

Panel on Manpower

Meeting on Tuesday 18 June 2013

Submission by Amnesty International

AGENDA ITEM IV – Intermediary charges for foreign domestic helpers

1. Problems faced by migrant domestic workers coming to Hong Kong in relation to recruitment fees.

Hong Kong SAR currently hosts approximately 300,000 migrant domestic workers. The vast majority come from the Philippines and Indonesia. All pay fees in order to find employment in Hong Kong. In the case of Indonesia, domestic workers must use private agencies in order to formally migrate abroad. Indonesian recruitment agencies are also obliged by law to have a partner placement agency in Hong Kong which is approved by the Indonesian Consulate. The placement agencies match the migrant domestic workers with employers.

i. Indonesia:

In May 2012, Indonesia's Ministry of Manpower and Transmigration issued a Ministerial Decree (No. 98/2012) on the Components and Placement Fee of Domestic Workers Candidates with Hong Kong as the Destination Country. The Decree set the maximum total fee recruitment agencies can charge at IDR 14,780,400 or HK\$13,436 (US\$1,730). However, as with previous decrees, the Indonesian government appears to be unable and/or unwilling to implement its own maximum fee.

There are several factors that contribute towards this situation. Firstly, despite clear laws and regulations by both the Indonesian and Hong Kong authorities, the lack of coordination between the two governments, reluctance to address the jurisdictional grey area, and a perceived lack of will to proactively counter abuses, has left the recruitment industry in both countries to construct an elaborate and sophisticated system to extract illegal, excessive fees from migrant domestic workers employed in Hong Kong.

Secondly, most prospective migrants are not properly informed about the breakdown of the fees, such as the cost of training, agency fees, food and accommodation. A survey conducted by the Indonesian Migrant Workers Union (IMWU) published in June 2012 found that 77 per cent of approximately 1,000 respondents were not informed about the cost of their training. This is consistent with the findings from Amnesty International's in-depth interviews with over 100 Indonesian migrant domestic workers and returnees. In reality, migrant domestic workers are rarely, if ever, provided with a breakdown of the fees and by the time they arrive at the training centre, it is too late to withdraw as they have already incurred the debt.

ii. Hong Kong:

The Government of Hong Kong has also legislated on the maximum charge a placement or employment agency can make for their services, as outlined in the Employment Ordinance.¹

This means that at the current Minimum Allowable Wage of HK\$3,920, the maximum fee agencies in Hong Kong can charge is HK\$392. However, in reality, Indonesian migrant domestic workers pay fees that are well in excess of both Hong Kong and Indonesian statutory limits.

Amnesty International's research demonstrates that the vast majority of interviewees were compelled to hand over a monthly repayment of HK\$3,000 for the initial seven months of their contract, which leaves them with very little to live on. The IMWU survey had comparable results with an overwhelming 85 per cent of the respondents indicating that they had to pay HK\$21,000 over a seven-month period.² It is also worth noting that some migrant domestic workers receive no salary during the deduction period, and a significant amount, approximately 28 per cent according to IMWU's survey, are underpaid around HK\$2,000 per month.

Thus, serious indebtedness due to illegal, excessive recruitment fees is common among Indonesian migrant domestic workers in Hong Kong. These debts often force workers to accept exploitation and abuse in the workplace. Fear of losing their job before they have been able to pay the debt means many often put up with underpayment, exploitative working conditions, including working for multiple households or in non-domestic work, physical and psychological abuse, inadequate food and accommodation, and failures by their employers to comply with their obligations under Hong Kong law. The practice of premature termination, within the seven month period of repaying the loan³, by placement agents appears to be solely to extract further fees from migrant domestic workers.

As the HK\$21,000 agency fee exceeds the legal maximum in Hong Kong, payment is diverted through diverse third party schemes, including forcing migrant domestic

¹Regulation 10(2) (Part II of Schedule 2) under Cap 57A Employment Agency Regulation states that "*The maximum commission which may be received by an employment agency shall be-*

(a) from each person applying to the employment agency for employment, work or contract or hire of his services, an amount not exceeding a sum equal to ten per cent of the first month's wages received by such person after he has been placed in employment by the employment agency Regulation 10(2) (Part II of Schedule 2), Cap 57A Employment Agency Regulation, Employment Ordinance of Hong Kong SAR, available at:

[http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/38DB2DFF314A22BB482575EE0034A5D2/\\$FILE/CAP_57A_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/38DB2DFF314A22BB482575EE0034A5D2/$FILE/CAP_57A_e_b5.pdf), accessed 8 February 2013.

