

Fit for Purpose?

Assessing compliance with the Code of Practice

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Foreword

This research project was initiated by the Executive Committee of the Hong Kong Federation of Asian Domestic Workers Unions (FADWU). This includes identifying the research objectives for assessing the impact of the Code of Practice for Employment Agencies and recruiting the research team.

The research was conducted over a four-month period in 2021 by a team from the Progress Labor Union of Domestic Workers Hong Kong (PLU), an affiliate of FADWU, and its partner, the Union of United Domestic Workers (UUDW). In addition, another team gathered evidence of the practices employed by employment agencies in Hong Kong using undercover filming between June and October 2020.

The use of participatory methodology in conducting this research recognises the agency of migrant domestic workers to identify and prioritise the human and labour rights abuses they face and to find solutions. It also aims to enhance and strengthen the ability of migrant workers and their organisations to represent the needs of their community through first-hand information, knowledge and experience.

Acknowledgements

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UUDW

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International Labour Organization (ILO)¹
Rights Exposure²

1. The International Labour Organization is a tripartite UN agency bringing together governments, employers and workers of 187 Member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men (<http://www.ilo.org>).
2. Rights Exposure is an award-winning international human rights consultancy providing solutions for positive social change. Founded in 2014 by a team of human rights and communication professionals, it offers a range of consultancy services to NGOs, IGOs, governments, trade unions, communities and social enterprises (<https://www.rightsexposure.org>).

About the organisations

Hong Kong Federation of Asian Domestic Workers Unions (FADWU)

FADWU is the only registered trade union federation of domestic workers in Hong Kong organising local and migrant domestic workers. It is an affiliate of the International Domestic Workers Federation (IDWF). Its current affiliates include the Hong Kong Domestic Workers General Union (HKDWGU), Thai Migrant Workers Union in Hong Kong (TMWU), Union of Nepalese Domestic Workers in Hong Kong (UNDW), Overseas Domestic Workers Union (ODWU) and Progressive Labor Union of Domestic Workers in Hong Kong (PLU). It currently has 847 paying members via its affiliates.

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Progressive Labor Union of Domestic Workers Hong Kong (PLU)

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

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

Email pludw_hk@gmail.com

Union of United Domestic Workers (UUDW)

The UUDW is a trade union of migrant domestic workers in Hong Kong. It was established on 26 February 2020 and is registered at the Registry of Trade Unions in Hong Kong (TU/1400).

The purpose of the UUDW is to help domestic workers in Hong Kong who have problems with employers and agents, promote and uphold the right and welfare of domestic workers, and empower and strengthen domestic workers to improve working conditions by raising violations that occur through advocacy, action and dialogue. It does this through programmes capacity building activities, education, policy advocacy, organising, and legal assistance/services.

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1. Introduction



There are 75.6 million domestic workers over the age of 15 worldwide³, 11 million of which are migrants⁴. Thirty-five per cent of the world's migrant domestic workers work in Asia and the Pacific. Hong Kong is a major employment destination for migrant domestic workers, who are locally referred to as 'foreign domestic helpers' (FDHs). As of 2020, there were 373,884⁵ migrant domestic workers officially employed in Hong Kong, accounting for approximately 9% of Hong Kong's total working population.⁶ Filipinos and Indonesians make up the vast majority of the migrant domestic worker population in Hong Kong—in 2020, they totalled 207,402 and 157,802 respectively.⁷

It is standard practice for migrant domestic workers from the Philippines and Indonesia to go through recruitment agencies in their countries of origin to find work in Hong Kong. These recruitment agencies generally have a direct relationship with Hong Kong employment agencies, which place the workers in jobs in Hong Kong. Over the last 10 years, a number of substantive research reports have documented that many Hong Kong employment agencies, along with their counterpart recruitment agencies in the countries of origin, have been engaged in exploitative and illegal practices in the recruitment and placement of migrant workers.⁸

3. *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention*, 2011 (No. 189), https://www.ilo.org/global/publications/books/WCMS_802551/lang-en/index.htm, accessed on 20 October 2021.
4. See: ILO, *ILO Global Estimates on Migrant Workers: Results and methodology (Special focus on migrant domestic workers)*, December 2015, p16, available at: http://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang-en/index.htm, accessed 22 September 2021.
5. <https://data.gov.hk/en-data/dataset/hk-imm-d-set4-statistics-fdh>
6. HKSAR, *Gov't fighting people trafficking*, 27 April 2018, available at: https://www.news.gov.hk/eng/2018/04/20180427/20180427_121234_067.html, accessed 21 September 2021.
7. <https://data.gov.hk/en-data/dataset/hk-imm-d-set4-statistics-fdh>

In 2016, the Hong Kong Special Administrative Region (HKSAR) Labour Department took action to try and address the issues identified in these reports. In April of that year, it published a draft *Code of Practice for Employment Agencies (CoP)*⁹ and undertook consultation on the proposed text with stakeholders over the following three months.

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

- 3.5 Fees that may be charged by employment agencies
- 3.8 Adopting fair trade practices
- 3.9 Observing immigration laws
- 3.10 Not to aid or abet employers to breach the Employment Ordinance on payment of wages
- 3.11 Personal documents and property of job seekers
- 4.4 Acting honestly and exercising due diligence
- 4.5 Maintaining transparency in business operations

8. See: Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, November 2013 (AI Index: ASA 17/029/2013); Alliance of Progressive Labor in the Philippines (APL), Alliance of Progressive Labor – Hong Kong (APL-HK) and Progressive Labor Union of Domestic Workers in Hong Kong (PLU), *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 21 September 2021; Hong Kong Federation of Asian Domestic Workers Unions (FADWU), *Between a Rock and a Hard Place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong*, October 2016, available at: <https://view.publitas.com/rights-exposure/between-a-rock-and-a-hard-place-en/page/1>, accessed 21 September 2021; and Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016.

9. HKSAR Labour Department, *Code of Practice for Employment Agencies*, February 2018, available at: http://www.eaa.labour.gov.hk/_res/pdf/CoP_Eng.pdf, accessed 21 September 2021.

- 4.6 Drawing up service agreements with job seekers and with employers
- 4.7 Provision of payment receipts
- 4.10 Promoting job seekers and employers' awareness of their rights and obligations
- 4.12 Avoiding involvement in financial affairs of job seekers
- 4.13 Job seekers' passports or personal identification documents

If fully implemented, the CoP could help to reduce the human and labour rights violations currently suffered by migrant domestic workers. However, non-compliance by employment agencies with the minimum standards set out in Chapter 4 of the CoP would not lead to any criminal liability. Despite this, the Commissioner for Labour stated that all employment agencies would be expected to implement them and that their compliance with the provisions in the CoP would be 'one of the important factors that the Commissioner will take into account when assessing if the licensee is a fit and proper person to operate an EA [employment agency]'.¹⁰

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

10. HKSAR, *Code of Practice for Employment Agencies promulgated*, 13 January 2017, available at: <http://www.info.gov.hk/gia/general/201701/13/P2017011300300.htm>, accessed 21 September 2021.

11. HKSAR Labour Department, *Draft Code of Practice for Employment Agencies*, para 1.9, available at: https://www.gov.hk/en/theme/bf/consultation/pdf/10125A_consultation_paper.pdf, accessed 21 September 2021.

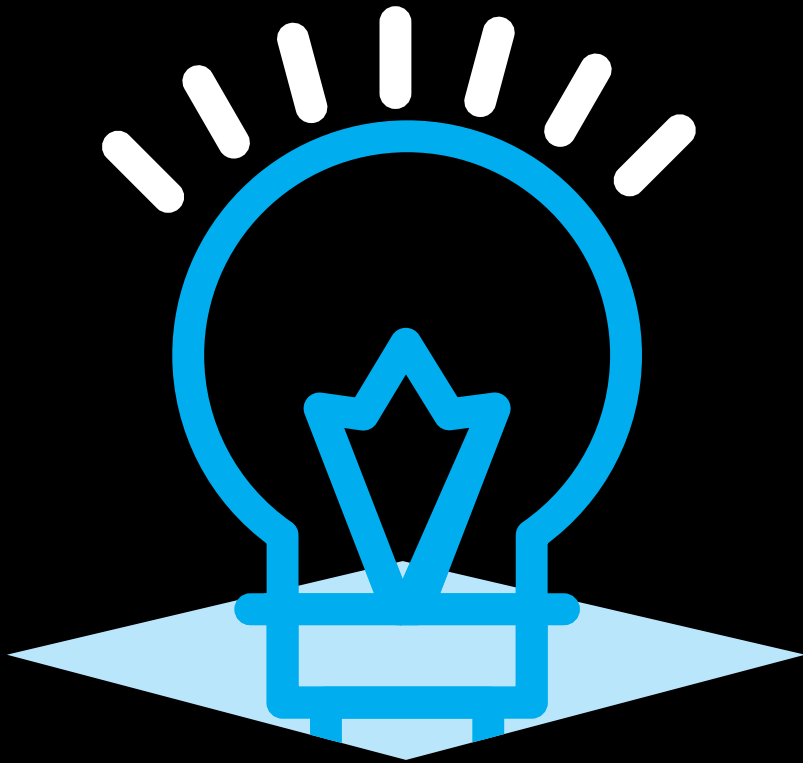
In 2018, FADWU published a research report evaluating compliance with core components of the CoP by employment agencies that are aimed at protecting the rights of migrant domestic workers. The report *Agents of Change? Assessing Hong Kong employment agencies' compliance with the Code of Practice*¹² showed that 96% of interviewees' (434 out of 452) employment agencies were not complying with key aspects of the CoP and that the majority of interviewees (56% or 253 out of 450) were still paying illegal agency fees. The research also confirmed that these were not the activities of a few rogue agencies, as 148 registered Hong Kong employment agencies were identified as not being fully compliant with the CoP.

Worse still, those agencies, which flouted the law and the CoP did so with impunity. Between January and July 2017, there were just five convictions of employment agencies for violating the law and 12 written warnings were issued for non-compliance with the CoP. The report concluded that the lack of effective enforcement action should be addressed as a matter of urgency and this would require further changes to existing policy and practice.

In view of the above, the current research was undertaken as a follow-up to the *Agents of Change?* report to examine whether, nearly five years after coming into force, employment agencies in Hong Kong are complying with the standards set out in the CoP and whether the CoP has contributed to improved protection of migrant domestic workers' rights.

12. <https://view.publitas.com/rights-exposure/agents-of-change-english-version/page/1>

2. Methodology



This research was conducted as a follow-up to the report titled *Agents of Change? Assessing Hong Kong employment agencies compliance with the Code of Practice* published by FADWU in June 2018 to assess the impact of the *Code of Practice for Employment Agencies (CoP)* on the protection of migrant domestic workers' rights in Hong Kong SAR. The 2018 research was designed by the Executive Committee of FADWU with the support of Rights Exposure and conducted by two teams from the Progressive Labor Union of Domestic Workers (PLU) and its partner Komunitas Buruh Migran-Hong Kong (KOBUMI-HK).

The 2021 research was designed to evaluate the degree to which employment agencies are complying with the CoP and whether there have been significant changes since its introduction in January 2017; the first survey was conducted in 2018. This research used a participatory research methodology in recognition of the agency of migrant domestic workers in identifying the human and labour rights abuses to which they are vulnerable. This approach strengthens the ability of migrant domestic workers and their organisations to represent the needs of their communities directly, through first-hand information, knowledge and experience.

Data collection was carried out from April to June 2021 by a team consisting of members of the Hong Kong Federation of Asian Domestic Workers Unions (FADWU) and the Union of United Domestic Workers (UUDW). They conducted 105 qualitative structured interviews with migrant domestic workers, of which 35 respondents were Indonesian and 70 were Filipino. The two nationalities were chosen because they are representative of the vast majority of domestic workers in Hong Kong. All respondents were female between the ages of 23-52 years.

The same questionnaire from the 2017-2018 research was used for data collection in order to enable a direct comparison of key findings from the previous report. Interviews took place across a diverse number of districts within Hong Kong SAR in areas where migrant domestic workers are likely

to congregate on their rest days. There are limitations to the sampling methodology as the researchers were not able to access migrant domestic workers who were either prohibited from taking time off or reluctant to be interviewed because of fear of reprisal—possibly representing some of the most vulnerable and abused workers in Hong Kong. The absence of responses from these domestic workers might have resulted in some bias in the results. Additionally, the sample size for this research was significantly smaller in comparison to the 2018 study where 452 migrant workers were interviewed during data collection (compared to 105 in 2021). This reduction in sample size was, in part, due to the challenges posed by social distancing measures in place in Hong Kong during the Covid-19 pandemic.

The research was conducted in compliance with public health regulations, using proper precautions to mitigate risks related to the transmission of Covid-19, with all interviews conducted outdoors with proper distancing measures and other safeguards in place. It should be noted that migrant domestic workers reported a significant increase in discrimination during the pandemic¹³, including restrictions by employers regarding their statutory 24-hour weekly rest day and other forms of abuse and harassment in public spaces. Such restrictions were implicitly and/or explicitly sanctioned by the government and some Legislative Council members¹⁴ despite there being no evidence that migrant domestic workers were any more likely than the general population to be infected by the virus or to transmit it. Other government policies, such as compulsory testing¹⁵ of all migrant domestic workers as a population and compulsory vaccinations (a policy that was reversed after an outcry by concerned groups¹⁶) also singled out migrant domestic workers for discriminatory treatment.¹⁷

13. *The New York Times*, “For Hong Kong’s Domestic Workers During Covid, Discrimination Is Its Own Epidemic”, 18 May 2021 <https://www.nytimes.com/2021/05/18/world/asia/hong-kong-domestic-worker-discrimination.html>, accessed on 21 September 2021.

14. *Hong Kong Free Press*, “Covid-19: Lock down domestic workers on their day off, says pro-Beijing Hong Kong lawmaker”, 29 December 2020 <https://hongkongfp.com/2020/12/29/covid-19-lock-down-domestic-workers-on-their-day-off-says-pro-beijing-hong-kong-lawmaker/>, accessed on 21 September 2021.

15. *The Diplomat*, “Hong Kong Domestic Workers Decry Mandatory COVID-19 Testing”, 7 May 2021 <https://thediplomat.com/2021/05/hong-kong-domestic-workers-decry-mandatory-covid-19-testing/>, accessed on 21 September 2021.

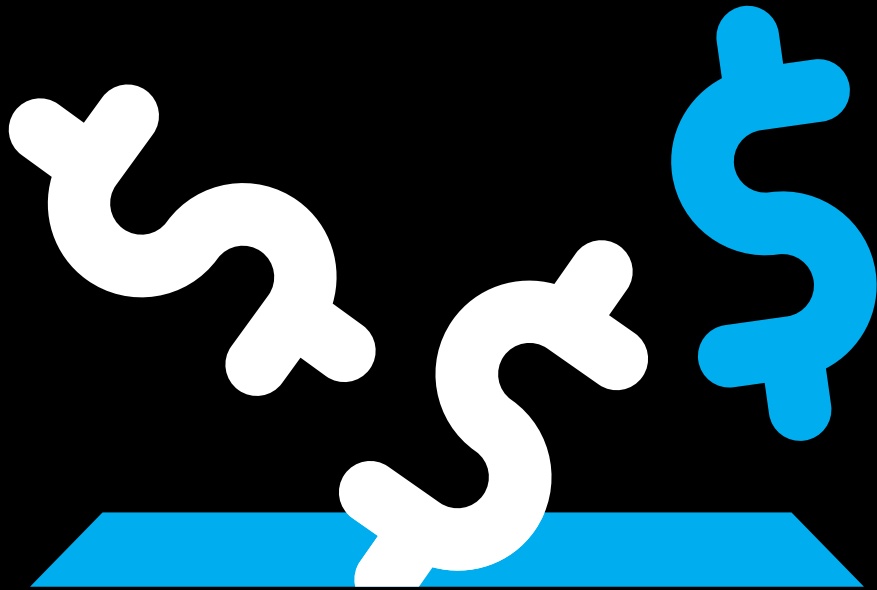
16. *Hong Kong Free Press*, “Hong Kong scraps mandatory vaccines for domestic workers after outcry”, 11 May 2021 <https://hongkongfp.com/2021/05/11/hong-kong-scraps-mandatory-vaccines-for-foreign-domestic-workers-after-outcry/>, accessed on 21 September 2021.

