Forced Labour and Debt Bondage in Hong Kong:
A Study of Indonesian and Filipina Migrant
Domestic Workers

by

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This study reports on in-depth interviews with 22 Migrant Domestic Workers (“MDWs”) and four resource persons. The interviews demonstrate that MDWs from Indonesia are particularly vulnerable. MDWs often work in situations of debt bondage, having been compelled to pay placement fees ranging from HK$6,000-21,000. As these fees exceed the legal maximum, employment agencies often disguise them as loans and then instruct employers to divert most of the monthly salary to a finance company or agent. Since employers often pay less than minimum wage, even before the illegal deductions, MDWs can be left with little or no salary for three to seven months. MDWs’ passports and identity documents are often confiscated by agencies or employers, denying them their freedom of movement. MDWs are also denied their weekly rest day, denied adequate food and accommodation, and suffer threats of or actual physical abuse during employment. MDWs who file complaints rarely receive full compensation due to the Hong Kong government’s discriminatory “two-week rule”.

Comments on this paper are welcome (see page 3 for details).

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# FORCED LABOUR AND DEBT BONDAGE IN HONG KONG:
A STUDY OF INDONESIAN AND FILIPINA MIGRANT DOMESTIC WORKERS
Peggy W.Y. Lee and Carole J. Petersen

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EXECUTIVE SUMMARY OF STUDY

Although Migrant Domestic Workers (MDWs)\(^1\) have been employed in Hong Kong since the mid-1970s, their numbers have increased significantly, from 1% of the labour force in 1982 to 7% in 2001.\(^2\) By 2005 more than 222,500 MDWs were employed in Hong Kong; 118,400 (53%) came from the Philippines and 95,700 (43%) came from Indonesia.\(^3\) This study reports on in-depth interviews with 22 MDWs and four resource persons.\(^4\) The interviews and supporting documents provide strong evidence that:

(1) MDWs often work in situations of debt bondage, having been compelled to pay placement fees ranging from HK$6,000-21,000. As these fees exceed the legal maximum, employment agencies often disguise them as loans and then instruct employers to divert most of the monthly salary to a finance company or agent.

(2) Since employers often pay less than minimum wage, even before the illegal deductions, MDWs can be left with little or no salary for three to seven months.

(3) MDWs are often deceived about their legal rights and not given a copy of the standard form employment contract that they are required to sign.

(4) MDWs’ passports and identity documents are often confiscated by agencies or employers, denying them their freedom of movement.

(5) MDWs are often denied their weekly rest day, denied adequate food and accommodation, and suffer threats of or actual physical abuse during employment.

(6) MDWs who complain are repatriated and rarely receive full compensation due to the Hong Kong government’s “two-week rule” (applied exclusively to MDWs).

The interviews demonstrate that MDWs from Indonesia are particularly vulnerable, in part because they are required by their own government to be placed by an employment agency. Figure A (below) summarizes the mode of operation used to extract illegal placement fees and other violations of MDWs’ rights.

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1 The Hong Kong government’s term “Foreign Domestic Helper” detracts from their status as employees with legal rights. “Migrant domestic worker” (MDW) is used in international human rights discourse.


4 The interviews were conducted by Peggy W. Y. Lee while working as a Senior Research Assistant in the Centre for Comparative and Public Law. The study was funded by an anonymous donation to the Centre.
**DECEPTION AND COERCION AT RECRUITMENT STAGE**
- Recruiter brings MDW to recruitment centre where she is confined and made to work as “training”.
- MDW is required to sign documents but not permitted to read or retain a copy (including employment contract).
- Shortly before departure, agent informs MDW that agency fee must be paid by salary deduction (a debt bondage arrangement).
- Recruitment agent deceives MDW about terms of standard form contract, including minimum wage and entitlement to rest days.

**DEBT BONDAGE IMPOSED IN HONG KONG**
- Passport and contract are confiscated by HK employment agency.
- HK agency brings MDW to HK finance company, where she is required to sign sham loan documents and not given a copy.
- HK agency delivers MDW to HK employer and gives instructions for payment of excessive placement fee to finance company (normally by salary deduction).
- HK agency collects illegal placement fee indirectly through finance company, circumventing HK laws.

