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- 1 Scrap the 2-week rule
- 2 Enforce maximum working hours.
- 3 Stop illegal agency fees.

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Clerk to Panel on Manpower,  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
Attn : Miss Lulu YEUNG

### **Comments on ‘Policies relating to foreign domestic helpers and regulation of employment agencies’**

#### **About the HK Helpers Campaign**

The HK Helpers campaign (the “HHC”) is an advocacy platform. The HHC seeks to promote the understanding and resolution of foreign domestic worker (“FDW”) issues in Hong Kong.

The HHC welcomes the Administration’s decision to open up for public comment policies relating to FDW and regulation of employment agencies and are pleased to have the opportunity to provide our comments in response to these policies.

#### **Introduction**

Domestic workers are the backbone of Hong Kong’s economy. Economic research indicates the contribution of FDW to Hong Kong’s economy in 2012 was 6.6% of Hong Kong’s GDP, or approximately HK\$134billion. This is double the contribution of the construction sector, and around the same as the accommodation and food sectors<sup>1</sup>. Protecting these workers is not only a human rights issue, it is also of paramount importance to Hong Kong’s continued economic success.

#### **Background**

Upon arrival in Hong Kong, the majority of FDW begin a cycle of indentured servitude that can last for years. The recruitment agency, the placement agency in HK and loan companies collude in a complex and opaque manner to evade regulators, burden helpers with debt and maximise profit. A 2013 Amnesty International report<sup>2</sup> found that agencies were routinely involved in supporting forced labour conditions.

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<sup>1</sup> This economic analysis is based on the double income earning enabled by Hong Kong’s 320,000 FDWs. The research is not yet published.

<sup>2</sup> Amnesty International 2013 report, page 8:  
<http://www.amnesty.org/en/library/asset/ASA17/029/2013/en/d35a06be-7cd9-48a1-8ae1-49346c62ebd8/asa170292013en.pdf>



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We take this opportunity to share our position on both:

- 1) Policies relating to foreign domestic helpers and
- 2) Regulation of employment agencies

## 1) Policies relating to foreign domestic helpers

Foreign domestic workers are unique in that they must live with their employer and Hong Kong's immigration law<sup>3</sup> allows them only two weeks to find a new contract if they are fired or quit. Both the 'two-week' and 'live-in' rules are unfair, discriminatory and prevent helpers from escaping abusive situations like Kartika's. Coupled with often excessive working hours and agency fees, many of Hong Kong's 311,844 (May, 2013) domestic workers find themselves completely trapped when things go wrong.

There are 9 points we'd like to highlight:

1. **The live in rule enables endemic abuse behind closed doors.**
2. **Hong Kong has been internationally condemned but has failed to act.**
3. **The current practice in Hong Kong violates international standards.**
4. **The rules have left FDW with little choice than to settle with abusive employers.**
5. **The 'two weeks' rule doesn't work in practice, this has been publicly acknowledged by the Immigration Department.**
6. **The '2 weeks rule' is a barrier to justice.**
7. **The 'Live-in' law is an affront to human dignity.**
8. **There is little evidence of FDW taking on a 'Second job'.**
9. **It is simply untrue that FDW want to 'Job hop'.**

**1. The live in rule enables endemic abuse behind closed doors.** The *majority* of helpers in Hong Kong are abused in some manner. A 2012 Mission for Migrant Workers survey<sup>4</sup> found that 58% of workers had faced verbal abuse, 18% had suffered physical abuse and 6% had been sexually abused. The 'two-week' rule, and the fact helpers must live with their employers, makes it unlikely they will report or leave abusive situations, particularly when there is an obligation to send money home or repay debts to agencies.

**2. Hong Kong has been internationally condemned but has failed to act.** International labour bodies and rights organisations have called for the abolition of HK's 'two-week' rule for over a decade. In 2006, the UN Committee on the Elimination of Discrimination against Women (to which Hong Kong is a signatory) claimed the rule pushes workers "*to accept employment which may have unfair or abusive terms and conditions in order to stay in Hong Kong*"<sup>5</sup>. In 2013, the UN Committee on Economic, Social and Cultural Rights said in a report<sup>6</sup> that Hong Kong should take steps to "*repeal*" the rule to "*address discrimination and abuse against migrant domestic workers as a consequence of this*

<sup>3</sup> Immigration Department, Guidebook for Employers:

<http://www.immd.gov.hk/en/services/hk-visas/employ-domestic-helpers-from-abroad/guidebook.html>

<sup>4</sup> Mission for Migrant workers survey,

<http://www.scmp.com/news/hong-kong/article/1294210/survey-reveals-extent-abuse-foreign-maids-hong-kong?page=all>

<sup>5</sup> Report of the Committee on the Elimination of Discrimination against Women, via Google books

<sup>6</sup> UN Committee on Economic, Social and Cultural Rights Report E/C.12/WG/CHN/Q/2 pp. 5



rule“. The UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination have also called for its repeal alongside NGOs such as Amnesty International, Human Rights Watch and Oxfam.