17. “If a decision on mandatory vaccination is made by an employer, it should be implemented in a non-discriminatory manner, in line with the requirements of Convention No. 111, and with due regard for specific circumstances that may require exemptions and accommodations. Finally, any required OSH measures shall not involve any expenditure for the workers, as required by Convention No. 15 “, p.29 of *ILO Standards and COVID (coronavirus)*, https://www.ilo.org/global/standards/WCMS_780445/lang--en/index.htm

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



3.1 Fees that may be charged by employment agencies



Current research reflects that employment agencies continue to charge illegal and/or excessive fees to migrant domestic workers and that these fees have increased significantly since the promulgation of the CoP. Approximately half of all migrant domestic workers interviewed for this research reported paying illegal and/or excessive fees. These fees were charged by agencies both in the country of origin and/or in Hong Kong. Additionally, these fees are far in excess of what is legally permissible for an employment agency in Hong Kong to charge and significantly higher than figures reported in 2018; with newly arrived migrant domestic workers paying 38 per cent more than the average previously reported, and those changing employers paying 88 per cent more than the average reported in 2018. In comparison to data from 2018, this suggests that the implementation of the CoP has yet to contribute to reducing the financial burden on migrant domestic workers. Although some of the fees were likely charged by placement agencies outside of Hong Kong, the burden and impact of that debt—especially as a coercive mechanism for keeping workers in employment conditions they would not normally agree to—impacts the human and labour rights of migrant domestic workers in Hong Kong.

Section 3.5.1 of the CoP prohibits employment agencies in Hong Kong from directly or indirectly receiving any type of fee from a domestic worker in exchange for their services, except for the prescribed commission. Additionally, the commission amount cannot exceed a sum equal to 10 per cent of the first month's wages by the person after they have been placed. As of 2021, the minimum allowable wage for migrant domestic workers was set at HKD 4,630 per month, broadly in line with what the majority of respondents reported being paid after accrued debt had been paid off. Accordingly, agencies cannot legally charge more than HKD 463 as commission fees, assuming the migrant worker is making the minimum allowable wage.¹⁸

The current research indicates that 52 per cent of newly arrived interviewees (44 of 84 respondents) were charged illegal and/or excessive fees by employment

18. HKSAR Government, "Minimum Allowable Wage and food allowance for foreign domestic helpers remain unchanged", 29 September 2020 <https://www.info.gov.hk/gia/general/202009/29/P2020092900369.htm#:~:text=%E2%80%8BThe%20Government%20announced%20today,less%20than%20%241%2C121%20per%20month>, accessed on 21 September 2021.

agencies after their arrival in Hong Kong. This is approximately equivalent to the findings from 2018 where 57 per cent of interviewees were charged illegal fees and/or excessive fees by employment agencies after their arrival. Among new arrivals, Indonesians were more likely than Filipino respondents to have paid illegal and/or excessive fees, with 91 per cent of Indonesians (32 of 35) and 16 per cent of Filipinos (11 of 70) stating that the employment agency collected fees.¹⁹ These were a contrast to figures reported in 2018, where 58 per cent of Indonesian respondents (41 of 71) and 74 per cent of Filipino respondents reported paying fees upon arrival in Hong Kong. Of newly arrived migrant domestic workers, approximately 30 per cent of respondents paid the employment agency fees prior to starting work or the dispersal of their first month's wages, which could contravene Section 3.5.1 of the CoP. On average, newly arrived respondents said they paid HKD 12,446 in fees (though payments ranged from HKD 350 - HKD 19,800) over 5.6 months, primarily through salary deductions. This figure was 38 per cent higher than data collected in 2018 where newly arrived respondents said they paid an average of HKD 9,013.

Of respondents changing employers in Hong Kong, 46 per cent (13 of 28) were charged what likely amounted to illegal agency fees²⁰ averaging HKD 6,235 paid largely through salary deductions. This was a slight reduction in comparison to data collected in 2018 where 51 per cent of respondents were overcharged. However, as above, the fee itself saw a marked increase from the amount respondents paid in 2018, averaging at HKD 3,164, therefore effectively doubling. This is almost 14 times the maximum legally permitted fee a Hong Kong employment agency can charge, as calculated by the minimum allowable wage. It should be noted that changing employers does not always involve an agency in the country of origin, thus increasing the likelihood that these fees were illegally accrued by Hong Kong employment agencies. Due

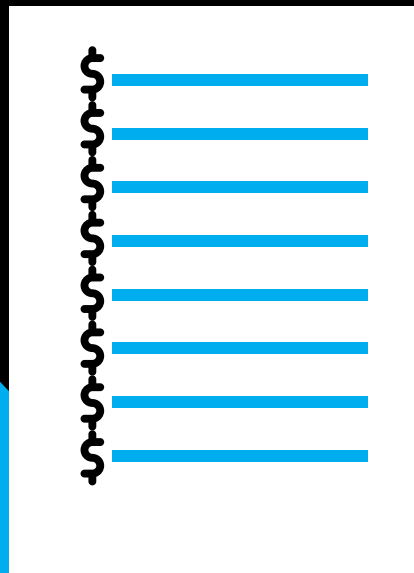
19. At the time the research was conducted the Indonesian government policy allowed fees to be charged to those migrating as domestic workers, though a cap was set on the amount. A new policy was implemented after the research was concluded that now prohibits the charging of fees. This is similar to the policy implemented by the Philippines government since 2006.

20. The breakdown of fees that migrant domestic workers pay to change employer varies. In some instances, illegal fees are charged by employment agencies in Hong Kong, as well as illegal and/or excessive fees in the country of origin. See *Between a Rock and a Hard Place* for research detailing fees charged to Filipino migrant domestic workers in both Hong Kong and the Philippines, <https://view.publitas.com/rights-exposure/between-a-rock-and-a-hard-place-en/page/1>

to the pandemic, the majority of migrant domestic workers who renewed their contracts after March 2020, including those who changed employers, did so without leaving Hong Kong. Fees paid in these circumstances would very likely be accrued through payments to Hong Kong employment agencies.

The CoP stipulates that a migrant domestic worker should only be charged after receiving his or her first month's wages. Agencies in breach of this provision are liable to a maximum fine of HKD 350,000 and up to three years of imprisonment. Yet, research reflects that 36 per cent of all respondents were forced to pay fees upfront, averaging at HKD 3,990 for newly arrived migrant domestic workers and HKD 4,051 for those changing employers. This, again, was a marked increase from the amounts that migrant domestic workers paid upfront in 2018 where the average amount that respondents reported paying was HKD 1,151 and HKD 1,682 respectively.

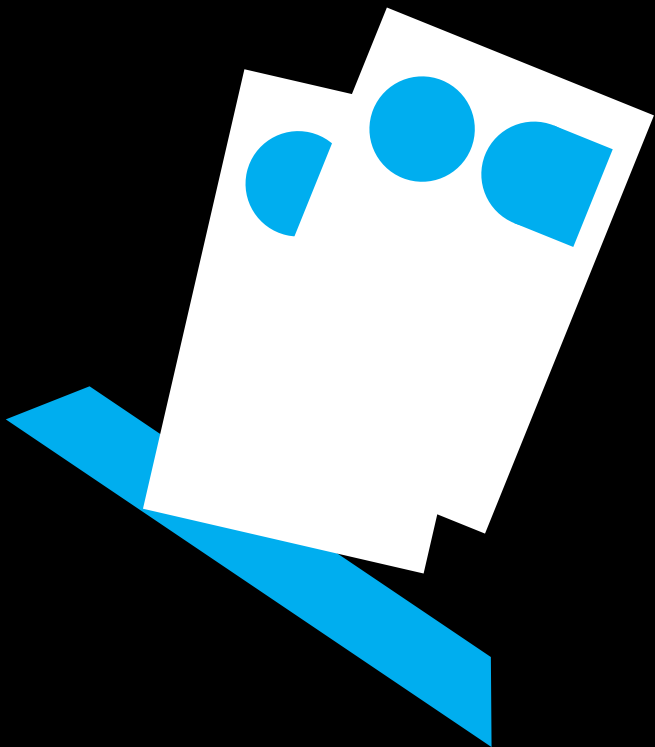
3.2 Avoiding involvement in the financial affairs of job seekers



The CoP prohibits direct or indirect involvement in the financial affairs of job seekers, prohibiting employment agencies from advising, arranging or encouraging loans from both individual brokers or financial institutions. This also includes a prohibition on the collection of training fees. Past research indicates that employment agencies sometimes collect illegal fees through third parties largely through a 'sham loan' scheme where migrant workers are coerced into signing a document stating that they have taken out a loan from a financial company.

Despite clear directives in the CoP prohibiting employment agencies from being involved in the financial affairs of job seekers this remains an ongoing concern where little has changed since 2017. Twelve per cent of respondents said that their employment agencies encouraged them to take out loans or borrow money from third parties (in comparison to 13 per cent from 2018). Of these respondents, 11 per cent said that the agency had directly arranged for them to do so. If these figures are indicative of the wider population, this would amount to over 40,000 individuals being forced to take out illegal loans.

3.3 Personal documents and property of job seekers



The confiscation of personal documents belonging to domestic workers, including, for example, passports, employment contracts or Hong Kong ID cards, is in direct violation of Hong Kong's Theft Ordinance Chapter 210 carrying a maximum sentence of 10 years imprisonment. Section 3.11.1 of the CoP also reiterates this, where no employment agencies may retain any personal documents and property belonging to migrant domestic workers without their consent and stipulates that any documents required for job placement must be returned without delay.

However, this is still widely used as a mechanism of coercion and abuse, where the confiscation of documents is used to control the movements of domestic workers or limit their ability to change jobs. Twenty nine per cent of interviewees had their personal documents withheld before or since taking their current jobs and in 70 per cent of these cases the employment agency was responsible for taking the documents. This was a marked increase in comparison to data from 2018 where 24 per cent reported that personal documents had been withheld. If these figures are indicative of the wider population this would amount to over 100,000 individuals having their personal documents, including passports, illegal confiscated.

Research reflected that passports or employment contracts were the type of documents that were most commonly seized, impacting on the ability of the migrant domestic worker to move or seek different employment – including escaping an abusive employer. Almost all respondents (93 per cent) said they directly requested their documents back of which only 66 per cent said that either the employment agency or employer returned the aforementioned documents within what they perceived of as a reasonable timeframe.

3.4 Acting honestly and exercising due diligence

Employment agencies are responsible for the provision of full and accurate information about the terms and responsibility of the job to a prospective domestic worker, without which informed consent is obsolete. This is reiterated in Section 3.8.2 and Section 4.4.1 of the CoP which details how the duty to provide information belongs to the employment agency, as does the exercise of due diligence to cross verify all details of the prospective employer. More specifically, this includes information on employers, job description, remuneration, benefits or accommodation arrangements.

Still, it is clear that many employment agencies are failing in their duty to act honestly or exercise due diligence ahead of placing migrant domestic workers with new employers. A full 28 per cent of respondents reported that the costs of securing their job in Hong Kong was different from what the agency initially quoted, of which 85 per cent of respondents reported that the costs were higher than what was communicated. This is an increase from the 2018 survey where 23 per cent of respondents reported that costs were different from initial promises by the agency, of which the majority stated that these costs were higher than expected. Ten per cent of respondents reported that the terms and conditions of their employment were different from what the agency had initially stipulated. Respondents reported how different aspects of their employment, including, for example, pay scales, place of employment, holiday or rest days, or the size of the household, were different from what was originally promised.

3.5 Drawing up service agreements with job seekers and employers



In accordance to regulations set forth in the CoP employment agencies are obligated to draw up separate service agreements with both the domestic worker and the employer prior to job placement or the dispersal of funds. The agreement made with the domestic worker should detail a number of specifications, including with respect to the types of service to be provided (e.g. seeking new employers, contract renewals). It should also detail whether a commission will be charged, and where the exact amount should not exceed more than 10 per cent of the projected wages following the first month of employment. Where relevant, it should also state when the commission should be paid. Finally, with the consent of the domestic worker, details of their employment history dating two years prior to prospective employment can also be included in the document. The CoP further requires specific terms to be detailed in the agreement, including in relation to service terms, fee schedules and complaints procedures for both parties. Despite this, more than half the respondents (54 per cent) stated that they were not provided a service agreement that clearly detailed all costs that the agency would charge them, an increase from the 2018 survey results where 42 per cent were not provided service agreements with all agency costs detailed.

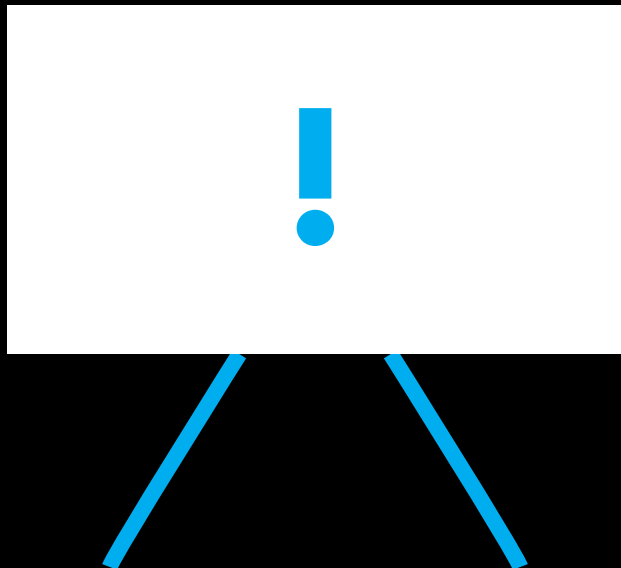
3.6 Provision of payment receipts



Section 4.7.1 of the CoP requires employment agencies to provide receipts for any payments received from domestic workers, detailing the employment agency's name, the migrant worker's name, amount received, date of receipt and an official stamp. It further stipulates that a record of all receipts should be maintained by the employment agency for inspections by the Labour Department.

Despite this, a staggering 88 per cent of respondents were either not provided a receipt or given an inaccurate one. Sixty-six per cent of respondents did not report being given a receipt for any payments made to the agency (a marginal decrease from 2018 where 69 per cent reported not being given receipts). Of the 36 respondents that were provided receipts, 64 per cent stated that the receipt did not detail all charges the agency demanded, which effectively means they were still in breach of the CoP. The provision of itemized and accurate receipts is a vital tool in the prevention of employment agencies charging illegal fees to migrant domestic workers. Without such documentation it is extremely difficult for workers to prove that legal provisions have been breached and to enable them to seek redress.

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

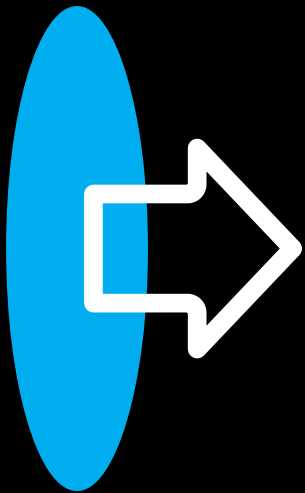


The CoP also places a duty on employment agencies to ensure that migrant domestic workers are aware of their rights under Hong Kong law including existing protection against discrimination and the terms of the Standard Employment Contract (SEC). With the latter, employment agencies are expected to provide domestic workers with a copy of the SEC in a language that the worker is able to understand and brief them on its contents.

