislative and policy change, conduct research and work with the media and civil society to fight root causes and change systems and minds.

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