**3. The current practice in Hong Kong violates international standards.** The ‘two-week’ rule violates the 1975 ILO recommendations<sup>7</sup> for migrant workers which states that loss of “*employment should not in itself imply the withdrawal of [a migrant worker’s] residence*” and that migrant workers should be “*allowed sufficient time to find alternative employment*” with residence “*extended accordingly.*” Meanwhile, both the ‘live in’ and ‘two-week’ rules violate the 2013 ILO Convention on Domestic Workers<sup>8</sup>, which Hong Kong has yet to sign.

**4. The rules have left FDW with little choice than to settle with abusive employers.** FDW must return home if they cannot secure a new contract within two weeks of ending a contract. Not only does this incur more costs and fees from agents but the short period given to find a new employer means FDW are under pressure to sign the first one available to them. A 2007 ILO supported report<sup>9</sup> found that this hindered FDW from the right to secure a minimum wage or favourable employer.

**5. The ‘two weeks’ rule doesn’t work in practice, this has been publicly acknowledged by the Immigration Department.** Hong Kong’s Immigration Department accepted, in a letter to Amnesty International<sup>10</sup>, that processing an application for a change of employer takes “*about 4-6 weeks*” once “*all necessary documents*” are received. This is much longer than the 2 weeks allowed, forcing many workers to leave the territory until Immigration approves their paperwork.

**6. The ‘2 weeks rule’ is a barrier to justice.** As a Labour Tribunal case takes at least two months to process, FDW who escape abuse find it difficult to seek justice<sup>11</sup>. To remain in the city, a FDW would need to apply for a visa extension (costing HK\$160 / US\$21 per fortnight), during which time FDW cannot work<sup>12</sup>. Each would also have to pay for private food and shelter. A paper<sup>13</sup> by the Queensland Law Student Review stated that “*the ‘two-week rule’ can pose significant practical obstacles to... redress in the courts*“, discouraging those who feel they have a case against their employers.

**7. The ‘Live-in’ law is an affront to human dignity.** Despite contract rules promising ‘suitable accommodation’ and ‘reasonable privacy’, a 2012 survey by Mission for Migrant Workers<sup>14</sup> found that 30% of FDW sleep in kitchens, corridors, storage rooms or with employers or their children. 25% stated

<sup>7</sup> ILO standards, Article 30 & 31; pp.

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R151](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R151)

<sup>8</sup> ILO 2013 Convention on Domestic Workers:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C189](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C189)

<sup>9</sup> ILO supported report, pp. 81.

[http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms\\_116888.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms_116888.pdf)

<sup>10</sup> Amnesty International 2013 report, page 75:

<http://www.amnesty.org/en/library/asset/ASA17/029/2013/en/d35a06be-7cd9-48a1-8ae1-49346c62ebd8/asa170292013en.pdf>

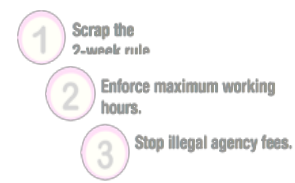
<sup>11</sup> *ibid*, pp. 11.

<sup>12</sup> *ibid*, pp. 83.

<sup>13</sup> *ibid*, pp. 110

<sup>14</sup> Mission for Migrant Workers study, pp. 6.

[http://issuu.com/mfmw/docs/primer\\_live-in\\_english/1?e=8079376/2254015](http://issuu.com/mfmw/docs/primer_live-in_english/1?e=8079376/2254015)



that they feel they have no privacy<sup>15</sup> with an equal number complaining they felt “unsafe”<sup>16</sup>. 20% reported that their employer had installed CCTV<sup>17</sup>. 35% of FDW would prefer to ‘live out’, if they could<sup>18</sup>. The rule negatively impacts FDW right to privacy, personal space and rest time, it enables abuse and prevents workers from socialising and taking part in civic life.