This is one of the few areas where compliance with the CoP has seen a significant increase since its promulgation, with 100 per cent of all respondents reportedly signing a copy of the SEC. Seventy-seven per cent of respondents stated that employment agencies provided them with a copy of the SEC in their own language. This was a marked improvement from the 2018 survey results where only 27 per cent of respondents were given an SEC in their own language.

Additionally, the CoP also dictates that the employment agency has a positive obligation to ensure that the migrant domestic worker understands where they are able to find assistance in government departments and/or other agencies providing relevant services to domestic workers in the case of dispute or complaint. Irrespective, only just over half of the respondents (53 per cent) reported being briefed about their labour rights under Hong Kong law or being given referrals to relevant government agencies or organizations. This was marginally more than the 2018 findings where 46 per cent reported being briefed on their rights or provided with pamphlets detailing relevant Labour Department mechanisms.

3.8 Conclusion



The research suggests that the implementation of the CoP since its promulgation on 13 January 2017 has been limited at best, and that migrant domestic worker protections have seen few improvements since its inception. All the migrant domestic workers interviewed in the scope of this research had experienced one or more incidents that were in direct violation of provisions set forth in the CoP. This was an increase in comparison to data from 2018 where 96 per cent of respondents reported CoP infringements. This means that many employment agencies, both in Hong Kong and their counterpart recruitment agencies in the migrant domestic worker's country of origin (for the purposes of this research, in Indonesia and the Philippines) are engaging in exploitative and illegal practices that are in violation of migrant domestic worker's rights. Whereas, the CoP was relatively new when FADWU's previous research was conducted in 2017 and 2018, during this current research the CoP had been in place for over four years. As such, all employment agencies would be expected to not only be well aware of their obligations under its provisions, but to have had more than enough time to incorporate those into their business practices.

Primarily, breaches of the CoP documented by this research relate to serious violations, such as the charging of illegal and/or excessive fees; the confiscation of personal documents or specific procedural elements—including, for example, the provision of receipts or contracts and agreements. This research indicates that fees charged to migrant domestic workers were in significant excess of the legally permitted amount and that these fees have actually seen a drastic increase in comparison to findings from past research. The financial burden on migrant domestic workers has only increased since 2018. For many, these costs exceeded what was initially conveyed to them, where 28 per cent of respondents reported that the costs of securing their job in Hong Kong was different and higher from what the agency initially quoted. The negative impact of the debt burden—most often manifesting itself in Hong Kong—is the same whether the fees are accrued there, the domestic worker's country of origin, or a combination of the two.

Among new arrivals, Indonesians were far more likely than Filipino respondents to have paid illegal and/or excessive fees, with 91 per cent of Indonesians (32 of 35) and 16 per cent of Filipinos (11 of 70) stating that the employment agencies collected fees. This is perhaps in part explained by the fact that until recently, it was legal for agencies in Indonesia to charge a commission from domestic workers.²¹ On 12 August 2021, the Government of Indonesia introduced a new placement fee policy that mandates the employers to carry the burden of costs, instead of the migrant domestic worker.²² However, the policy appears to introduce a regulated loan scheme using commercial banks. At the time of writing, it remains unclear how this new policy will impact the amount Indonesian nationals pay for placement in jobs as domestic workers in Hong Kong. In the Philippines, comparable protections for migrant domestic workers have been in place since 2006 following the implementation of a series of reforms protecting household service workers, where agencies in the Philippines are not permitted to charge placement fees for workers heading to Hong Kong. It is worth noting, however, that fees can still be extracted through covert or disguised means, including, for example, charging for trainings, medical exams or photos and videos. Additionally, it is also commonplace for agencies to exploit existing economic vulnerabilities that many migrant domestic workers face by demanding illegal fees but not providing receipts for it, or colluding with money lending institutions to extract additional funds.²³

The confiscation of personal documents is a form of coercion and abuse, where it is used to limit a domestic workers ability to move or make key choices such as changing employers. It is also illegal under Hong Kong Criminal Law (as detailed in the Theft Ordinance Chapter), yet almost impossible to prosecute because intent is difficult to prove and easily disputable. This also continues

to happen frequently where almost one third of all respondents disclosed that their personal documents were held against their will. In a letter to FADWU the Labour Department stated that it refers cases to law enforcement agencies if they detect possible offences. In the past three years (2019-2021 – up to August) the Employment Agency Administration referred 41, 23 and 79 cases involving migrant domestic workers to the police, immigration, and customs and excise, respectively. A breakdown of how many of these cases were related to passport confiscation and how many were successfully prosecuted was not provided.

Numerous procedural concerns remain an ongoing problem, primarily in relation to the provision of receipts or contracts and agreements. More than half the respondents stated that they were not provided a service agreement that clearly detailed all costs that the agency would charge them. The provisions of receipts are an ongoing issue where 88 per cent of respondents were either not provided a receipt or given an inaccurate one. Additionally, 77 per cent of respondents stated that employment agencies provided them with a copy of the SEC in their own language, a significant increase from 2018 where only 27 per cent of respondents were given an SEC in a language they understood. Still, despite the fact that the CoP provides that employment agencies have a positive obligation to inform workers about their rights only a little over half of the respondents (53 per cent) reported being briefed about their labour rights under Hong Kong law or being given referrals to relevant government agencies or organisations that were tasked with labour rights protections.

21. Under art. 30 of Law No. 18/2017 on the Protection of Indonesian Migrant Workers, migrant workers are not responsible for covering any costs associated with his/her placement overseas except for costs related to getting his/her own Indonesian National ID Card (e-KTP), passport, medical check-up and competency/certification exam. However, the data collected for this research suggests gaps remain in the law's implementation.

22. <https://apmigration.ilo.org/news/indonesia-delays-new-migrant-worker-policy-to-july>, accessed 21 September 2021.

23. <https://helpfordomesticworkers.org/en/get-help/understanding-your-rights/employment-agency-issues>, accessed 22 August 2021.

4. Analysis



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



Both the 2018 and 2021 surveys reflect that full compliance with the CoP is practically nonexistent as 100 per cent of agencies cited in the 2021 survey were in breach of one or more provisions (in the 2018 study the figure was 96 per cent). Still, it is worth noting that the severity of these violations differs depending on the provision being breached. For example, the charging of illegal and/or excessive fees (newly arrived 52 per cent and changing employers 46 per cent) and the confiscation of passports or other personal documents (29 per cent) are considerably more serious than other violations. Still, even these core components of the CoP are being systematically breached with over half of respondents reporting breaches by employment agencies regarding passports and/or fees. Of 105 respondents, 61 had said that the employment agency either collected fees upon arrival; charged fees for changing jobs; and/or confiscated passports, amounting to 57 per cent of those surveyed.

A comparison between data collected in 2018 and 2021 reflects some minor improvements in the protection of migrant worker rights in the years since the implementation of the CoP, most notably in the provision of Standard Employment Contracts. Additionally, 2018 data reflects that 13 per cent of respondents had complained to their employment agency about work-related problems, of which 32 per cent said the employment agency tried to help. Data from 2021 reflects an increase in comparison to those figures, where 22 per cent of respondents said they complained to the employment agency of which 54 per cent said the agency tried to help and 37 per cent saw a positive outcome (in comparison to 7 per cent reflected in 2018 data). Another indication of improvements is that the 2018 research indicated that 38 per cent of respondents were sometimes unable to leave their employer's home during their rest day, in comparison to 12 per cent in 2021. Where there were improvements in the charging of illegal fees (notably a reduction in Filipino respondents reporting this) this is arguably not due to the CoP as the reverse was reported by Indonesians, indicating the reduction can more likely be attributed to legally binding policies enforced by the Government of the Philippines.

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



In March 2018, the HKSAR government published an *Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong*.²⁴ Additionally, the HKSAR government maintains an allocation of HKD 62.23 million in the annual budget to fund positions specifically dedicated to anti-trafficking initiatives.²⁵ Still, without additional legislative safeguards coupled with higher rates of identification and prosecution, the meaningful implementation of protections for migrant domestic workers remains inadequate.

A number of amendments to the legal framework have strengthened protections for migrant domestic workers. Specifically, the Employment Ordinance imposes criminal liability on employers involved in nonpayment, underpayment or a delay in the payment of wages, and failure to grant rest days and statutory holidays to employees. Additionally, the 2018 amendment to the Employment Ordinance raised the maximum penalty for overcharging jobseekers and unlicensed operation of employment agencies significantly, from HKD 50,000 to HKD 350,000 (USD 6,400 to USD 44,800) and imprisonment for three years. It also extended the statutory time limit for prosecution of these two offences from six months to 12 months.²⁶ The HKSAR government has mandated that noncompliance with the CoP could lead to the revocation or refusal of licenses.²⁷ It extended the scope of the offences beyond the holder of the licence so that a partner, other staff member or an associate (e.g. member of the management board or those acting on behalf of an agency) can be prosecuted. Still, there is little evidence to suggest that, given the scale of the breaches revealed by this research, that the majority of employment agencies in breach of CoP provisions are being penalized accordingly for doing so. The number of convictions and warnings issued by the Labour Department remain extremely low with only 12 convictions issued since 2019.²⁸

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

25. <https://www.state.gov/reports/2021-trafficking-in-persons-report/hong-kong/>, accessed 22 August 2021.

26. HKSAR, *Gazetted of Employment (Amendment) Ordinance 2018*, 9 February 2018, available at: <http://www.info.gov.hk/gia/general/201802/09/P2018020600356.htm>, accessed 21 September 2021.

27. HKSAR Legislative Council, *Legislative Council Brief, Employment Ordinance (Chapter 57) Employment (Amendment) (No.2) Bill 2017 (File reference: LD CR/5/15/706)*, 6 June 2017, pp3-5, available at: http://www.legco.gov.hk/yr16-17/english/bills/brief/b201706163_brf.pdf, accessed 21 September 2021.

28. <https://www.eaa.labour.gov.hk/en/convicted.html>, accessed 22 August 2021.

The HKSAR Government has exhibited a commitment to raise public awareness about the exploitation of migrant domestic workers through briefings and seminars with employment agencies, public information campaigns and training government officials. Alongside the promulgation of the CoP in January 2017 the Labour Department launched an Employment Agency Portal to facilitate public access to information related to the regulation of employment agencies. In the year 2020, the HKSAR government has trained 880 officials from different government agencies.²⁹

The Hong Kong government is investigating more cases of labour trafficking than in previous years. This has included a high-profile case of debt-based coercion, involving a money lending business that charged a migrant domestic worker excessive and illegal fees. Additionally, the government screened 6,900 vulnerable individuals for trafficking. However, of all vulnerable individuals screened, only three were identified as trafficked individuals. The government did not prosecute or convict any labour traffickers in 2020.³⁰ The ineffectual implementation of these laws continues to hamper meaningful progress in protecting migrant domestic worker rights.

29. <https://www.state.gov/reports/2021-trafficking-in-persons-report/hong-kong/>, accessed 22 August 2021.

30. <https://www.state.gov/reports/2021-trafficking-in-persons-report/hong-kong/>, accessed 22 August 2021.

Improvements in monitoring, investigations, prosecutions and convictions



Currently, the HKSAR government's framework for identifying malpractice by employment agencies appears to be largely ineffectual. The government needs to take more effective measures towards stronger enforcement of the current legislative safeguards protecting migrant domestic workers against exploitation. This should include improving the quality of screenings conducted to identify employment agencies violating the CoP. An important component of this would be making the complaints process more user-friendly for migrant domestic workers themselves—including accessible communication platforms (both online and offline) in their own languages. This will improve the Employment Agencies Administration access to evidence of malpractice by encouraging those who experience these abuses to make complaints. These measures should be followed by the thorough investigation of suspected violators and prosecution of agencies suspected of violating employment laws in accordance with the law.

At the end of 2019, 2020 and August 2021, there were 1,493, 1,530 and 1,529 employment agencies in Hong Kong dealing with migrant domestic workers. In the past three years (2019, 2020 and 2021 up to August) the EAA conducted 1390, 1091 and 1115 inspections respectively with employment agencies dealing with migrant domestic workers. Despite this, the research reflects that employment agencies continue to violate multiple provisions of the CoP without serious consequences, effectively allowing them to continue to do so with almost absolute impunity. This is evidenced by the fact that the Labour Department reported that it issued only 10 convictions of employment agencies found to be in breach of employment laws in the period between 2019 and 2021³¹, including: one for operating an unlicensed employment agency; two for managing an unlicensed employment agency; and six for overcharging job-seekers. This is despite receiving 475, 290 and 269 complaints over that period about employment agencies serving migrant domestic workers.

31. <https://www.eaa.labour.gov.hk/en/convicted.html>, accessed 22 August 2021.

In addition, the Employment Agencies Administration reported in a letter to FADWU on 4 October 2021 that the number of employment agencies dealing with migrant domestic workers that had their licences revoked in 2019, 2020, and 2021 were 12, 7 and 6 respectively. Of 10 fines imposed over this three-year period for overcharging job seekers the average was HKD 16,660. This average is made significantly higher by one fine of HKD 84,000. If this outlier is removed, the average is reduced by over half to HKD8,260. Given the full extent of the powers available to the EAA and the profits made by employment agencies for placement of workers, it is difficult to see how the amount leveled as fines can act as a significant disincentive.

This extremely low incidence of complaints, convictions and licenced sanctions is particularly concerning considering the amount of awareness-raising initiatives undertaken by the government and the fact that the current research identified what could be indicative of widespread illegal activity. Between 2019 and 2021 (up to August), the Labour Department organized 6, 1 and 1 seminars respectively, briefing employment agency staff on the legal provisions and requirements in the CoP they need to comply with. Attendance was 210, 30 and 30 staff respectively. Given the number of agencies and the ease in which seminars could be organized through video conferencing (when social distancing measures related to the Covid-19 pandemic were in place), these numbers fall far short of the number necessary to ensure all agency staff are sufficiently knowledgeable about important legal provisions and standards.

The EAA is responsible for licencing, inspections, investigating complaints and ensuring that employment agencies comply with Hong Kong law. However, as above, its enforcement of the regulations has been ineffective in addressing the violations they were designed to prevent. The EAA needs to ensure its inspection process prioritises quality over quantity and that it is more effective at identifying illegal behaviours. As it stands, inspections are failing to identify the majority of employment agencies in breach of the CoP. This includes the voluntary elements of the CoP that are characterized as 'best practice', like the issuing of receipts. If this research is representative of the wider population, then most agencies are non-compliant, indicating that the EAA could be sanctioning these agencies in far greater numbers through more thorough inspections.

The HKSAR government should take specific legislative measures to increase protections for migrant domestic workers and reduce their vulnerability to exploitation and abuse. This could include, for example, legislating that any recruitment fees borne by migrant domestic worker are illegal—bringing Hong Kong legislative framework in line with international standards, as provided by ILO C189 – Domestic Workers Convention (2011)³¹ and the ILO General Principles and Operational Guidelines for Fair Recruitment.³³ It is evident from the research findings that a cross-border, bi-lateral solution is needed to address the indebtedness experienced by migrant domestic workers in Hong Kong. This should start with enhanced cooperation between the HKSAR government and governments in the countries of origin to ensure debt is not being accrued there that makes migrant domestic workers vulnerable to exploitation and abuse in Hong Kong. One aspect of this could include barring placement agencies in countries of origin that consistently charge excessive and/or illegal fees from partnering with Hong Kong employment agencies. In addition, employment agencies in Hong Kong should be required to ensure that the business practices of the agencies they partner with abroad are in compliance with local laws, including those pertaining to fees.

In addition to improvements to the complaints system mentioned above, the HKSAR government should improve all existing complaints and redress services to make them more accessible. Currently, migrant domestic workers face a number of barriers to accessing the formal justice system³⁴, including prohibitive costs associated with pursuing formal justice, further exacerbated by the fact that migrant domestic workers are not allowed to work while in litigation. To this end, the HKSAR government should implement key reforms to ensure that migrant domestic workers seeking compensation for human or labour rights abuses have effective access to support measures, including information on redress mechanisms; free professional interpretation; access to shelter if required; and the ability to work while they are pursuing their cases.

32. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189, accessed 22 September 2021.

33. This provides a definition of "recruitment fees or related costs", as "any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection". Principle 7 expressly prohibits the charging of these. https://www.ilo.org/global/topics/labour-migration/publications/WCMS_536755/lang-en/index.htm

34. *The Prices of Justice – migrant domestic workers' experience of trying to resolve labour disputes in Hong Kong*, FADWU (2019) <https://view.publitas.com/rights-exposure/the-price-of-justice/page/1>

Confiscation of passports



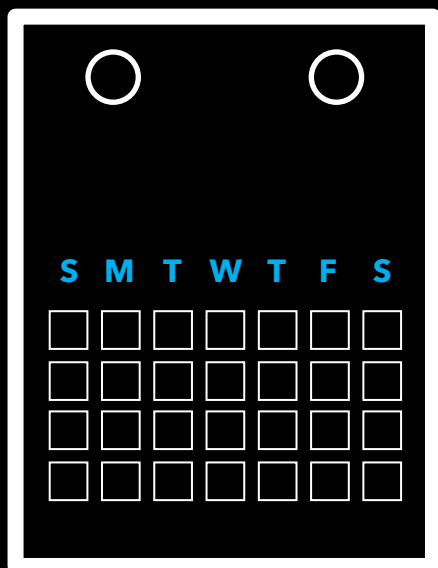
Employment agencies in Hong Kong, as well as employers, continue to illegally deprive migrant domestic workers of their passports and other important personal documents, including their HKID. Government measures, including the CoP, appear to have failed to prevent this from happening. As such, the government must enact new, more effective measures. These could include legislating so that it is illegal for an agency or employer to hold the passport, HKID, bank cards or contracts of migrant domestic workers. A breach of such a law could be punishable with a fine up to HKD350,000 and up to 3 years in prison. Such measures would address the difficulty of prosecuting employment agents who confiscate passports, as currently it is very difficult to prove the document was not freely given. A change in the law would provide a significant disincentive to such illegal practices. Where the passport and/or HKID of the domestic worker are needed by the employment agency for administrative purposes, the passport must be returned within 72 hours, with evidence of consent from the owner of the passport and the time the document was handed over.

Not providing a full 24-hour rest day



Migrant domestic workers are contractually entitled to one 24-hour period (rest day) every week, yet this provision is widely ignored by the vast majority of employers. Many migrant domestic workers are made to perform household tasks by their employers, such as preparing meals, cleaning and taking care of children and pets, during their rest day. The widespread breach of workers' contracts with almost absolute impunity suggests that the government does not have the political will and/or ability to enforce this provision. The government must act to address this long-standing problem—facilitated by its own compulsory live-in requirement, where the worker is forced to live in their employer's place of residence. Measures should include a public information campaign targeting employers of migrant domestic workers making them aware of their legal obligation to provide a full 24-hour rest day, as well as a warning system wherein a household would be barred from hiring a migrant domestic worker for two years if the law is breached three times.

Reform of the 'Two-Week Rule'



Other legislative measure should include abolishing existing provisions that discriminate against migrant domestic workers. This includes, for example, the 'Two-Week Rule' that implicitly discourages workers from submitting complaints against their employer.

The Two-Week Rule has long been criticised, including by human rights bodies at the United Nations, for its role in keeping migrant workers in jobs that they would not ordinarily agree to. This is largely because the two-week period when their contract ends does not allow enough time for them to find another employer. This makes migrant domestic workers very reluctant to make a complaint or leave their employer because if they do, they are likely to lose their right to work in Hong Kong, which in turn would make it impossible for them to repay their debts and/or support their families through remittances.

Even where individuals are willing to leave their job and file a complaint, the process of accessing justice is often prohibitively expensive. Cases can take months to be resolved and, without an exception from the Immigration Department (which is normally only granted after the case has been accepted for prosecution), migrant domestic workers are not allowed to work while pursuing claims or engaging in litigation, which means they cannot afford living expenses, such as food and accommodation. As a result, many abandon their case or accept an unfavourable settlement at the conciliation stage. In this way, the Two-Week Rule increases migrant domestic workers' vulnerability to abuse and their reluctance to file complaints and take legal action.³⁵

The Immigration Department's intransigence on the Two-Week Rule, despite international criticism from human rights experts, also works against the Labour Department's objective to encourage migrant domestic workers to help in the prosecution they bring against employers and agencies. Yet the recent Covid-19 pandemic saw the rule effectively waived for most of 2020—where workers were allowed to apply for an extension to their limit of stay for up to a month as visitors. The purpose of this measure was to facilitate migrant domestic workers in finding

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

a new employer without having to leave Hong Kong—and as a result, migrant domestic workers were better positioned to avoid excessive and/or illegal fees, reducing their debt burden. The Immigration Department has stated the objective of the Two-Week Rule is to prevent migrant domestic workers from overstaying and working illegally. Yet after a prolonged pause of this provision these fears appear to be unsubstantiated. In addition, because migrant domestic workers were not forced to return to their country of origin their debt burden is likely to have been significantly reduced as they did not have to pay fees charged by agencies at home.

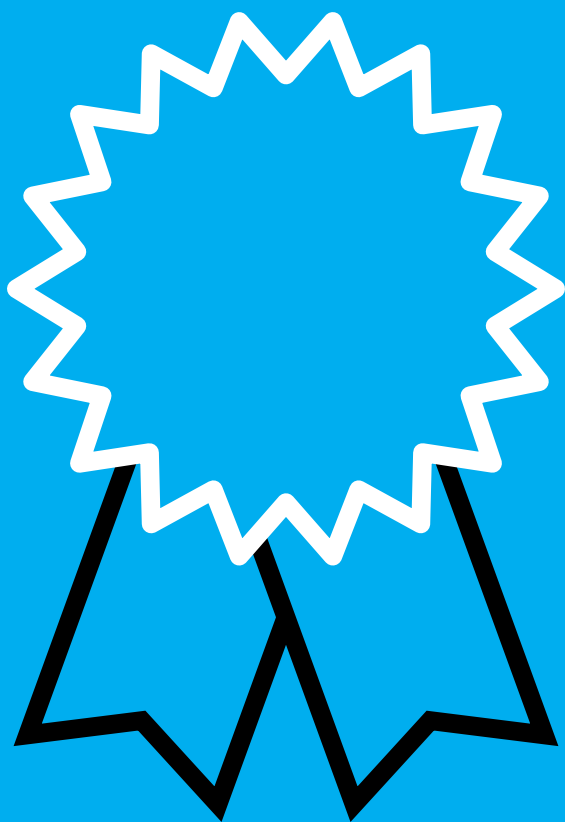
However, on 30 December 2020, the Immigration Department amended the policy brought in due to the pandemic, excluding migrant domestic workers whose contracts were terminated prior to their completion from applying for an extension of stay, unless they could demonstrate ‘exceptional circumstances’³⁶ The reason given for this by the Immigration Department was an increase in the incidents of so-called ‘job hopping’—where workers move employers in pursuit of better working conditions and/or wages. Although one of the exceptional circumstances is when a worker is being abused by their employer, this policy puts these workers at risk due to the difficulty in proving abuse. As such, many put up with the abuse due to the fear that they will be refused a visa by the Immigration Department and so have to return home and re-migrate, thus accumulating more debt.

Given this, it is hard to see how the Immigration Department can continue to maintain a policy that, through its own actions, has been demonstrated to not only to be unnecessary by restricting the free movement of labour and putting at risk workers who are being abused but also facilitating debt that is known to be used as a coercive mechanism in human trafficking and forced labour.³⁷ The Two-week Rule should either be abolished or reformed to allow migrant domestic workers enough time to find a new employer without having to return home.

36. <https://www.info.gov.hk/gia/general/202101/27/P2021012700549.htm>

37. The ILO indicators of forced labour are: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. See: ILO, *ILO Indicators of Forced Labour*, 1 October 2012, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf, accessed 22 September 2021.

5. Conclusion and recommendations



There are professional and reputable employment agencies operating in Hong Kong. Since FADWU's previous research in 2018 a small number of employment agencies have been established using ethical business models. These agencies practices usually include policies such as 'no fee to the worker' (in both Hong Kong and the country of origin), skills matching with the needs of employers, itemized receipts, and ensuring both parties are aware of their rights and responsibilities. This shows that employment agencies can operate a sustainable and profitable business model, which implements a no-fee policy for migrant domestic workers and fully complies with the CoP and others statutory provisions in Hong Kong.

Despite action taken by the HKSAR government over the last five years to improve the protection of migrant domestic workers, including through the introduction of the CoP, the passage of the Employment (Amendment) Ordinance 2018 and the publication of the *Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong*, the results of this research suggest these measures have failed to adequately address the problems they were tasked to deal with. The research confirms that these are not the activities of a few rogue agencies, nor a result of the CoP not being adhered to due to it being newly introduced.

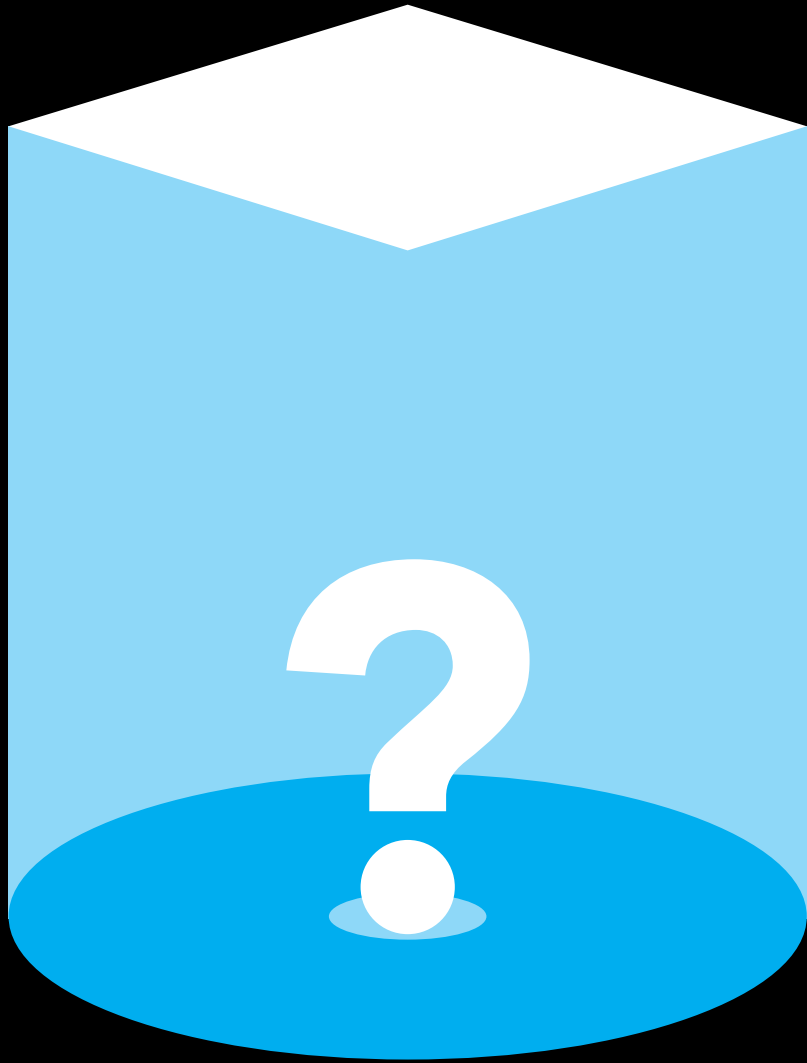
Those agencies which flout the law and the CoP continue to do so with a high degree of impunity. The lack of effective enforcement action must be addressed as a matter of urgency and this will require further changes to existing policy and practice. Laying out what professional practices are expected and increasing punishment for breaches of the law are to be commended, but these will remain ineffectual unless the risk of getting caught increases.

The CoP is not achieving the objectives it was designed to address. This research suggests it has failed to address core abuses perpetrated by unscrupulous employment agencies. Even in the case of what could be reasonably characterised as minor reforms, such as issuing receipts, the CoP and those who administer it have not been up to the task. It is time for a major rethink in regards to implementation of the CoP and other legislative measures that will have the force of the law behind them. Without such reforms the CoP will not be fit for purpose.

In view of the above, FADWU makes the following recommendations to the Government of the Hong Kong SAR:

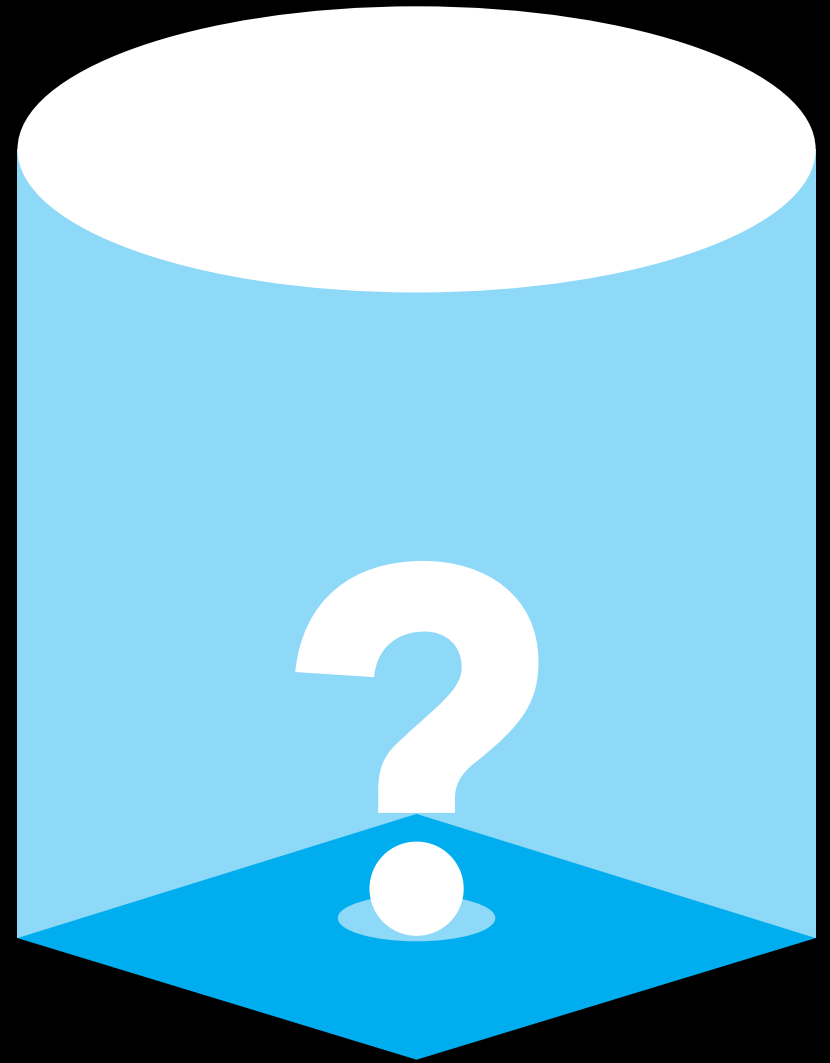
- Enhance the ability of the Employment Agencies Administration (EAA) to effectively investigate, prosecute and punish employment agencies—including its role in facilitating legal cases brought before the courts—that are not compliant with the CoP and/or other statutory requirements. Measures should include:
- Reform of EAA inspection processes to improve the detection rate of violations of the law and the CoP, including through reviewing the criteria and procedures used for assessing compliance and evidence collection.
- Improve the EAA complaints process to be more user-friendly for migrant domestic workers—including reporting platforms (both online and offline) in their own languages that are accessible at times and locations convenient to complainants.
- Grant all migrant domestic workers with a pending case in the conciliation service, Minor Employment Claims Adjudication Board (MECAB), Labour Tribunal or criminal court visa extensions, which allow them to work while their case is being pursued, and waive their visa fees.
- Ensure that migrant domestic workers seeking compensation for human or labour rights abuses have effective access to support measures, including adequate information on redress mechanisms and how to use them; free professional interpretation; and access to shelters for those with no other means of supporting themselves while pursuing their claim.
- Legislate that it is illegal to charge recruitment fees to migrant domestic worker—bringing the Hong Kong legislative framework in line with international standards, as provided by ILO C189 – Domestic Workers Convention (2011) and ILO General Principles and Operational Guidelines for Fair Recruitment.
- In coordination with the relevant government authorities, bar Hong Kong employment agencies from partnering with agencies in Indonesia and the Philippines that consistently charge excessive and/or illegal fees.
- Legislate that it is illegal for an employment agency or employer to hold the passport, HKID, bank cards, contracts or other personal documents of migrant domestic workers. A breach of such a law should be punishable with a fine of up to HKD350,000 and a prison sentence of up to three years.