**EMPLOYMENT CONDITIONS**
- Little or no salary is paid to MDW while in debt bondage to agency (normally for period of 3 to 7 months).
- Common additional labour rights violations include: denial of rest days; insufficient food and accommodation; excessive working hours; and underpayment of salary (even after debt repaid).
- Some MDWs also experience: threatened or actual physical abuse; forced illegal work; confinement and prohibition of outside contacts.
- Upon termination, MDW loses right to work and faces imminent repatriation pursuant to the Immigration Department’s “two week rule”.

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5 Figure A summarizes data from this study and other published academic studies, ILO documents and NGO publications. The process is explained in more detail in the body of the paper and in the Appendices.
Section 1 of this report summarizes the legal framework governing the employment of MDWs in Hong Kong, including structural barriers to enforcement of MDWs’ legal rights.

Section 2 briefly reviews the definitions of debt bondage and forced labour in international law.

Section 3 presents the study methodology and key findings, demonstrating that practices of debt bondage and forced labour are occurring in Hong Kong.

Section 4 elaborates upon the obligations of the Hong Kong government under domestic and international law and identifies gaps between these obligations and actual practice.

Section 5 provides specific recommendations on how the Hong Kong government could better fulfill its human rights obligations to MDWs.

Appendix I contains nine case studies that illustrate the vulnerability of MDWs to exploitation by employment agencies, finance companies and abusive employers. Appendix II contains samples of documents (provided by interviewees) of debt bondage arrangements imposed by Hong Kong employment agencies and finance companies.

This report is distributed as an Occasional Paper to give government departments, consulates, employment agencies, non-governmental organizations, and other interested parties an opportunity to comment on the research and supplement or clarify our findings. The final report will take into account any comments received prior to 10 June 2006.

Comments may be mailed to: Ms. Flora Leung, Centre for Comparative and Public Law, Faculty of Law, The University of Hong Kong, 4/F KK Leung Building, Pokfulam Road, Hong Kong. Comments may also be sent by email to: fkleung@hku.hk.

When making comments, please provide your affiliation and contact information and indicate whether we have permission to quote your comments in subsequent publications.

Peggy W.Y. Lee and Carole J. Petersen
19 May 2006

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6 Associate Professor, Faculty of Law, University of Hong Kong and Fellow in the Centre for Comparative and Public Law (email: carole@hku.hk).
1. THE LEGAL FRAMEWORK GOVERNING MIGRANT DOMESTIC WORKERS IN HONG KONG

1.1 The Work Visa and the Standard Form Contract

MDWs in Hong Kong are administered jointly by the Immigration Department and the Labour Department. The Immigration Ordinance, Cap. 115, sets forth the conditions of stay and specifically excludes MDWs from acquiring the right of abode in Hong Kong. The Immigration Department regulates the work visa and issues the standard form employment contract for all MDWs. The work visa will not be issued unless the prospective employer and the MDW have entered into the standard form contract.\(^7\)

MDWs are obligated to live with their employers\(^8\) and to work six days per week, with no maximum number of working hours per day. The standard form contract specifies a minimum allowable wage determined by the Hong Kong government, set at $3320 (approximately $US 415) since 19 May 2005. The stipulated salary of our interviewees varied, depending upon the date on which the contract was entered into. For example, the legal monthly salary was reduced by $400 in 2003, to $3,270\(^9\) and then raised to $3,320 in May 2005. The contract also requires that the MDW be given food or a food allowance, reasonable accommodation with a specified minimum amount of space and privacy, free medical care, and one rest day each week. The contract states that the MDW shall perform only domestic work in her employer’s household.