**8. There is little evidence of FDW taking on a ‘Second job’.** Government spokespeople and commentators regularly ‘bust’ FDW found ‘living-out’ in dormitories or shared apartments, the FDW are then liable to prosecution. Authorities claim the ‘live-in’ rule prevents workers taking on ‘illegal’ second jobs, yet a 2002 Caritas investigation of ‘live-out’ FDW found little evidence of this<sup>19</sup>.

**9. It is simply untrue that FDW want to ‘Job hop’.** The government has ignored international pressure, claiming that the ‘two-week’ rule prevents ‘job hopping’. There is little evidence of any trend whereby FDW repeatedly change employer to receive severance benefits. In late 2013, the Immigration Department made it even more difficult for FDW to switch employers<sup>20</sup>. However, local NGOs insist such a high-risk ‘scam’ makes no sense for FDW<sup>21</sup>, who are hit with high fees when changing contracts and are effectively homeless when not employed. A 2006 HKU study<sup>22</sup> found, in fact, that the ‘two-week’ law “encouraged employers to violate the standard form contract and to ‘maid hop’ ... putting a ‘menace of penalty’ in the hands of every employment agent and employer”.

Taking these points into consideration, we ask you to consider all of the following:

- 1. Extend the 2-week rule to 6 weeks and/or allow FDW to either remain employed or remain in HK whilst legal challenges are being pursued.**
- 2. Scrap the mandatory ‘live-in’ rule and make it optional for FDW to ‘live-in’ from the outset.**
- 3. Ensure FDW are not excluded from upcoming maximum working hours legislation.**
- 4. Develop an inspection and complaints mechanism to ensure fair and humane working conditions as per ILO recommendations.**
- 5. Waive visa extension costs for domestic FDWsuing their employers for abuse and give them shelter, interpreters and assistance during the process.**

## 2) Regulation of employment agencies

Hong Kong employment agencies are obliged to link up with recruitment agencies in the home countries of FDW as workers themselves are not allowed to seek work independently. Filipinos often pay placement fees and commissions to both the Hong Kong and home country agencies and Indonesians are charged

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<sup>15</sup> *ibid*, pp. 9.

<sup>16</sup> *ibid*, pp. 11.

<sup>17</sup> *ibid*, pp. 9.

<sup>18</sup> *ibid*, pp. 17.

<sup>19</sup> *ibid*, pp. 5.

<sup>20</sup> Announcement featured on hongwrong.com blog, here: <http://hongwrong.com/domestic-helpers/>

<sup>21</sup> Via TimeOutHK feature:

<http://www.timeout.com.hk/big-smog/features/61216/domestic-helper-job-hopping-serious-problem-or-an-over-reaction.html>

<sup>22</sup> HKU study, ‘Forced Labour and Debt Bondage in Hong Kong: A study of Indonesian and Filipina Migrants Domestic Workers’, pp. 24; <http://www.law.hku.hk/ccpl/pub/Documents/16-LeePetersen.pdf>



excessive amounts by home country agencies for pre-arrival ‘training’.

There are 7 points we’d like to highlight:

1. **The law is not being enforced.**
2. **FDW are crippled in debt and living in fear.**
3. **Employment agencies engage in collusion with moneylenders.**
4. **Employment agencies need to be more transparent.**
5. **Legal opinion suggests FDW may be living in debt bondage.**
6. **Moneylenders are acting unscrupulously.**
7. **Agencies are charging excessive contract renewal fees.**

**1. The law is not being enforced:** Contradictory policies<sup>23</sup> between HK and the home countries of domestic helpers enable agencies to abuse loopholes. In the Philippines, a 2006 reform package prohibited agents from charging a commission<sup>24</sup>. Training fees and other fees are legal, but commission for placement with an employer is not. A 2012 decree by the Indonesian government limits ‘training’ fees in their country to the equivalent of HK\$13,436 (US\$?), though many recruiters exceed this amount. Meanwhile, HK law allows agents to charge only HK\$401 (US\$52) to workers, which is 10% of their first month’s salary<sup>25</sup>. Fees for medical checks, insurance, visas and airline tickets are meant to be paid by employers<sup>26</sup>, yet they commonly request that the domestic workers pay these fees.