- Legislate that employment agencies must provide migrant domestic workers with itemised receipts—including a requirement to keep copies of receipts on file for two years—with those who do not comply punishable by a fine of HKD 50,000.
- Make it mandatory that all staff employed at an employment agency attend training on the provisions in the CoP by the Employment Agency Administration within three months of starting work or the provision coming into force.
- Employers who hire and terminate three or more workers within 12 months are to be interviewed by the Labor Department and if the terminations are found to be unreasonable, they will be barred from hiring a worker for 24 months.
- Take action to address employers not providing a full 24-hour rest day to migrant domestic workers. This should include a widespread public information campaign informing employers of their obligations, as well as a warning system—mediated by the Labour Tribunal—that when breached three times bars that household from hiring a migrant domestic worker for two years.
- Repeal or reform the ‘Two-Week Rule’ to allow migrant domestic workers to continue employment in Hong Kong without having to return to their country of origin (including those who terminated their contract prematurely). A reasonable amount of time should be allowed to identify and sign a contract with a new employer or renew a contract with an existing employer.
- Allow cases of overcharging by employment agencies to be heard at the Labour Tribunal so that third parties, including trade unions, NGOs or individuals, can take a complaint on behalf of a migrant domestic worker.
- Amend the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong to ensure that all migrant domestic workers with a pending case in the labour or criminal court are granted visa extensions, have their visa fees waived, and are supported to stay in Hong Kong—including allowing them the right to work while their case is being pursued.
- Ensure that migrant domestic workers seeking compensation for human or labour rights abuses have effective access to free support measures (e.g. sheltered accommodation and interpretation) throughout the process.
- Extend the People’s Republic of China’s ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) the Hong Kong SAR and fully implement its provisions into Hong Kong law. Pass specific legislation, which clearly defines and prohibits forced labour, with penalties that are adequate and strictly enforced.



Fit for Purpose?

Assessing compliance with the Code of Practice



恰如其分?

評估過去五年《職業介紹所業務守則》的依循情況

致香港特區政府：

● 提升職業介紹所事務科的能力，使它能夠在檢控前後，有效調查、檢控及懲處那些沒有依循《守則》和／或其他法規的僱傭中心。應包括以下措施：

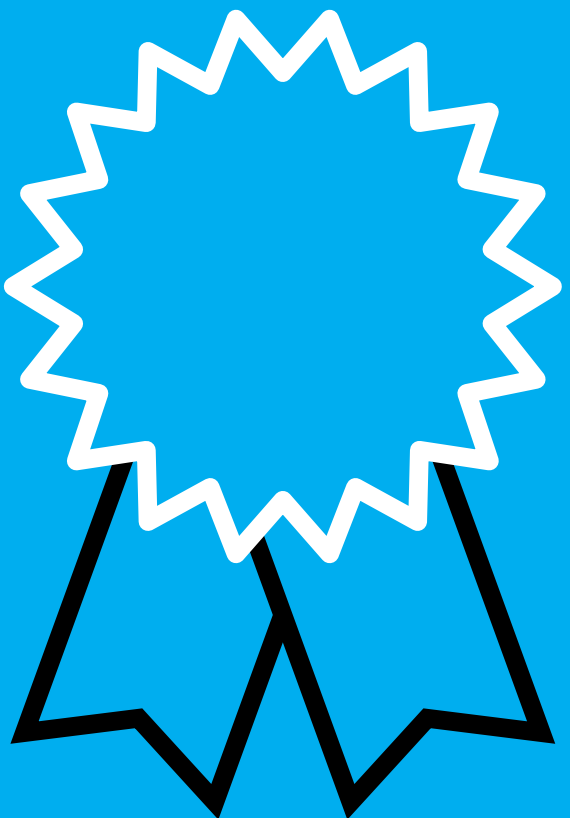
- 重整職業介紹所事務科的巡查過程，如檢閱評估遵守法規及採證的條件和程序，以改善檢出違反法例及《守則》的比率。
- 改良向職業介紹所事務科投訴的流程，包括以家務移工的語言編寫舉報平台（在線及離線），方便他們在任何時候、任何地方作出投訴。
- 批准所有有待決案的家務移工的簽證延期，不論案件是在調解服務、小額薪酬索償仲裁處、勞資審裁處或刑事法庭，讓移工能夠在訴訟期間工作，並豁免簽證費用。
- 確保家務移工在申索侵犯人權或勞工權益的賠償時，能夠有效獲得支援，包括有關申索機制及其使用方法的充足資訊、免費專業傳譯和尋求庇護所的途徑，讓那些在索賠期間未能支持自己生活的移工獲得庇護。
- 立法禁止向家務移工收取招聘費用，促使香港立法框架與國際標準看齊，如國際勞工組織 C189、家務工公約（2011年）及國際勞工組織的一般原則及公平招聘的實務指引。
- 配合相關政府機關，禁止香港的僱傭中心與那些位於印尼及菲律賓、一直收取超額和／或違法費用的中介合作。
- 立法禁止僱傭中心或僱主扣留家務移工的護照、香港身份證、銀行卡或其他個人文件，違例者最高可被判處罰款 350,000 港元和監禁三年。
- 立法規定僱傭中心向家務移工提供列明細項的收據，並保存收據副本兩年，違例者將被罰款 50,000 港元。
- 規定所有僱傭中心職員，在開始工作或條款生效的三個月內，必須出席由職業介紹所事務科舉辦、有關《守則》條款的培訓。

- 僱主如在 12 個月內聘請並解僱三個或以上家務工，勞工處將接見僱主約談（連同被解僱的移工所提交的證據）。一旦發現為無理解僱，將禁止僱主於 12 個月內聘請家務工。
- 著手處理未能給予家務移工足 24 小時休息日的僱主，措施應包括開展公眾宣傳活動，讓僱主了解他們的責任，以及建立警告制度，由勞資審裁處協調，禁止三度違反休息日規定的家庭在兩年內聘用家務移工。
- 廢除或改革「兩星期規定」，准許家務移工不用返回其原籍國（包括被提前終止合約的移工），繼續在港工作。移工應獲得足夠時間覓得新僱主簽約，或與現任僱主續約。
- 准許在勞資審裁處聆訊有關僱傭中心收取過多費用的案件，讓第三者如工會、非政府機構或個別人士代表家務移工，提出控訴。
- 修改《打擊販運人口及加強保障外籍家庭傭工行動計劃》，確保所有在勞資審裁處或刑事法庭有待決案的家務移工都獲簽證延期，並豁免其簽證費用，且獲支持留在香港，包括准許她們在訴訟期間工作。
- 確保家務移工在申索侵犯人權或勞工權益的賠償時，能夠有效獲得免費支援，包括傳譯及庇護所住宿。
- 將中華人民共和國簽定的《聯合國打擊跨國有組織犯罪公約關於預防、禁止和懲治販運人口特別是婦女和兒童的補充議定書》延用至香港特別行政區，納入到香港法律中完全實踐。通過特定立法，清楚界定及禁止強逼勞動，嚴格實施充足罰則。

致香港的僱傭中心：

- 確保所有職員，連高級管理人員在內，明瞭《守則》的詳細要求，促進及確保公司完全依循《守則》的所有元素。
- 僱傭中心的協會應當在業界推廣《守則》，禁止那些未能完全遵循《守則》的中介擔任執行委員會或董事會成員。對於那些未能依循《守則》和／或其他法定條款要求來營運的僱傭中心，協會應採取行動，如禁止他們入會、刊登違規中介的名單等。

5 總結及建議



香港有一些專業且信譽良好的僱傭中心。自FADWU在2018年進行研究以來，有少數僱傭中心以良心生意模式成立，經營時通常包括以下政策：「不向移工收費」（在香港及原籍國）、按僱主需要作技能配對、列明收費細項的收據及確保雙方瞭解其權益與責任。這表示僱傭中心能夠以可持續並獲利的營運模式運作，向家務移工實行不收費政策，且完全依循《守則》及其他香港法例規定。

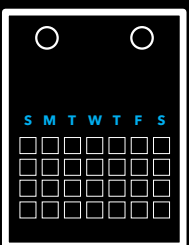
即使在過去五年，香港特區政府著力改善對家務移工的保障，包括推行《守則》、通過《2018年僱傭（修訂）條例》及出版《打擊販運人口及加強保障外籍家庭傭工行動計劃》，本研究結果反映這些措施未足以解決他們應當處理的問題。研究更肯定了這些問題並不是來自個別無良中介的經營手段，也不是沒有依循新發佈的《守則》的後果。

那些違犯法律及《守則》的中介多數都不受懲罰。我們必須急切正視欠缺有效的執法行動的問題，這須要改變現行的政策及實務操作。雖然制訂了對專業經營做法的期望和加重了對違法行為的刑罰是值得嘉許讚揚的，但除非被捕風險增加，否則這些舉措將繼續是無效的。

《守則》沒有達到它所旨在要解決的目標。本研究指出政策未能取締無良僱傭中心的主要剝削行為。即使有一些可標誌為小改革的地方，如簽發收據，但《守則》和其執行者都尚未做好本份。現在對執行《守則》和其他具法律效力的立法措施進行重大反思的時候了。如果沒有這樣的改革，《守則》將不能達到其目的。

有見及此，FADWU有以下建議。

改革「兩星期遣返規定」



其他立法措施應包括廢除現行歧視家務移工的規定，例如「兩星期遣返規定」，它無形地阻礙移工對其僱主的投訴。

「兩星期規定」久被聯合國人權機構等組織批評，因為這項規定逼使移工或需違背意願留任工作。她們完約後只得兩星期可以合法留港，時間根本不足以找到另一個僱主。令家務移工十分抗拒投訴或離開他們的僱主。因為如果她們這樣做，很可能會失去在香港工作的權利，變相令他們更難以償還債務和／或匯款去支持她們的家人。

即使有個別移工希望辭工並作出投訴，尋求司法公義的過程代價往往高昂。案件可以歷時多月才得以解決，但入境處從未容許家務移工在索賠或訴訟期間工作（一般只在個案獲接納為可提控的案件後才給予許可），這意味著他們不能維持起居飲食等生活支出。因此，很多移工都會放棄訴訟，或在調解期間接受對她們不甚有利的和解方案。由此可見「兩星期規定」使家務移工更易遭受剝削，並更抗拒投訴和採取法律行動。³⁴

「兩星期規定」不只受到國際間人權專家的批評，入境處仍然執固於這規定，與勞工處的目標相違，有礙鼓勵家務移工協助檢控違法僱主和僱傭中心。然而，2020年大多時間受2019冠狀病毒病疫情影響，移工獲准申請延長逗留期限，

以訪客身份留港一個月，方便她們在港尋覓新僱主。此舉令家務移工能夠避過超額和／或違法中介費，減輕債務負擔。

入境處重申「兩星期規定」是為了防止家務移工非法逾期居留及工作，但此條款停置已久，處方的這些理由都難再成立。此外，因為家務移工沒有被逼返回原籍國，不用向當地中介繳付費用，債務負擔也大為減少。

但是，入境處於2020年12月30日修訂因應疫情而訂下的政策，將那些提早終止合約的家務移工排除在外，不准她們申請延長留港期限，除非能夠提供「特殊情況」的證明。³⁵入境處解釋是次修訂是鑑於「跳工」情況增多，移工為尋找更好的工作條件及／或待遇，而轉換僱主。雖然移工受虐於僱主是其中一種特殊情況，但由於難於證明虐待情況，這項政策只將這些受虐移工推向危險。因此，很多受虐移工選擇啞忍，因為她們深怕入境處拒發簽證，要返回家鄉，再重新來港，以致債務加重。

有見及此，實在難以理解入境處為何繼續維持這項政策，通過其自身的行動已經證明是不必要的政策，因為它限制了勞動的自由流動，使受虐待的工人處於危險之中，更促使工人負債，眾所周知，債務被用作人口販運和強逼勞動的一種脅迫機制。³⁶「兩星期規定」應被廢除或改革，容許家務移工有足夠時間去找新僱主，而不用返回原籍國。

³⁴ 多個聯合國監察機構促請香港政府重新審視或推翻「兩星期規定」和同住要求，包括聯合國消除對婦女歧視委員會、聯合國經濟、社會和文化權利委員會和聯合國人權委員會。

³⁵ <https://www.info.gov.hk/gia/general/202101/27/P2021012700547.htm>

³⁶ 國際勞工組織的強逼勞動指標包括：濫用脆弱性、欺騙、限制行動、孤立、身體和性暴力、恐嚇和威脅、扣留身份證件、扣薪、債役、惡劣的工作和生活條件以及過度加班。見：國際勞工組織，《ILO Indicators of Forced Labour》（國際勞工組織的強逼勞動指標），2012年10月1日，可見於http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/publication/wcms_203832.pdf，擷取於2021年9月22日。

沒收護照

香港的僱傭中心和僱主仍非法奪取家務移工的護照和其他重要個人文件，包括香港身份證。囊括《守則》在內的政府措施似乎未能阻止這種情況發生。因此，政府必須制定更有效的新措施，包括立例禁止僱傭中心或僱主持有家務移工的護照、香港身份證、銀行卡或合約，違例者可被最高判處罰款350,000港元和監禁三年。由於目前難以證明移工不是自願提供文件，此等措施有助解決這個困難，檢控沒收護照的僱傭中心。法例的改變將大大抑制這種非法行為。如果僱傭中心基於行政目的需要家務移工的護照和／或香港身份證，他們必須在72小時內歸還，並附上載有護照持有人的同意及文件移交的時間的證明。



沒有給予足夠24小時的休息日



合約上，家務移工有權享有每週24小時的休息日，但絕大多數僱主忽視這一規定。許多僱主要求家務移工在休息日做家務，譬如做飯、清潔、照顧孩子和寵物。這麼多僱主違反移工的僱傭合約卻幾乎無一受罰，反映出政府沒有政治意願和／或能力來執行此規定。這個問題亦由政府訂立的「強制留宿」規定有份促成，逼令移工住在僱主住所。政府必須解決這由來已久的問題。措施應包括開展公眾宣傳活動，以家務移工的僱主為目標對象，讓他們知道給予全天24小時的休息日是其法律責任，以及建立警告制度，當家庭三度違規，兩年內不得再僱用家務移工。

眼見政府雖有大力提升公眾意識，但本研究發現違法行為十分普遍情況。因此，當投訴、定罪和牌照相關刑罰的數字是如此寥寥可數時，情況實在令人擔憂。在2019至2021年（截至8月）期間，勞工處分別舉辦了9次、1次和1次研討會，向僱傭中心員工講解《守則》，讓他們明瞭需要遵守的法律條文和規定。研討會分別有210、30和30名員工出席。考慮到中介的數量，以及（由於2019冠狀病毒病期間實施社交距離措施）用視像會議組織研討會的便利，這些出席率遠低於所需，難以確保所有僱傭中心員工充分了解重要的法律條文和標準。