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\(^9\) This reduction in the minimum wage was instituted when the government introduced the “Employees Retraining Levy”, which requires the employer to pay HK$9,600 for the privilege of employing a FDW for a two-year contract. Although the employer officially pays the levy, it is widely viewed as an indirect tax on the workers because the government simultaneously lowered the minimum wage of MDWs by $400 per month (the exact amount of the levy pro-rata over a two-year contract) and many employers subsequently reduced the salary. The levy was the subject of an application for judicial review which was unsuccessful in the Court of First Instance. The applicants have appealed to the Court of Appeal and the hearing was held in April 2006 (not decided as of this writing). The revenue from the levy is intended to subsidize training of local workers but due to the legal challenge the funds remain frozen in a government account. *See Julita F. Raza & Others v Chief Executive in Council & Others* [2005] 3 HKLRD 561 (Court of First Instance).
1.2 Laws Governing Employment Agencies and Employers

The majority of MDWs in Hong Kong were initially recruited and placed with an employer by an employment agency. While Filipino MDWs are sometimes directly hired by employers (particularly after they have completed an initial two-year contract), Indonesian MDWs are required by their government to use employment agencies.\(^{10}\) Hong Kong employment agencies are regulated by the section 57 of the Employment Ordinance (Cap 57) and the Employment Agency Regulations (Cap 57A). The employment agency may lawfully charge a successfully placed MDW a commission of no more than ten percent of his/her first month’s salary,\(^{11}\) which would normally amount to approximately HK$ 330. An employment agency that charges an MDW more than this is liable upon conviction to a maximum fine of HK$ 50,000.\(^{12}\) Employment agencies are also not permitted to share their commissions with other persons, such as finance companies.\(^{13}\)

The Labour Department administers Hong Kong employment law and regulations. Both local and migrant workers are covered by local labour law, including the Employment Ordinance, Cap. 57, and the Employee’s Compensation Ordinance, Cap. 282. The Labour Department has issued a Practical Guide\(^ {14}\) to advise employers and MDWs as to their rights and duties under Hong Kong law. There are several divisions within the Labour Department. Of particular relevance to MDWs is the Labour Relations Division, which provides voluntary conciliation services for employers and employees who have disputes relating to wages and other conditions of employment. The Employment Claims Investigation Division is empowered to investigate suspected offences under the Employment Ordinance and to pursue prosecution action against offenders where

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\(^{12}\) Employment Ordinance, Cap. 57, *Laws of Hong Kong* (1968) s60(7); “Any licensee who contravenes any provision of section 57 shall be guilty of an offence and shall be liable on conviction to a fine at level 5.” The maximum fine is HK$ 50,000.

\(^{13}\) Employment Ordinance, Cap. 57, *Laws of Hong Kong* (1968) s57(b). It stipulates a licensed employment agency shall not, directly or indirectly “share with any person, other than another licensee or a bona fide partner or shareholder in his employment agency, the prescribed commission which he is permitted to charge and receive.”

appropriate.\textsuperscript{15}

In theory, if a MDW is underpaid by her employer or if her employer makes an illegal deduction from her salary (e.g. as part of a debt bondage arrangement) then the MDW can complain to the relevant authorities. The Labour Department’s \textit{Practical Guide} states that:

“Approval for the importation of [a] foreign domestic helper is based on facts submitted to the Director of Immigration, whereby the employer has agreed to pay not less than the minimum allowable wage. An employer who underpays wages as stated in the standard employment contract is liable, upon conviction, to a maximum fine of HK$350,000 and three years’ imprisonment. The employer would also be committing serious offences of making false representation to an Immigration Officer and conspiracy to defraud. Any person convicted of the offence of conspiracy to defraud is liable to imprisonment for 14 years.”\textsuperscript{16}

The law also prohibits an employer from making a deduction from an MDW’s salary to pay an excessive fees demanded by employment agencies. An employer can only make salary deductions in certain limited circumstances, such as where the employee has received an advance of wages from the employer.\textsuperscript{17}

\textbf{1.3 Barriers to Enforcement of MDWs’ Legal Rights}

In practice, the legal and policy framework discourages MDWs from filing complaints with the authorities, allowing certain employment agencies and employers to violate the law with little fear of prosecution. MDWs are not permitted to switch employers before the end of the two-year contract except in unusual circumstances, such as when the employer needs to terminate the contract because s/he is leaving Hong Kong.\textsuperscript{18} The Hong Kong government also maintains an immigration policy known as the “two-week rule”, which stipulates that MDWs will “only be allowed to remain in Hong Kong for the remainder of [their] limit of stay or for two weeks, whichever is the shorter.”\textsuperscript{19} The two-
week rule replaced the former practice of granting a six-month renewable work visa to an MDW and allowing her to change employers in the second year of the contract if she obtained a release letter. Under the current policy, if a MDW or her employer terminates the two-year contract early then the MDW is normally required to return to her home country within two weeks. This gives the employer the power to terminate the work visa and discourages MDWs from filing complaints.