**2. Crippling debt; living in fear:** Despite legal limits, a survey<sup>27</sup> by the Indonesian Migrant Workers Union found that 85% of Indonesian helpers were forced to pay fees of HK\$21,000 (US\$2,709). Since implementation of the 2012 decree last year, this figure has dropped to around HK\$16,000, including finance charges, in most cases. Many agencies illegally withhold passports, employment contracts and bank cards until this debt has been repaid<sup>28</sup>. As repayment takes 5 to 8 months to complete, workers are unlikely to report abuse by employers for fear of losing their jobs. A 2012 Mission for Migrant Workers survey<sup>29</sup> found that 58% of workers had faced verbal abuse, 18% had suffered physically and 6% had been sexually abuse. A local financial planning domestic helper NGO, Enrich, found that almost 60% of workers are in debt<sup>30</sup>. After years of working in the city, some leave HK with less money than when they

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<sup>23</sup> For more specific information, please see the helpful backgrounder by Helpers for Domestic Helpers:

<http://www.hdh-sjc.org/your-rights/employment-agency-issues/>

<sup>24</sup> This hasn’t been successful. Please see Bloomberg’s expose on what is happening in practice:

<http://www.bloomberg.com/news/2012-11-13/indentured-servitude-in-hong-kong-abetted-by-loan-firms.html>

<sup>25</sup> See Amnesty International 2013 report, pp. 61-62.

[http://www.amnesty.org/en/library/asset/ASA17/029/2013/en/d35a06be-7cd9-48a1-8ae1-49346c62ebd8/asa170292013\\_en.pdf](http://www.amnesty.org/en/library/asset/ASA17/029/2013/en/d35a06be-7cd9-48a1-8ae1-49346c62ebd8/asa170292013_en.pdf)

<sup>26</sup> See Hong Kong government, Immigration Department, ‘specimen’ contract:

[http://www.immd.gov.hk/en/forms/forms/id407\\_detail.html](http://www.immd.gov.hk/en/forms/forms/id407_detail.html)

<sup>27</sup> Survey results:

<http://www.idwn.info/news/un-cedaw-committee-recommendations-should-sound-alarm-bells-indonesia-and-hong-kong>

<sup>28</sup> Asian Migrant Centre report:

[http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms\\_116888.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms_116888.pdf); pp. 31

<sup>29</sup> Survey news coverage:

<http://www.scmp.com/news/hong-kong/article/1294210/survey-reveals-extent-abuse-foreign-maids-hong-kong?page=all>

<sup>30</sup> Enrich research: <http://joannachiu.wordpress.com/2012/08/01/most-helpers-in-debt-charity-surveys-find/>





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arrived largely due to having to repeated pay excessive agency fees.

**3. Money lender/agent collusion:** Upon arrival, some HK agencies take helpers directly to money lender companies to sign up for a loan. Sometimes, sham loan documents signed in the country of origin are simply assigned to Hong Kong money lenders. Typically, workers are not allowed to read the contract, do not receive a copy and do not actually receive any money. They are, instead, given a loan repayment card, enabling monthly payments to be made at local convenience stores. In some cases, a cheque is issued to the agency by the loan firm. In other cases, loan documents are signed before arrival. In tandem with the money lenders, deals are done so that everyone gets a cut of the helper's repayments.

**4. Employment agencies are not transparent:** There is little to no paper trail. When charging excessive fees, agencies make a point of dealing in cash, without receipts, thus avoiding a paper trail. They also enlist employers to deduct their commission payment *before* handing over helper's wages. To protect their jobs and evade legal issues, helpers are made to sign a receipt for the amount of their *full* salary, despite being handed a lesser sum. These practices make it difficult for employees to prove they have been conned.

**5. Debt bondage? Modern day slavery? Trafficking?** Article 1(a) of the 1956 Supplementary Convention on the Abolition of Slavery<sup>31</sup> explains how a person becomes a 'bonded labourer' when they work in order to repay a loan demand. An Amnesty International report<sup>32</sup> declared HK's domestic helpers to be working in conditions of "*slavery*" whilst Bloomberg<sup>33</sup> defined their plight as "*indentured servitude*". Hong Kong sits in Tier 2 of the US Department of State's Trafficking in Persons Report largely due to the risk of labour trafficking of domestic workers<sup>34</sup>.