職業介紹所事務科負責發牌、巡查、調查投訴及確保僱傭中心遵守香港法律。然而，如上所述，執法一直無效，未能解決違規行為，發揮不了法規的原定作用。職業介紹所事務科需要確保其巡查過程視質素先於數量，使其更有效地識別違規行為。就目前而言，巡查未能識別大多數違反《守則》的僱傭中心，包括違反《守則》中自願性質並被稱為「最佳的實務」，例如簽發收據。如果這項研究能代表更多人數，那麼大部份中介均屬違規，亦即職業介紹所事務科需要更徹底的巡查，以懲罰更多違規中介。

香港特區政府應採取具體立法措施，加強家務移工的保障，減少他們遭受剝削和虐待的機會，例如立法禁止由家務移工承擔的任何招聘費用，使香港的立法框架符合國際標準，如國際勞工組織C189「家務工公約（2011年）」³¹和國際勞工組織的一般原則和公平招聘實務指南。³²研究結果證實讓香港家務移工負債的問題需要一個跨境、雙邊的解決方案，應從加強香港特區政府與移工原籍國政府之間的合作開始，確保她們不會從原籍國便負上債務，以致在香港容易受到剝削和虐待。其中一個方向包括禁止在原籍國有濫收超額和／或違法中介費用的招聘中心與香港的僱傭中心合作。此外，香港的僱傭中心應確保海外的伙伴中介的營運手段符合當地法律，包括收費的相關法律。

除了要改善如上所述的申訴制度外，香港特區政府應改善所有現行的申訴和索償的服務，使其更開放易得。目前，家務移工在正式經司法系統作出申訴時³³，往往面對不少障礙，包括在尋求正式司法申訴時伴隨的高昂成本；而家務移工不能夠在訴訟期間工作，加深了家務移工的困難。為此，香港特區政府應推行重要改革，確保家務移工為其人權或勞工權益索償時，能夠有有效的渠道獲得支援，包括有關索償機制的資訊、免費專業傳譯、按需要住進庇護所，以及她們可以在訴訟期間工作。

³¹ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILCO_CODE:C189，擷取於2021年9月22日。

³² 這定義了「招聘費或相關成本」為「於招聘過程中產生的任何費用或成本，使移工能保住工作機會，不論強加或接收的方式、時機或地點」。第7項原則明顯禁止收取上述費用。 https://www.ilo.org/global/topics/labour-migration/publications/WCMS_536755/lang-en/index.htm

³³ 《公義的代價：家務移工在港試圖處理勞資糾紛的經驗》· FADWU (2019年) · <https://www.publitas.com/rights-exposure/the-price-of-justice/page/1>

改善監察、調查、起訴和定罪



改善

目前，香港特區政府識別僱傭中心違規行為的政策框架顯然毫無成效。政府需要採取更有效的措施來加強當前的立法保障，讓家務移工免受剝削，箇中應包括提升篩查質素，以識別違反《守則》的僱傭中心。其中一個重要部分就是改善家務移工的投訴渠道，使其更方便及容易作出投訴，包括以她們的語言設立一個（在線和離線）易於使用的溝通平台。透過促進那些遭受剝削的人提出申訴，定將有助職業介紹所事務科獲得違規行為的證據。緊接這些措施的是應該依法對涉嫌違法者進行徹底調查，並檢控涉嫌違反勞工法例的僱傭中心。

於2019年底、2020年底及2021年8月底，全港分別有1,493、1,530及1,529間經營家務移工轉介服務的僱傭中心。在過去三年（2019、2020和2021年1至8月），職業介紹所事務科對經營家務移工轉介服務的僱傭中心分別進行了1,390、1,091和1,115次巡查。儘管如此，研究反映僱傭中心依然違反《守則》的多項規定，而不用承擔嚴重後果，使他們能夠繼續逍遙法外。勞工處報稱在2019至2021年間，在被發現違反《僱傭條例》的僱傭中心當中，僅得10宗定罪³⁰，包括1宗無牌經營、2宗管理無牌職業介紹所和9宗濫收求職者佣金。然而，處方在這三年間分別接獲了475、290和269宗對服務家務移工的僱傭中心的投訴。

此外，職業介紹所事務科在2021年10月4日回信FADWU的回信，報稱2019年、2020年和2021年間，分別有127和6家僱傭中心被吊銷牌照。在這三年間，僱傭中心因為濫收求職者佣金而被判處10次罰款平均為16,660港元，但這平均全因一宗84,000港元的罰款而顯著提高。如果去除這個離群值，平均值將減少一半以上，只有8,260港元。考慮到職業介紹所事務科的全部權力，以及僱傭中心為安排移工工作所得的利潤，罰款的款額實在難以發揮阻嚇作用。

³⁰ <https://www.eaailabour.gov.hk/tc/convicted.html>, 擷取於2021年8月22日。

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4.3

還有甚麼需要做的？

香港特區政府已開展了活動，舉辦僱傭中心簡報會和研討會、公眾宣傳活動和培訓政府官員，以提升公眾對家務移工受剝削的認識²⁸。在2017年1月頒布《守則》的同時，勞工處還推出了《職業介紹所專題網站》，以方便公眾獲取有關規管僱傭中心的資訊。2020年，香港特區政府一共培訓了880名來自不同政府機關的官員。²⁸

香港特區政府比往年調查了更多強逼勞動的案件，包括一宗引人注目的威逼借貸案件，當中涉及一間財務公司向家務移工收取超額和違法的費用。此外，政府還對9,600名來自弱勢社群的人進行了販運篩查。然而，在所有接受篩查的弱勢群體中只有三人被確定為被販運者。香港特區政府在2020年沒有檢控或定罪任何勞工販運者。²⁹ 法例執行不力，將繼續妨礙推進家務移工的權益保障。

²⁸ <https://www.state.gov/reports/2021-traffic-in-persons-report/hong-kong/>，擷取於2021年8月22日。
²⁹ <https://www.state.gov/reports/2021-traffic-in-persons-report/hong-kong/>，擷取於2021年8月22日。

4.2

香港特區政府還有採取甚麼措施來解決這個問題？



2018年3月，香港特區政府發布了《打擊販運人口及加強保障外籍家庭傭工行動計劃》²³。此外，香港特區政府在年度預算中預留了6,223萬港元的撥款，以資助專用於打擊人口販運活動的職位。²⁴可是，如果沒有額外的立法保障及更高的識別率和起訴率，保障家務移工的措施便不足以有效執行。

法律框架的若干修訂加強了對家務移工的保障，尤其在《僱傭條例》下，如僱主拖欠工資、少付或延遲支付工資，以及沒有給予僱員休息日和法定假期，都需負上刑事責任。此外，2018年修訂的《僱傭條例》大幅提高了對濫收求職者費用和無牌經營職業介紹所的最高刑罰，由最高罰款50,000港元增至最高罰款350,000港元和監禁三年。修訂更將起訴這兩項罪行的法定時限由六個月延長至十二個月。²⁵香港特區政府規定，違反《守則》可能導致吊銷或拒發牌照。²⁶政府更將罪行的涵蓋範圍擴展至持牌人之外的相關人士，因此合夥人、其他工作人員或相關人士（例如管理層或以中介身份行事的人）都可能被起訴。儘管如此，鑑於本研究揭示的違規行為的規模，幾乎沒有證據證明大多數違反《守則》的僱傭中心因而受罰。勞工處發佈的定罪數目和警告數量仍然極低，自2019年以來僅得12宗定罪。²⁷

²³ 《行動計劃》可於香港特別行政區保安局網站下載：www.sb.gov.hk/chi/special/index.html，以及勞工及福利局：www.lwb.gov.hk/chi/home/index.htm。

²⁴ <https://www.state.gov/reports/2021-traffic-ing-in-persons-report/hong-kong/>，擷取於2021年8月22日。

²⁵ 香港特別行政區，《2018年僱傭（修訂）條例》刊憲，2018年2月9日。可見於<https://www.info.gov.hk/gia/general/201802/09/P2018020600353.htm>，擷取於2021年9月21日。

²⁶ 香港立法會，立法會資料摘要，《2017年僱傭（修訂）（第2號）條例（第57章）草案》（備案參考：LD CR/5/15/706），2017年6月6日，第3至5頁，可取於http://www.legco.gov.hk/yr16-17/chinese/bills/brief/b201706163_brf.pdf，2021年9月21日。

²⁷ <https://www.eaaalabour.gov.hk/tc/convicted.html>，擷取於2021年8月22日。

4.1 《守則》有沒有改善 對家務移工權益的保障？



2018年和2021年的調查均反映實際上沒有僱傭中心完全遵守《守則》。在2021年的調查中，100%的僱傭中心違反了至少一項的《守則》規定（2018年的研究有96%）。不過，值得注意的是，各項《守則》的違規行為帶有不同程度的嚴重程度各，譬如收取違法和/或超額的費用（新來港的佔52%，更換僱主的佔46%）和沒收護照或其他個人文件（29%）比其他違規行為更加嚴重。然而，這些作為《守則》的核心規定也遭到有規模地違反，過半受訪者表示僱傭中心違反《守則》在護照和/或費用上的規定。在105名受訪者中，61位（佔57%）表示僱傭中心會在抵港時收取費用、轉換工作時收取費用和/或扣押護照。

比較2018年和2021年的研究資料，反映出自《守則》實施以來，移工權益的保障只有些微改善，尤其在提供標準僱傭合約方面。此外，2018年的資料顯示，13%的受訪者曾就工作有關問題向僱傭中心投訴，其中32%的受訪者表示僱傭中心曾嘗試協助。與2021年的資料相比，相關數字有所上升：22%的受訪者表示曾向僱傭中心投訴，其中54%表示僱傭中心曾嘗試協助，並有37%獲得了正面結果（比較2018年的7%）。另一個改善的指標就是少了受訪者有時不能在休息日離開僱主居所，由2018年研究中的38%，下跌至2021年的12%。違法收費情況亦有見改善（尤見於菲律賓籍受訪者中），但這未必是由於《守則》奏效，因為印尼籍受訪者報告了相反的情況，故此，違法收費的減少更有可能歸因於菲律賓政府執行的法定政策。



求由僱主承擔費用，而不是家務移工。²¹然而，該政策似乎引入了一項使用商業銀行的受規範貸款計劃。在撰寫本報告時，這項新政策將如何影響印尼國民在香港從事家務工工作而支付的金額，仍是未知之數。而在菲律賓，相類似的家務移工保障則自2006年起，緊接著一系列的家務工保障改革推行，致使當地中介不得向前往香港的移工收取中介費。但值得留意的是，費用仍然可以透過隱藏或另類方式收取，例如培訓費、體檢費或攝錄費用。此外，中介剝削處於經濟弱勢的家務移工也是司空見慣的。他們向移工苛索違法費用但不提供收據，或勾結放債機構以搾取移工更多金錢。²²

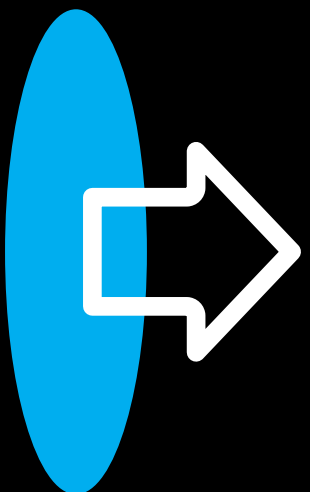
沒收個人文件是一種脅逼和剝削，用以限制家務工的行動或抉擇，例如更換僱主。根據香港刑事法律（詳見《盜竊罪條例》〔第210章〕），這也是違法的卻幾乎不可能被起訴，因為難以意圖證明且易起爭議。這種情況也經常發生，幾乎三分之一受訪者透露，她們的個人文件在未經她們同意下被扣押。勞工處在一封寫給FADWU的回信表示，處方一旦發現涉嫌違法行為，他們會將案件交由執法機關處理。在過去三年（2019年至2021年8月），職業介紹所事務科向警察、入境處和海關分別轉交了41、23和79宗涉及家務移工的案件，但處方並沒有詳細列出這些案件中有多少關乎沒收護照，以及有多少的案件被成功起訴。

不少程序問題依然存在，主要與提供收據或合約和協議有關。過半受訪者表示沒有收到任何清楚列明僱傭中心會向她們收取的所有費用的服務協議。提供收據是一個尚待解決的問題，88%的受訪者表示要沒有收到收據，要不收到了不準確的收據。此外，77%的受訪者表示僱傭中心向她們提供了以她們明白的語言撰寫的標準僱傭合約，比2018年的27%有顯著增長。然而，即使《守則》規定僱傭中心必須告訴移工她們擁有的權益，只有略多於一半的受訪者（53%）報稱僱傭中心曾給她們講解過自己在香港的法定勞工權益，或自己曾被轉介至負責保障勞工權益的政府機關或組織。

²¹ <https://apmigratio.iio.org/news/indonesia-delays-new-migrant-worker-policy-to-july>, 擷取於2021年9月21日。

²² <https://helpfordomesticworkers.org/en/get-help/understanding-your-rights/employment-agency-issues>, 擷取於2021年8月22日。

3.8 結論



本研究顯示自2017年1月13日頒布《守則》以來，其實施著實有限，而且對移工的保障幾乎沒有改善。本研究訪問過的所有家務移工都經歷過直接違反《守則》規定的事件，與2018年的69%相比，這一數字有所增加。這意味著許多香港的僱傭中心和家務移工原籍國（就本研究而言，在印尼和菲律賓）的對口招聘中心，都涉及剝削和違法經營手法，違反家務移工的權益。鑑於FADWU之前的研究在2017和2018年進行，《守則》當時相對較新，但時至本研究，《守則》已經實施了四年多，所有僱傭中心理應已充分了解《守則》規定的責任，且有足夠時間將其規定納入業務運作。

本研究所記錄的違反《守則》行為，以嚴重的違規行為為主，例如收取違法和／或超額費用、沒收個人文件或特定的程序元素，包括收據或合約和協議。本研究發現僱傭中心向家務移工收取的費用已遠超法定款額，而且顯著地大幅超過以往的研究結果。自2018年以來，家務移工的經濟負擔有增無減。對許多人來說，這些費用已超出初時告知她們的款額，其中28%的受訪者表示，得以在港就業的收費總額高於僱傭中心最初的報價。無論費用是在香港、家務工原籍國或是兩地中產生的，債務負擔帶來的負面影響都是一樣的，而最常在香港呈現出來。

在新來港移工中，印尼籍受訪者比菲律賓籍受訪者更大可能繳付違法和／或超額的中介費用，分別有62%的印尼移工（35位中的32位）和16%的菲律賓移工（70位中的11位）表示僱傭中心收取了中介費。其中一個原因或許在於印尼的中介機構近來可合法向家務工收取佣金²⁰。在2021年8月12日，印尼政府推出了一項新的就業收費政策，要

²⁰ 根據保護印尼移工的第18/2017號法律第30條，移工毋須為越洋就業支付任何費用，除了以下相關費用，包括申領印尼國民身份證（e-KTP）、申領護照、進行體檢和報考能力／認證考試。然而，本研究的數據顯示該法例仍未被完善實踐。

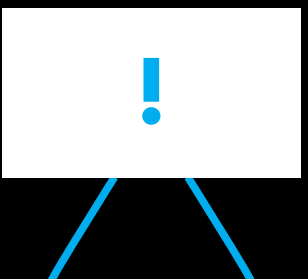
3.6 提供付款收據

《守則》第4.1.1條要求僱傭中心在收取家務移工任何款項後提供收據，上面載有僱傭中心的名稱、移工姓名、已收取的款額、收取款項的日期和公司印章；同時規定僱傭中心應保存所有收據的記錄，以供勞工處查閱。

儘管如此，88%的受訪者表示要不沒有收過任何收據，要不收到不準確的收據，這情況實在駭人。其中99%的受訪者表示向僱傭中心付款後沒有收過收據，比2018年的96%略有減少。而在收到收據的39名受訪者中，94%表示收據上沒有詳列僱傭中心收取的所有款額，意味著這些公司仍然違反《守則》。提供詳細準確的收據有效防止僱傭中心向家務移工收取違法費用。如果欠缺這重要文件，移工就難以證明僱傭中心違法，提出申訴。