Moreover, even if a MDW makes the difficult decision to file a complaint she will generally have to negotiate with her former employer for any remedy. The primary mechanism for resolving labour disputes in Hong Kong is voluntary conciliation at the Labour Department’s Labour Relations Division. This gives considerable bargaining power to employers, which is exacerbated by the two-week rule in cases involving MDWs. The Immigration Department will extend a MDW’s visa if she has an active claim with the Labour Department but normally grants only short extensions (necessitating frequent visa fees) and does not permit the MDW to work while she pursues her claim. This provides a strong incentive for the MDW to accept any offer from the employer, even if it is less than her legal entitlement.

Similar problems arise if a MDW files a complaint with the Hong Kong Equal Opportunities Commission (EOC) for employment discrimination or sexual harassment. In theory, MDWs have the same rights as local workers under the Disability Discrimination Ordinance (DDO) and the Sex Discrimination Ordinance (SDO). Indeed, a special provision in the SDO prohibits anyone who lives in the household from sexually harassing the MDW who works there. This was included because the legislature recognized that a live-in MDW might be harassed by people other than the employer (for example, the husband or son of the employer). However, if a MDW files a complaint against the employer or a member of the employer’s family this will certainly result in termination of the contract, leaving the MDW without a work visa and unable to support herself while the claim is being investigated. Like the Labour Department, the EOC depends primarily upon voluntary conciliation to resolve complaints.

20 For a summary and critique of the policy before 1987 see Andrew Hicks, “Admission of Foreign Domestic Helpers: Some Legal Issues” (1983) 13 Hong Kong Law Journal 194.
21 There are only four allowable exceptions to the “two-week rule” namely: (a) death of employer; (b) financial difficulty of employer; (c) employer leaving Hong Kong; (d) proven maltreatment. These are granted only through the Director of Immigration’s exercise of discretion.
23 See Carole J. Petersen, Janice Fong, and Gabrielle Rush, Enforcing Equal Opportunities: Investigation and Conciliation of Discrimination Complaints in Hong Kong (Hong Kong: Centre for Comparative and
involving a MDW the employer can gain an advantage by dragging out the process or by refusing to conciliate at all, knowing that the MDW may have to return home before obtaining a remedy.

Thus, although MDWs theoretically enjoy many of the same legal protections as local workers, in practice they find it far more difficult to enforce their rights. Since this is at least partly due to the Hong Kong government’s two-week rule (which is not applied to any other category of worker in Hong Kong), the government has a special duty to protect MDWs from abuse, including practices of debt bondage and forced labour. The next section of the paper thus briefly discusses the definitions of debt bondage and forced labour under international law.

2. WHAT IS FORCED LABOUR AND DEBT BONDAGE?

2.1 The Definition of Forced Labour in International Law

The ILO estimates that there are 12.3 million victims of forced labour in the world today and that 80% of forced labour is exacted by non-state actors. While most state-imposed forced labour is prohibited, governments regularly fail to address forced labour in the private sector.

Forced labour is defined in the ILO Convention on Forced Labour No. 29, which applies to Hong Kong through the British government’s ratification in 1931 (extended to Hong Kong on 3 June 1957) and the notification of the government of the People’s Republic of China (PRC) in 1997. Article 2(1) of the Convention provides:

For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of penalty and for which the said person has not offered himself voluntarily.