**6. Moneylenders are acting unscrupulously.** Licensed local money lenders target HK's helpers, encouraging even more borrowing by offering free phones or TVs whilst charging up to 60% annual interest<sup>35</sup>. Although practices often breach the Money Lenders Ordinance (Cap 163), business is booming – the number of loan companies listed in HK has increased by 20% to 938 over the past two years alone. They are not regulated by the Monetary Authority thus form part of the city's 'shadow banking' system. In 2012, the Financial Stability Board in Switzerland declared<sup>36</sup> the situation to be a "*vulnerability*" and recommended the HK government "*strengthen oversight and regulation*". For now, setting up such a company remains very simple – renewable licences cost HKD\$10,710 (\$1,382) for a year.

**7. Agencies are charging excessive contract renewal fees.** Even if they are not switching employers or arriving in HK for the first time, foreign domestic workers are exploited by agencies at the end of each two year contract. The HK Immigration Department imposes a list of requirements upon helpers who attempt to renew contracts independently (such as medical checks, letters from solicitors, signatures from employers, 'permission letters' from family members and approval from the association of Indonesian employment agencies). An ILO-backed report found that 93% of Indonesian helpers will therefore

<sup>31</sup> Supplementary Convention on the Abolition of Slavery: <http://www1.umn.edu/humanrts/instree/f3scas.htm>

<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> US Department of State: Trafficking in Persons Report 2013 – Hong Kong, 19 June 2013 (available at <http://www.state.gov/documents/organization/210739.pdf>)

<sup>35</sup> Mission For Migrant Workers

<http://www.migrants.net/for-migrants/know-your-rights/about-recruitment-agency-fees/>

<sup>36</sup> Financial Stability Board: [http://www.financialstabilityboard.org/press/pr\\_120530.pdf](http://www.financialstabilityboard.org/press/pr_120530.pdf)



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approach their agency to renew a contract at an average cost of HK\$3,598 (US\$464)<sup>37</sup>, although 7% of helpers pay over HK\$7,000 (US\$902). However the actual fees to facilitate renewal at HK's Immigration Department are under HK\$1,000 and the cap on commission is currently HK\$401. The Immigration Department requires all foreign domestic helper contracts to be endorsed by the respective consulate. In the case of Indonesia, the Indonesian Consulate's requirement that the contract be endorsed by the employment agency in Indonesia incurs unnecessary additional cost and prevents workers from changing agency when exploited.

**We ask you to consider all of the following:**

1. **Issue an invitation to the UN Special Rapporteur on Migrant Workers: We request the Secretary for Labor and Manpower to invite Mr Francois Crepeau, United Nations Special Rapporteur for Migrant Workers to visit Hong Kong to conduct an impact assessment on the lives of FDW in Hong Kong. If the Secretary feels this is not within boundaries, we request the Honorable Committee to request the Secretary for Constitutional and Mainland Affairs to issue an invitation.**
2. **Stop the need for foreign domestic workers to have their employment contracts stamped by their consulates. If the practice is considered beneficial, liaise with the respective consulates to ensure that their policies for endorsing contracts does not give rise to exploitation by agencies.**
3. **Properly regulate and inspect helper recruitment agencies**
  - a. Force all agencies and money lenders to implement adequate accounting systems so that the paper trail of payments is more transparent; and
  - b. Insist agencies conduct a home visit within 1 week of FDW placement, and then every three months afterwards for the duration of the contract.
  - c. Prosecute and sanction those who violate HK law (e.g. by charging excessive fees or confiscating ID documents);
  - d. Tighten the provision of money lender and employment agency licences, meaningfully punishing abuses.
  - e. Extend the 6-month limit for bringing prosecutions under the Employment Ordinance;
  - f. Increase the HK\$50,000 (US\$6448) penalty for overcharging placement fees to a more meaningful level; and
  - g. The Labour Department has failed to monitor or reprimand unscrupulous agencies. Despite dozens of complaints, only two firms have been found guilty in recent years<sup>38</sup> of overcharging helpers beyond the permitted 10% of their first month's salary. Each company was fined just HK\$50,000 (US\$6,448) and lost their licences.
4. **Extend the 2-week rule to 6 weeks and/or allow helpers to either remain employed or remain in HK whilst legal challenges are being pursued.**
5. **Ratify the ILO Domestic Workers Convention, a ground-breaking international treaty adopted in 2011 which prevents agents from deducting recruitment fees from helper's salaries (article 15).**

<sup>37</sup> ILO report, pp. 83:

[http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms\\_116888.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms_116888.pdf)

<sup>38</sup> Business Week: <http://www.businessweek.com/articles/2012-11-15/indentured-servitude-hong-kong-style>