3.7 促進求職者和僱主 對其權益和責任的認識



《守則》還規定僱傭中心有責任確保家務移工了解她們在香港的法定權益，包括現有的反歧視條例和標準僱傭合約的條款。再者，僱傭中心應向移工提供以其明白的語言撰寫的標準僱傭合約，並解釋有關內容。

這是自頒布《守則》以來，依循情況顯著增加的少數項目之一。全部受訪者稱他們曾簽署標準僱傭合約，其中77%更表示僱傭中心曾向她們提供以其語言撰寫的標準僱傭合約。這比2018年的調查結果有顯著改善，當時只有27%的受訪者獲得以她們母語撰寫的標準僱傭合約。

此外，《守則》規定僱傭中心必須確保家務移工明白，當有爭議或投訴時，她們可以向相關的政府部門和／或其他機構求助。但是，只有稍多於一半的受訪者（53%）表示僱傭中心曾向她們解釋自己在香港的法定勞工權益，或她們曾被轉介給相關政府機構或組織。這數據比2018年的調查結果略高，當時46%的受訪者表示僱傭中心曾向她們講解權益，或提供詳述勞工處相關機制的小冊子。

3.4 行事誠實及盡責



僱傭中心應向求職者提供工作相關的條款和職責，確保資料完善準確。否則求職者的知情同意將變無效。《守則》第3.8.2條和3.4.1條重申了這一點，詳細說明僱傭中心在提供資料方面的職責，並應盡其責任覆核未來僱主的所有資料，具體包括僱主資料、職責內容、薪酬福利或住宿安排。

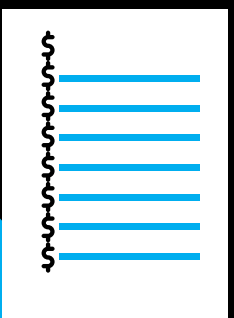
儘管如此，許多僱傭中心都未能在安排家務移工給新僱主前，誠實地行事或盡其責任。整整28%的受訪者表示獲安排在港工作的收費總額與僱傭中心原本的報價不符，其中85%的受訪者更表示實際收費比談好的高。這情況比2018年的調查所得有見加劇，當時23%的受訪者稱收費總額有別於僱傭中心初時承諾的價錢，其中大多數更表示收費總額高於預期。10%的受訪者表示，她們的僱傭條款和細則有異於僱傭中心最初的規定。受訪者提到她們工作的各個方面有別於僱傭中心最初的承諾，例如薪金、工作地點、假期或休息日，或家庭人數。

3.5 求職者和僱主擬訂 書面服務協議



根據《守則》規例，僱傭中心必須在安排工作或收取任何費用之前，分別與家務工和僱主擬訂服務協議。僱傭中心與家務工擬訂的協議應詳列一些細項，包括提供的服務類別（例如尋找新僱主、續約）。協議亦應說明會否收取佣金，以及如收取佣金，確實款額不得多於家務工入職第一個月後，預期工資的10%。在相關的情況下，也應列明支付佣金的日期。最後，在家務工的同意下，她們在過去兩年的受僱紀錄也可以包含在文件中。《守則》進一步要求僱傭中心在協議中詳列具體條款，包括與雙方協訂的服務條款、收費表和投訴程序。儘管如此，過半受訪者（54%）表示她們沒有收過一份詳列僱傭中心會向她們收取的所有費用的服務協議。這現象比2018年的調查結果多，當時有42%表示沒有收過如此的服務協議。

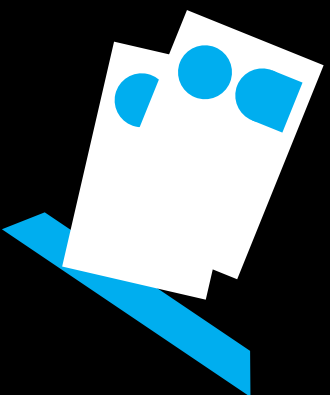
3.2 避免牽涉在求職者的財務事宜



《守則》禁止僱傭中心直接或間接牽涉在求職者的財務事宜，並建議、安排或鼓勵求職者向任何財務機構或個人借取貸款，以及禁止收取培訓費用。以往的研究指出，僱傭中心有時借助第三者收取違法費用，主要透過「假貸款」計劃強逼移工簽署文件，說明他們已從財務公司獲得貸款。

儘管《守則》明確禁止僱傭中心牽涉於求職者的財務事宜，但是這個問題懸而未決，自2017年以來幾乎沒有變化。12%的受訪者表示僱傭中心鼓勵她們向第三者借貸（2018年時為13%），當中的11%更表示僱傭中心已直接為她們安排貸款。如果這些數字代表更廣泛的人口，這表示超過40,000人被逼借取非法貸款。

3.3 求職者的個人文件及財物



任何人沒收家務工的個人文件，如護照、僱傭合約或香港身份證，會觸犯香港法例第210章《盜竊罪條例》，最高可被判處監禁10年。《守則》第3.1.1節也重申了這一點，在未經家務移工同意下，僱傭中心不得扣押家務移工的任何個人文件和財物，並必須歸還任何安排工作所需的文件，不得延誤。

可是，沒收文件仍然是一種普遍的脅逼和剝削手段，以控制家務工的行動或阻礙她們轉工。29%的受訪者表示在開始現職工作之前或之後，個人文件被扣押，其中70%是被僱傭中心取去這些文件。與2018年數據相比有明顯增升，當時24%的受訪者報稱個人文件被扣押。如果這些數字代表更廣泛的人口，這表示有超過100,000人的個人文件（包括護照）被非法沒收。

研究指出護照或僱傭合約是最常被奪去的文件類型，妨礙家務移工行動或轉工，難以逃離僱主的虐待。幾乎所有受訪者（93%）表示他們曾直接要求回個人文件，但只有66%的受訪者表示僱傭中心或僱主在他們認為合理的時間內歸還。

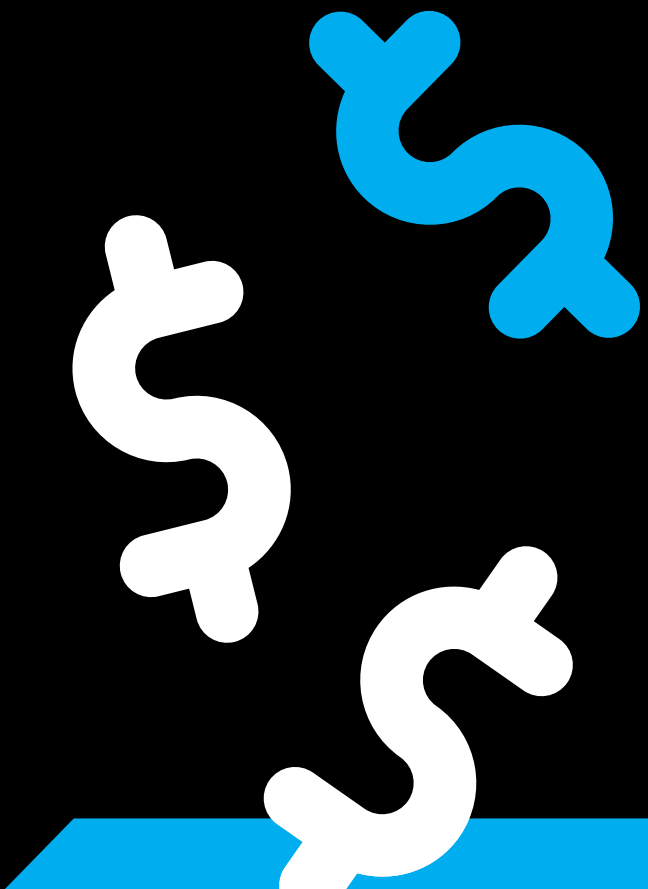
(70位中的21位)稱僱傭中心收取了費用。這些數據與2018年報告形成鮮明對比，當時有58%印尼籍受訪者(71位中的41位)和74%菲律賓籍受訪者稱抵港後支付費用。在新來港的家務移工中，約有30%的受訪者在開始工作前，或獲發首月工資前，向僱傭中心繳付了費用，違反了《守則》第35.11條。新來港的受訪者稱她們主要透過扣薪方式付款，平均在5.6個月內繳付了12,446港元中介費(款額介乎350至19,800港元不等)。這一數字比2018年錄得的高出38%，當時新來港的受訪者表示她們平均支付9,013港元。

在香港更換僱主的受訪者中，46%的受訪者(28位中的13位)主要以扣薪的方式繳付了平均6,235港元的違法中介費¹⁹，比2018年的所得數據略有下降，當時51%的受訪者被多收了費用。不過，如述顯示，費用本身較2018年受訪者平均支付的款額顯著增加，實則比當時平均的3,164港元多了一倍。按最低許可工資計算，這比香港的僱傭中心可收取的佣金上限多出接近1.3倍。然而，更換僱主並不經常涉及原籍國的招聘中心，故此，這些收費更有可能是由香港的僱傭中心違法收受。鑑於疫情，大多數家務移工都在沒有離港的情況下，成功在2020年3月後續約或更換僱主。在這些情況下，繳交的費用很可能透過支付予香港的僱傭中心來累算。

《守則》規定僱傭中心只可在家務移工獲發第一個月工資後收取費用，違例者最高可被判處罰款350,000港元及監禁三年。然而，研究反映36%的受訪者被逼預繳費用，當中新來港的家務移工平均繳付3,990港元，更換僱主的則為4,051港元。這再次比2018年時家務移工繳付的款額明顯增多，當時受訪者稱平均繳付的款額分別為1,151港元和1,682港元。

¹⁹ 家務移工付費更改僱主的收費細項各異，例如有些香港的僱傭中心收取違法費用，以及在原籍國被收取違法及/或超額費用。有關菲律賓家務移工於香港與菲律賓實被收取非法中介費之情況的研究，請參《左右為難·進退兩難》：<https://www.publitas.com/rights-exposure/between-a-rock-and-hard-a-place-cn/page/1>

3.1 職業介紹所可收取的費用



本研究反映僱傭中心仍有向家務移工收取違法及／或超額費用，而且自《守則》頒布後，這些費用更大幅增加。所有受訪家務移工中，約一半稱曾繳付違法及／或超額的費用，由原籍國和／或香港的中介公司收取。這些費用的款額遠超香港的僱傭中心可收取的法定限額，亦遠高於2018年報告的數字：新來港的家務移工要比2018年報告的平均多付38%，而那些更換僱主的移工更要多付88%。與2018年的數據比較，證明了實施《守則》並未能減輕家務移工的經濟負擔。雖然部分費用或由香港以外的就業機構收取，但那些債務的負擔及作用在在影響家務移工的人權和勞工權益，尤當債務被用來強行保留移工在他們不情願的工作條件中。

《守則》第3.5.1條列明除訂明佣金外，香港的僱傭中心不得直接或間接向家務移工收取任何形式的酬勞，以換取中介服務。此外，佣金金額不得超過移工入職後首月工資的10%。截至2021年，家務移工的規定最低許可工資定為每月4,630港元，與大多數受訪者在還清累計債務後獲取的工資大致一致。因此，若按移工的規定最低許可工資計算，僱傭中心在法律上不得收取超過463港元的佣金。¹⁸

本研究顯示52%的新來港受訪者（84位中的44位）抵港後，被僱傭中心收取違法及／或超額費用，大致相當於2018年的調查結果，當時有57%的受訪者抵港後，被僱傭中心收取違法及／或超額費用。在新來港移工中，印尼籍比菲律賓籍更有可能繳付了違法及／或超額的費用，當中91%印尼籍受訪者（35位中的32位）和16%菲籍受訪者

¹⁸ 《外籍家庭傭工「規定最低許可工資」及膳食津貼維持不變》· 2020年9月29日 · <https://www.info.gov.hk/gia/general/202009/29/P2020092900363.htm> · 擷取於2021年9月21日。

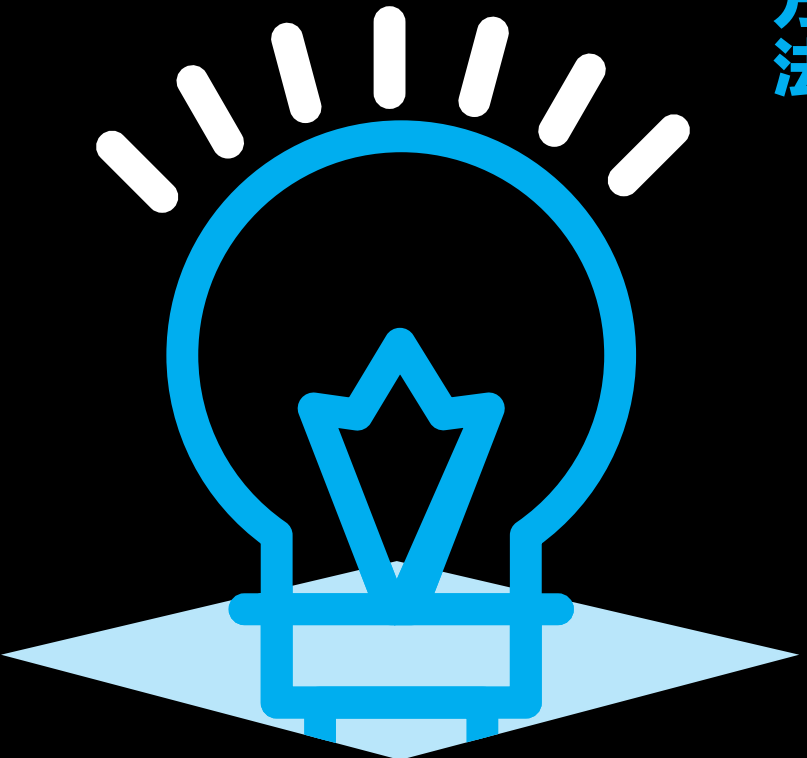
3 有關僱傭中心依循《守則》的調查結果



本研究所有採訪均在戶外進行，並已按照公眾衛生相關法規採取適當的防疫措施，包括社交距離措施和其他安全措施，來減低2019冠狀病毒的傳播風險。值得注意的是，家務移工親述歧視在疫症期間顯著增加¹³，包括僱主限制其法定每週一天24小時的休息日，以及在公眾場所受到其他形式的侵犯和騷擾。儘管沒有證據證明家務移工比普通大眾更易受到感染或傳播病毒，但政府和一些立法會議員¹⁴默許和／或確許這些限制。其他政府政策，例如強制所有家務移工進行檢測¹⁵和接種疫苗（該政策在有關團體強烈抗議後被撤銷¹⁶），也獨對她們構成歧視待遇。¹⁷

- 13 紐約時報·《For Hong Kong's Domestic Workers During Covid Discrimination Is Its Own Epidemic》（關於疫情中的香港家務工·歧視才是它們的疫情）·2021年5月18日·<https://www.nytimes.com/2021/05/18/world/asia/hong-kong-domestic-worker-discrimination.html>· 擷取於2021年9月21日。（只含英文版）
- 14 Hong Kong Free Press·《Covid-19: Lock down domestic workers on their day off, says pro-Beijing Hong Kong lawmaker》（2019 新冠狀病毒病：在休息日困在家務工·親中香港立法會議員說）·2020年12月29日·<https://hongkongfp.com/2020/12/29/covid-19-lock-down-domestic-workers-on-their-day-off-says-pro-beijing-hong-kong-lawmaker/>· 擷取於2021年9月21日。（只含英文版）
- 15 The Diplomat·《Hong Kong Domestic Workers Decry Mandatory COVID-19 Testing》（香港家務工公然反對強制新冠狀病毒測試）·2021年5月7日·<https://thediplomat.com/2021/05/hong-kong-domestic-workers-decry-mandatory-covid-19-testing/>· 擷取於2021年9月21日。（只含英文版）
- 16 Hong Kong Free Press·《Hong Kong scraps mandatory vaccines for domestic workers after outcry》（反種族·撤掉政策：強制家務工接種疫苗）·2021年5月11日·<https://hongkongfp.com/2021/05/11/hong-kong-scraps-mandatory-vaccines-for-foreign-domestic-workers-after-outcry/>· 擷取於2021年9月21日。
- 17 「如果僱主決定強制接種疫苗，它必須以非歧視方式執行，符合第111號公約要求，並適當考慮可能需要豁免和便利的具體情況。最後，根據第15號公約的要求，任何要求的職業安全與衛生措施不應涉及工人的任何支出。」《國際勞工組織標準及新冠狀病毒（新型冠狀病毒）》第29頁·https://www.ilo.org/global/standards/MCMS_780445/lang-en/index.htm

