



ASIA PACIFIC MISSION FOR MIGRANTS (APMM)

Address: G/F, No. 2 Jordan Road, Kowloon, Hong Kong SAR
Tel. No. (852) 2723-7536 Fax No. (852) 2735-4559
Email: apmm@hknet.com Website: <http://www.apmigrants.org>

LC Paper No. CB(2)1356/12-13(10)

Submission to the Hong Kong Legislative Council on Overcharging by Recruitment Agencies

As a regional migrant service institution based in Hong Kong, the Asia Pacific Mission for Migrants (APMM) welcomes the initiative by the Hong Kong SAR Legislative Council to conduct a hearing on the operations of migrant recruitment agencies under its jurisdiction. We believe that it is a significant first step for the HK government towards enacting further measures that will regulate these third-party entities for the greater benefit of the territory's foreign domestic workers (FDWs) and their employers.

The biggest issue at hand on placement agencies in Hong Kong is their covert practice of overcharging FDWs, most notably Filipinos and Indonesians. While official Hong Kong policy mandates that it is the employers who should be paying any recruitment fee accruing to these agencies, the facts on the ground declare otherwise. Studies conducted by researchers from Stanford University (USA)ⁱ and Hong Kong University (HKU)ⁱⁱ reveal a well-entrenched system of illegal collections of fees and debt bondage arrangements among FDWs, not only in source countries but even in Hong Kong itself. This has been occurring for a long time and right under the very noses of the territory's state officials.

In the case of Filipino FDWs, the Stanford University study found that even as employers already pay for the airfares and other recruitment charges of their migrant domestics, new entrants are still made to pay fees imposed by private agencies in the Philippines. These are not called "placement fees" by these firms, but are rather disguised as payments for pre-employment services like medical checkups and trainings that are exorbitantly priced and are often unnecessary. Filipino FDWs usually incur debts from loan companies that are connected with placement agencies, and afterwards have to pay back their borrowings from Hong Kong in monthly installments that often take nearly a year to complete under ideal conditions. On the average, they need to shell out up to HK\$21,000 to these agencies prior to the start of their employment in HK.

Overcharging among Filipino and Indonesian FDWs possess a commonality and generally proceed along the same lines. As an example, placement agencies of both source countries oblige their migrant domestics to pay the remainder of the fees under conditions of premature contract termination, usually ranging between HKD10,000-15,000 and averaging 5 months in regular installments. Unlike their Filipino counterparts however, Indonesian FDWs are not allowed to renew their contracts directly with the same employers even after the completion of their first 2-year contract. The Indonesian government requires that all contracts (even recontracts with the same employer) pass through placement agencies and under the same procedures, thus laying the

condition for greater exploitation of Indonesian migrant workers and increasing their vulnerability to debt bondage and involuntary servitude.

Thus, the current policies of the HK government in regulating placement agencies are inadequate and ineffectual, to say the least. Such redress mechanisms as are available operate mainly on the assumptions that overcharging by agencies occur only in source countries, and that expressly prohibiting this in HK is sufficient to address the concern. Policy gaps in the regulation of placement agencies need to be filled in by the Hong Kong government in order to substantially reduce (if not totally eliminate) the former's illegal and unconscionable practices, and to afford FDWs maximal protection under HK laws and international norms on human rights.

While in most cases overcharging practices originate from sending countries, the studies cited point to the essential role of placement agencies operating within Hong Kong territory in completing the process. There is therefore an overriding rationale for the HK government to refine its existing policies and measures, and in this regard we respectfully recommend to the Legislative Council the following points for consideration:

1. Conduct an impartial and comprehensive investigation on overcharging and debt bondage by recruitment agencies, with the participation of non-government organizations (NGOs) that are directly involved in handling cases of FDWs in HK. The objective of such investigation is for the Hong Kong government to gain first-hand knowledge of the intricate operations of placement agencies from source countries to HK.
2. Provide a mechanism for coordination between Hong Kong's Labor Department and its Employment Agencies Administration (EAA) on one hand, and the Philippines' Department of Labor and Employment (DOLE) and the Philippine Overseas Employment Administration (POEA) on the other, to ban erring placement agencies. Such a mechanism should include the option for the Hong Kong government to terminate the licenses of placement agencies in their territory that are proven to be complicit in overcharging and debt bondage practices by their counterparts in sending countries.
3. Eliminate irrational evidentiary requirements from FDW complainants in the prosecution of cases of illegal exaction of fees within HK territory. Specifically but among others, this refers to demands by Hong Kong's prosecuting officials on complainants for *prima facie* proof, such as receipts on fee payments. As overcharging is done under conditions of circumvention of existing laws, placement agencies are often extremely careful not to leave such obvious evidence as might lead to their own prosecution.
4. In bilateral negotiations between the HK government and source countries on the deployment of migrant workers in Hong Kong, arrive at clear-cut provisions against overcharging and debt bondage in bilateral negotiations. This is an effective way of compelling sending-country governments to regulate their respective placement agencies from the point of origin.
5. Recommend to the National People's Congress (NPC) of the People's Republic of China the ratification of the ILO Domestic Workers' Convention (C189). This is the definitive

international standard on the fundamental rights of domestic workers, and contains an explicit provision on the regulation of recruitment agencies, and should be a benchmark for compliance by all FDW-receiving territories in China such as Hong Kong and Macau.

APMM stands with other migrant organizations in advocating for an end to the unbridled profit-making of placement agencies at the expense of migrant workers. We believe the HK government through its Legislative Council can effect far-reaching reforms in this area of FDW deployment by leveraging on its stakeholder role as a destination territory, and migrant organizations and service institutions such as APMM will always extend their full support to initiatives such as the current one in the future. #

Hong Kong
14 June 2013

ⁱ Tayag, Michael (2011), *An Evaluation of the Hands-On Conciliation Method of the Philippine Consulate General in Hong Kong*, Stanford: Stanford University

ⁱⁱ Lee, Peggy and Carole J. Petersen (2006), *Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers*, Hong Kong: The University of Hong Kong