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25 Certain compulsory public service does not fall within the definition of forced labour. See C29 Forced Labour Convention (1930) adopted 28 June 1930, entered into force 1 May 1932, Article 2(2).
26 C29 Forced Labour Convention (n 25 above) Article 2(1). This is one of the eight fundamental labour conventions under the ILO Declaration on Fundamental Principles and Rights of Work (1998) deemed
Thus the two elements of forced labour are: (1) the work is exacted under the “menace of penalty”; and (2) the lack of consent or non-voluntary nature of the work. The ILO has stated that “the [menace of] penalty does not need to be in the form of penal sanctions, but may also take the form of a loss of rights and privileges.”27 The ILO has also clarified the definition of lack of consent, stating that “[i]nitial consent may be considered irrelevant when deception or fraud has been used to obtain it.”28 Thus, if a MDW agrees to come to Hong Kong but is deceived about the salary or her contractual rights under Hong Kong law, then her initial consent would no longer be valid.

2.2 The Definition of Debt Bondage in International Law

Although traditional forms of chattel slavery have been largely eradicated, contemporary forms of slavery, such as debt bondage, are still practiced throughout Asia.29 The ILO has noted that “debt bondage” (also known as “debt slavery”) is a particularly prominent feature of contemporary forced labour situations.30 The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1957)31 defines debt bondage as:

the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.32

This Convention applies to Hong Kong through the British government’s ratification in 1957 (extended to Hong Kong on 6 September 1957) and the PRC notification in 1997. Applying this definition to our findings (discussed further below), we conclude that many MDWs in Hong Kong are working under conditions of debt bondage. Their labour is pledged as a security for a debt, which takes the form of a sham “loan” that is used by employment agencies to cover up the fraudulent collection of extortionate placement fees.

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30 ILO, Forced Labour Global Report (n 24 above) para 27.
31 UN, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 UNTS 3, entered into force 30 Apr. 1957.
32 UN, Supplementary Convention on the Abolition of Slavery (n 31 above), Article 1(a).
from the migrant worker. At five to seven months of the MDW’s salary (HK $ 15,000 to 21,000) these fees far exceed the maximum placement fee that can be charged under Hong Kong law.

The second element of debt bondage is that “the length and nature of those services are not respectively limited and defined”. 33 Since 2003, the Hong Kong government has specifically required MDWs to live in their employer’s household. When combined with the lack of legislation on maximum hours of work, this renders the MDW effectively on-call for work at any time of day or night, without entitlement to overtime pay or to time off in lieu of overtime pay. Thus the length and nature of her work is not adequately limited or defined. As discussed below, virtually all of the MDWs in our study were required to work excessive hours by their employers and they felt that they could not object to such orders without risking termination of their employment and immediate repatriation.

3. STUDY METHODOLOGY AND FINDINGS

3.1 Methodology

In-depth qualitative interviews were conducted with 22 MDWs who had experienced various forms of exploitation or physical abuse in Hong Kong. Five of the interviewees were Filipino and 18 were Indonesian. The interviewer also reviewed extensive documentation, including instructions to employers to pay the MDW’s salary to a finance company, police statements, photographed evidence, hospital records and submissions to the Labour Department that corroborated the stories told by the interviewees.

Each of the interviewees had sought assistance at migrant shelters or paralegal centres during the research study period (July 2005 to September 2005). The interviewees were referred by migrant-serving institutions and migrant worker organizations, such as Bethune House Migrant Women’s Refuge, the Mission for Filipino Migrant Workers and the Association for Indonesian Migrant Workers. Prior to each interview, the MDW was informed that her name and identifying details would be modified in this report to protect confidentiality.

In addition to the 22 interviews with MDWs, our study also included four interviews with resource persons who work directly with MDWs: two migrant worker paralegal center

33UN, Supplementary Convention on the Abolition of Slavery (n 31 above), Article 1(a).
managers; a migrant worker organizer; and a legal practitioner. They provided information on the overall situation of MDWs and the practical problems of accessing justice. Secondary research data and documents were gathered from governmental sources, media, academic journals, migrant worker organizations, NGOs and international organizations.