2 研究方法



本研究旨在跟進 FADWU 於 2018 年 6 月發表的研究報告，題為《推動變革的中介？對香港僱傭中心依循職業介紹所之評估》，旨在評估《職業介紹所實務守則》對保障在港家務移工的權益的影響。該研究由 FADWU 理事會策劃，並由進步家務工工會 (PLU) 及其合作夥伴香港印尼移工社群 (KOBUMI-K) 兩個團隊進行。

這項 2021 年的研究則旨在評估僱傭中心自 2017 年 1 月頒佈《守則》及 2018 年進行首次調查以來，在依循《守則》的程度上有沒有重大變化。本研究採用參與式研究方法，以肯定家務移工能夠辨識她們的人權和勞工權益被剝削的情況、其嚴重性及尋求解決辦法；同時旨在提升移工及其社群利用第一手信息、知識和經驗，為自身權益發聲的能力。

香港亞洲家務工工會聯合會 (FADWU) 和團結家務工工會 (UDDW) 的會員組成團隊，於 2021 年 4 至 6 月期間收集數據；。他們跟 105 名家務移工進行了質性結構式的訪問，其中 35 名受訪者來自印尼，70 名來自菲律賓。是次研究選擇了這兩個國籍，是因為他們代表了香港絕大多數的家務工。所有受訪者均為年齡介乎 23 至 52 歲的女性。

為方便比較上一份報告的主要發現，本研究取用了 2017 至 2018 年研究用的調查問卷來收集數據。訪問在香港多區進行，地點選在家務移工於休息日通常聚集的地方。抽樣方法具一定限制，因為研究人員無法接觸到被禁休假，或害怕遭受報復而拒絕受訪的家務移工，而她們正代表著香港最脆弱和受剝削的移工。缺乏這些家務工的回應或導致研究結果出現偏差。此外，本研究的樣本量比 2018 年的少得多，當時在數據收集期間訪問了 452 名移工，而 2021 年只訪問了 105 名。樣本量縮減的部分原因見於 2019 冠狀病毒病肆虐期間，香港實施社交距離措施而造成困難。

- 4.10 促進求職者和僱主對其權益和責任的認識
- 4.12 避免牽涉在求職者的財務事宜
- 4.13 求職者護照或個人身分證明文件

如果《守則》獲全面實行，理應可減少家務移工遭受人權和勞工權益剝削的情況。可是，沒有達到《守則》第4章中各項最低標準的僱傭中心，並不會負上任何刑事責任。儘管如此，勞工處處長曾表示，所有僱傭中心均需執行這些規定，而他們對《守則》的遵循將是「處長考慮有關持牌人是否經辦職業介紹所的適當人選時的其中一個重要因素」。¹⁰

此外，勞工處發佈《守則》草擬本時，表示會「密切監察《守則》的成效」及「如本守則未能達致其目標，勞工處會考慮其他措施，包括修訂《僱傭條例》及／或《職業介紹所規例》，以適當地規管業界」。¹¹

2018年，FADWU發表了一份研究報告，評估僱傭中心對《守則》核心部分的依循情況，而那些核心部份的目的正是為了保障家務移工的權益。《推動變革的中介？對香港僱傭中心依循職業介紹所實務守則之評估》報告指出¹²，96%的受訪者（452位中的434）的僱傭中心均沒有依循《守則》的主要規定，且過半受訪者（56%，或450位中的253位）仍在繳付違法的中介費。研究還證實這些違反《守則》的情況並不只是個別無良中介的行為，而是148間已登記的香港僱傭中心未有依循《守則》規定。

然而，那些無視法律和《守則》的中介仍然逍遙法外。在2017年1至7月期間，只有5間違法的僱傭中心被定罪，及發出12封書面警告，告誡未有依循《守則》的僱傭中心。報告認為當務之急是要解決缺乏有效執法行動的問題，進一步改善現有政策和做法。

有見及此，這項研究本以《推動變革的中介？》的跟進研究來進行，查考《守則》生效近五年後，香港的僱傭中心有否依循《守則》，以及《守則》能否改善家務移工權益的保障。

⁹ 香港特別行政區勞工處，《職業介紹所實務守則》，2018年2月。可見於：<https://www.gov.hk/tc/residents/government/publication/consultation/docs/2016/CoP.pdf>。擷取於2021年9月21日。

¹⁰ 見香港特別行政區勞工處，《職業介紹所實務守則》頒佈》，2017年1月13日。可見於：<https://www.info.gov.hk/gia/general/201701/13/P2017011300303.htm>。擷取於2021年9月21日。

¹¹ 香港特別行政區勞工處，《職業介紹所實務守則》草擬本》，第19段。可見於：<https://www.gov.hk/tc/residents/government/publication/consultation/docs/2016/CoP.pdf>。擷取於2021年9月21日。

¹² https://view.publitas.com/rights-exposure/agents-of-change_report_final_cn/page/1

全球現有7,500萬名16歲以上的家務工³，其中1,100萬名是移民工⁴，而當中35%在亞太地區工作。香港是家務移工的主要工作地點之一，在本地一般被稱為「外籍家庭傭工」（外傭）。截至2020年，有373,884名家務移工在香港正式受僱，約佔全港總工作人口的9%⁵，其中主要來自菲律賓和印尼，分別有207,402人和157,802人⁷。

菲律賓和印尼籍家務移工一般會透過原籍國的招聘中心找香港的工作，這些招聘中心通常與香港的僱傭中心有直接聯繫，轉介家務工到香港的僱主。在過去十年，多份獨立研究報告指出，香港多間僱傭中心與移工原籍國的對口招聘中心，在招聘和安排移工工作方面，均指涉剝削移工的非法營運手段。⁸

2016年，香港特別行政區勞工處嘗試著手解決這些報告提出的問題，並於同年4月發佈《職業介紹所業務守則》（下稱《守則》）⁹的草擬本，且在隨後的三個月就草擬內容諮詢各方持份者。

2017年1月，勞工處正式頒佈《職業介紹所實務守則》。《守則》重申香港的僱傭中心必須依循的各項現行法律規定（例如《僱傭條例》下的《職業介紹所規例》、《入境條例》和《個人資料（私隱）條例》），亦就以下各個主要範疇訂立中介公司必須達到的最低標準：

- 3.5 職業介紹所可收取的費用
- 3.8 採用公平營商手法
- 3.9 遵守入境法例

- 3.10 不得協助或教唆僱主違反《僱傭條例》下有關支付工資的規定

- 3.11 求職者的個人文件及財物

- 4.4 行事誠實及盡責

- 4.5 保持具透明度的營運手法

- 4.6 與求職者和僱主擬訂書面服務協議

- 4.7 提供付款收據

³ Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189) (《職業工實現理想工作的現實》, 2011年採納家務工公約後十年的進展及展望)。可取於: https://www.ilo.org/global/publications/books/WCMS_802551/lang-en/index.htm。擷取於2021年10月20日。(只有英文版)

⁴ 國際勞工組織。ILO Global Estimates on Migrant Workers: Results and methodology (Special focus on migrant domestic workers) (《國際勞工組織對移工的全球估計：結果及方法（特別關注家務移工）》, 2015年12月，第16頁，可見於: http://www.ilo.org/global/migration/publications/WCMS_436343/lang-en/index.htm。擷取於2021年9月22日。(只有英文版)

⁵ <https://data.gov.hk/en-data/dataset/hk-immid-set4-statistics-fdh/resource/063e1929-107b-47ae-86ac-b4b1ed460ac3>
⁶ 香港政府新聞網。"Gov't fighting people trafficking" (政府打擊人口販運)。2018年4月27日。可見於: https://www.news.gov.hk/eng/2018/04/20180427/20180427_121234_067.html。擷取於2021年9月21日。(只有英文版)

⁷ <https://data.gov.hk/te-data/dataset/hk-immid-set4-statistics-fdh>

⁸ 見：國際特赦組織。《Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong》(剝削圖利·政府失職：印尼籍家務移工被販運到港)。2013年11月(文件編號：ASA 17/029/2013)；菲律賓進步勞工聯盟 (APL)；進步勞工聯盟香港分會 (APL-HK) 及香港進步家務工工會 (PLU)。《License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong》(持牌剝削：菲律賓家務移工在港經歷的招聘手法及問題)。2013年。可見於: <http://www.idwfd.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>。擷取於2021年9月21日。FADWU。《左右為難，進退兩難：菲律賓家務移工於香港與菲律賓被收取非法中介費之情況》, 2016年10月。可見於: <https://view.publitas.com/rights-exposure/between-a-rock-and-hard-a-place-cn/page/1/>。擷取於2021年9月21日。以及 Justice Centre。《Coming Clean... 香港外籍家庭傭工遭受強逼勞動以及強逼勞動為目的的人口販運的普遍程度》, 2016年3月。

組織介紹

香港亞洲家務HH會聯會 (FADWU)

FADWU 是香港唯一一個已註冊、同時組織本地和外籍家務工的工會聯會，是國際家務工聯會 (IDWF) 的屬會。現時 FADWU 的屬會包括香港家務助理總工會 (HKDWGU)、香港泰國移工工會 (TMWU)、香港尼泊爾家務工工會 (UNDW)、海外家務工工會 (ODWU)、及進步家務工工會 (PLU)。FADWU 現時透過其屬會擁有 847 位付費會員。

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香港進步家務HH會 (PLU)

PLU 是香港其中一個家務移工工會，於 2012 年 4 月 27 日成立，並於香港職工會登記局登記 (TU1247)。PLU 是香港亞洲家務工工會聯會 (FADWU) 的屬會，亦是國際家務工聯會 (IDWF) 的間接屬會。

PLU 致力提倡和保障香港所有家務工的權益和福利，活動及服務主要包括組織工人、教育、能力建設、政策倡議與公眾教育運動、動員，及法律援助／服務。

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團結家務HH會 (UUDW)

UUDW 是香港其中一個家務移工工會，於 2020 年 2 月 26 日成立，並於香港職工會登記局登記 (TU1400)。

UUDW 致力幫助在香港遇到僱主和中介問題的家務工，透過倡導、行動和對話，促進和維護家務工的權益和福利，並提升家務工的能力，勇敢提出僱主及僱傭中心的違規行為，以改善工作條件。UUDW 為此提供能力建設活動、教育、政策倡議、組織和法律援助／服務。

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前言

本研究項目由香港亞洲家務工工會聯合會（Hong Kong Federation of Asian Domestic Workers Union，下稱 FADWU）理事會提出及推動，包括訂立研究目標，以評估《職業介紹所行為準則》的影響和招募研究團隊。

FADWU 的屬會——進步家務工工會（Progressive Labor Union of Domestic Union of Domestic Workers，下稱 PLU）及其合作夥伴——團結家務工工會（Union of United Domestic Worker，下稱 UUDW）組成團隊，於 2021 年進行為期四個月的研究。此外，另一團隊在 2020 年 6 至 10 月期間，利用秘密拍攝手法蒐證，收集香港僱傭中心的營運方式。

本研究採用參與式研究方法，以肯定家務移工能夠辨識她們的人權和勞工權益被剝削的情況、其嚴重性及尋求解決辦法；同時旨在提升移工及其社群利用第一手信息、知識和經驗，為自身權益發聲的能力。

鳴謝

FADWU 感謝以下組織支持製作本報告：

香港樂施會

團結家務工工會（UUDW）

特別鳴謝以下組織提供的技術和後勤支援：

國際勞工組織（ILO）¹
Rights Exposure ²

¹ 國際勞工組織是聯合國屬下的三方組織，旨在協助 187 個成員國的政府、僱主及僱員合作，訂立勞工標準、發展政策及策劃項目，為所有人提倡體面勞動 (<http://www.ilo.org>)。

² Rights Exposure 是一間獲獎的跨國人權顧問組織，就社會問題提供解決方案，為社會帶來正面改變；於 2014 年由一班人權及傳播界專業人士創立，向非政府機構、政府間組織、政府、工作、社群及社會企業提供一系列顧問服務 (<https://www.rightsexposure.org>)。

恰如其分？

評估過去五年《職業介紹所業務守則》的依循情況

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國際勞工組織 (ILO) 為本報告提供技術和資金支援。所有在研究中表達的意見及引用的文獻，責任屬個別作者，並不代表國際勞工組織立場，贊同個別意見。

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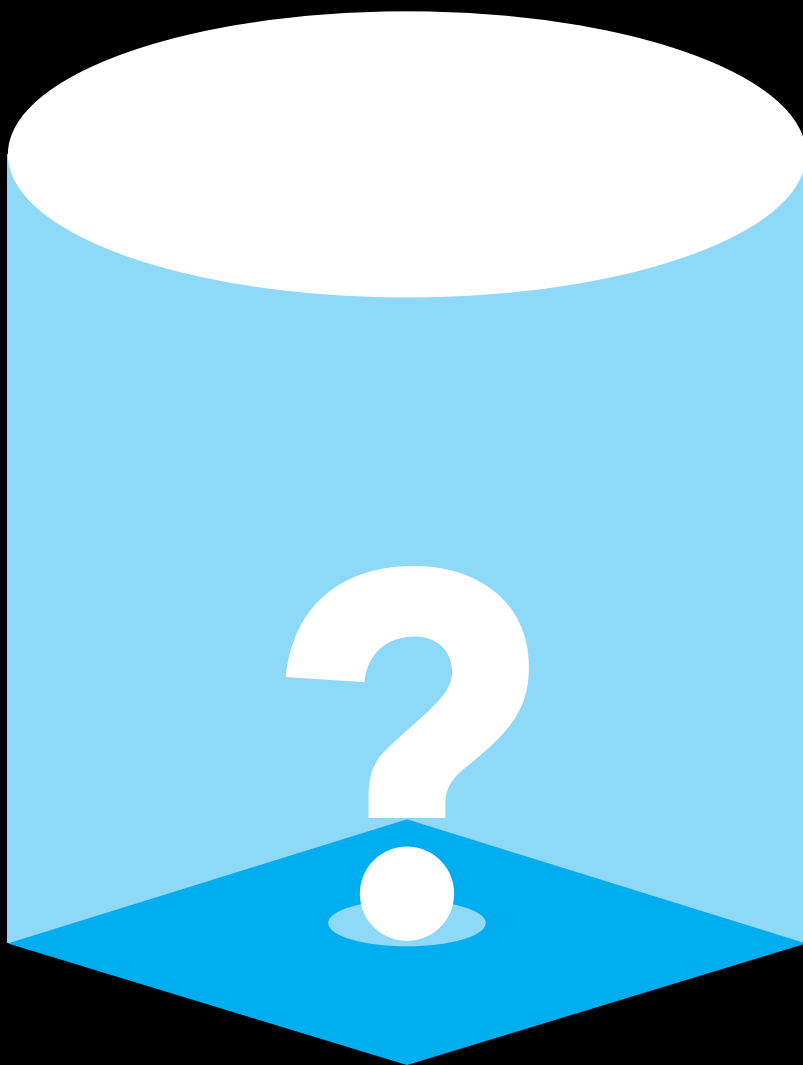
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恰如其分？

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