² ITUC, IMWU and HKCTU, *Final Report on Malpractices of Recruitment Agencies toward Indonesian Domestic Workers in Hong Kong* (unpublished), in collaboration with the Institute for National and Democratic Studies (INDIES), June 2012, p48.

³ 40 per cent of respondents to IMWU's survey acknowledged that their contract was terminated just before the completion of their seven-month contract repayment period. ITUC, IMWU and HKCTU, *Final Report on Malpractices of Recruitment Agencies toward Indonesian Domestic Workers in Hong Kong* (unpublished), in collaboration with the Institute for National and Democratic Studies (INDIES), June 2012, p51.

workers to take out a sham loan through finance companies.⁴ Through this scheme, agencies can collect the illegal fees, via the third party, and therefore avoid breaking Hong Kong law on the 10 per cent cap.⁵

Amnesty International's interviews with migrant domestic workers also found that illegal salary deductions were made through an agreement between the placement agency and the employer to deduct a portion of the migrant domestic worker's salary and then to force the worker into signing a piece of paper falsely acknowledging full receipt of her salary.

2. Policy and implementation solutions

While acknowledging the comprehensive nature of labour laws and protections in Hong Kong, including ratification of major ILO and UN conventions, at present the authorities are failing in their due diligence to protect migrant domestic workers from trafficking for labour exploitation and forced labour in the territory. The lack of robust cooperation mechanisms between the Hong Kong authorities and other governments in countries of origin, most notably Indonesia, fail to acknowledge and address the dual jurisdictional nature of the problem, which is crucial to finding solutions to the systematic exploitation of migrant domestic workers. In addition, the lack of pro-active monitoring, investigation and prosecution of agencies and loan companies by the Hong Kong authorities has allowed a system to evolve that, via loopholes and convenient grey areas, evades protection measures within existing laws. As such, oversight of the migration industry is left to complaints raised by individual migrant domestic workers themselves at the Labour Department's conciliation process or Labour Tribunal – both processes leave them without an income for months and can often fail to reimburse them the full amount they are entitled to. Faced with this costly process that offers no guarantee of success, many understandably are reluctant to access these redress mechanisms. This, and the disguised nature of the fee and loan system, means that the agencies operate with impunity.

Solutions that the Hong Kong SAR government should consider include, in particular in regards to migrant domestic workers from Indonesia:

- i. Bilateral cooperation by the Hong Kong and Indonesian authorities that acknowledges the dual jurisdictional nature of migration and the need for agreement on an overall maximum recruitment fee per individual no matter where that fee is incurred or repaid. Maximum fees should be decided based on tripartite (Government, recruitment association and trade union) consultation to ensure that they are reasonable both in

⁴Peggy W.Y. Lee and Carole J. Petersen, *Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers*, Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong, May 2006, pp26-27.

⁵Peggy W.Y. Lee and Carole J. Petersen, *Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers*, Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong, May 2006, p2 and 12.

maximum amount and length of repayment schedule as not to leave the worker without enough money to live on.

- ii. Government regulation and oversight of repayment scheme for migrant domestic workers, including repayment schedules and interest rates that do not increase debt and thus vulnerability to exploitation. These schemes should be government administered, robustly monitored and fully transparent.
- iii. Proactive investigation jointly by Hong Kong and Indonesian authorities on how placement agencies are operating, and investigate credible accusations by migrant domestic workers and members of civil society of illegal, excessive fees and underpayment. Investigation should not be solely reliant on individuals having to file individual complaints at the Labour Department and Tribunal. Those found to be complicit or actively involved in the trafficking of migrant domestic workers for labour exploitation and forced labour should face adequate punishment that reflects the serious nature of the crime.
- iv. As a matter of urgency, ratification of the ILO Convention 189 Concerning Decent Work for Domestic Workers, and prior to such ratification, incorporating its provisions into domestic law and implementing it in policy and practice .