Since the 22 interviewees were referred by organizations that provide assistance to abused workers, we do not conclude that they are representative of the situation of all MDWs in Hong Kong. It is noteworthy, however, that the stories told by 21 of the 22 interviewees are remarkably consistent in terms of the treatment that they received, particularly from the employment agencies. Thus, we feel confident that the interviews do not describe rare violations but rather a mode of operation that is being routinely used by certain employment agencies. We are also confident that many MDWs are experiencing similar treatment but not filing complaints, due to fear of repatriation under the two-week rule.

3.2 Summary of Interview Findings

21 of our 22 interviewees were victims of forced labour and/or debt-bondage in Hong Kong. 18 interviewees reported experiences that fall within the definition of debt bondage, while 21 interviewees worked under continued “menace of penalty” that enabled their labour to be exacted without their full and informed consent.

The 18 interviewees who experienced debt bondage were all coerced to pay, in Hong Kong, extortionate agency fees, ranging from HK $6000 to HK $21,000. Many of our interviewees reported that they were deceived or coerced into signing false loan documents. Some were forced to sign a day or two before they departed for Hong Kong whereas others were instructed to sign loan documents immediately upon arrival in Hong Kong. If they refused to sign then they would not be placed with an employer. The false loan documents were usually printed in English and our interviewees were not allowed to read or to keep a copy of the documents that they signed. None of the women interviewed for this study ever received any of the money that they had supposedly “borrowed”. Yet their employers were instructed to repay the “loan” by sending a large portion of the

34 Interviews were conducted with: Cynthia Tellez, Executive Director of Mission for Filipina Migrant Workers (2 Sep. 2005); Eni Lestari, Chairperson of Association of Indonesian Migrant Workers in Hong Kong (2 Sep. 2005); Holly Carlos Allan, Manager of Helpers for Domestic Helpers (6 Sep. 2005); Melville Boase, Partner of Boase, Cohen & Collins Solicitors Firm (6 Sep. 2005).

35 The only exception was the case of a Filipina domestic worker who had come to Hong Kong over 21 years ago and was the victim of serious car accident. Her story involves problems with accessing justice as the driver of the vehicle was never prosecuted. She has now filed a personal injury claim.
monthly salary directly to the finance company for a period of several months.

These 18 interviewees provided us with copies of documents to substantiate their reports. For example, we were given copies of documents from the employment agency that instructed the employer to make monthly “loan” repayments for the MDW by depositing her salary into the bank account of a Hong Kong finance company. For example, one of these documents (at Appendix II to this report) instructs the employer to deduct HK $3,000 from the MDW’s monthly salary for seven months, claiming that:

“All Indonesian maid [sic] that arrived in Hong Kong carried with them an agent loan for training fee in Indonesia. This loan should be paid to [name of Hong Kong finance company deleted] and payment must be made punctually every month.”

One can only imagine what sort of “training” the MDW received that would justify requiring her to pay almost her entire monthly salary for seven months, a total of HK $21,000. Some of this money probably was sent to the Indonesian agency for its role in recruiting the MDW. However, the Hong Kong finance company and Hong Kong employment agency almost certainly kept a significant portion, as compensation for their participation in the scheme and assistance in collecting the excessive placement fee. Employers may or may not be aware that they are participating in a debt bondage arrangement when they comply with these instructions; some may assume that the salary deductions are made with the MDW’s consent, to repay a legitimate loan.

12 interviewees reported underpayment of salary independent of the salary deductions. We included, in this category, cases in which the MDW’s salary was less than the legal minimum even before the deductions and cases in which the employer failed to pay the minimum legal salary even after the illegal placement fee was paid off.

18 interviewees also reported that their passports and employment contracts were confiscated by the employment agent or by the employer. This was almost certainly done in order to restrict their freedom of movement and to deny them information about their contractual rights.

Four interviewees reported that they were forced to perform additional work at a location other than the contractual address, which is unlawful under the standard form MDW contract and Hong Kong law.
16 interviewees reported verbal abuse; 18 reported physical abuse; and three reported rape or sexual harassment. Six of the interviewees reported that they felt compelled to escape from the situation within the first month of employment after incidents of physical abuse. As a result they did not receive any salary and did not work long enough to pay off the illegal placement fee.

All 22 of our interviewees reported excessive work hours and 19 reported that they often were not given their required weekly rest day. Ten reported insufficient food and seven reported accommodations falling below the minimum amount of space and privacy required under the standard form contract and Hong Kong law.

21 out of our 22 interviewees filed complaints with the Labour Department for outstanding wages in arrears and termination payments. Settlements ranged from 6% to 80% of their claims, with most settling for about 50% of their legal entitlements. None of the women in our study received full settlement of their claims.

20 of our interviewees also filed a criminal complaint with the police. The cases included two complaints alleging theft of the MDW's passport or belongings, 15 complaints of physical assault or wounding, and two complaints of indecent assault or rape. All of our interviewees reported what they perceived as a high degree of indifference or mistrust by the police. The complaints of rape and indecent assault did not lead to prosecution and only six of the 15 physical assault complaints led to prosecution (of which four resulted in convictions). The two interviewees who attempted to file complaints of theft told us that the police refused to officially record the complaint as an alleged theft by the employer or the employment agency and also declined to assist the MDW to recover her property, treating her complaint as a labour dispute rather than a criminal matter. In both cases, the MDW's property was finally recovered without police assistance.

These reports contrast starkly with the approach that is apparently taken when the employer accuses an MDW of theft. Three of our interviewees reported that after constructive termination of their contracts due to underpayment or abuse they were falsely accused of stealing property from their employer. In all three cases, the police arrested the MDW, detained her for several hours, denied requests to make telephone calls for assistance, strip-searched her, took statements, and eventually released the MDW on bail. These three cases were later dismissed due to insufficient evidence. While we cannot draw any conclusions from such a small sample, these reports raise questions for further research.
3.3 Applying the Definition of Forced Labour to the Interview Findings

When we apply the internationally accepted definition of forced labour to the data obtained from this study, it becomes clear that forced labour is occurring in Hong Kong. Although MDWs initially volunteer to seek employment in Hong Kong, many find themselves in situations that fit the ILO’s definition of forced labour. In summary:

*The involuntary nature of their work arises from deception about contractual rights and work conditions, coercive practices of debt bondage, passport confiscation, psychological compulsion, physical confinement, and non-payment of legally earned wages.

*The menace of penalty is present when MDWs experience threats or actual acts of violence, financial penalties (non-payment or illegal deductions), threats of immediate dismissal or exclusion from future employment, deprivation of food or shelter, and the removal of rights or privileges (such as the weekly rest day).

3.4 Key Details of Case Studies

This section presents the key elements of nine case studies, selected from the 22 interviews. Figure B categorizes their reported experiences within the two main elements of the definition of forced labour. (For a more detailed narrative, see Appendix I.)

Figure B Summary Details of Nine Case Studies

<table>
<thead>
<tr>
<th>INTERVIEWEE DETAILS</th>
<th>INVOLUNTARY NATURE OF WORK</th>
<th>MENACE OF PENALTY</th>
</tr>
</thead>
</table>
| Bella (Indonesian, age 23) | • agency fee / induced indebtedness (7 months x $3000 HKD)  
• passport and contract confiscated by HK agent  
• deception and misinformation about terms of employment | • no rest days  
• no salary received  
• worked 19 hours per day  
• slept on living-room sofa  
• verbal psychological abuse  
• physical assault (punched in face)  
• multiple rapes; indecent assaults |
| Vanna (Indonesian, age 29) | • agency fee / induced indebtedness (7 months x $3000 HKD)  
• passport and contract confiscated by HK agent  
• deception and misinformation about terms of employment | • no rest days  
• no salary received  
• worked 18 hours per day  
• insufficient food  
• verbal psychological abuse  
• physical assault (two broken ribs) |
### Table: Cases of Domestic Workers in Hong Kong

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Gender</th>
<th>Escaped After</th>
<th>Agency Fee / Induced Indebtedness</th>
<th>Passport and Contract Confiscated by Agent</th>
<th>Deception and Misinformation about Terms of Employment</th>
<th>Rest Days</th>
<th>Salary Received</th>
<th>Hours Worked</th>
<th>Other Abuses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Umah</td>
<td>33</td>
<td>Male</td>
<td>2 months</td>
<td>(5 months x $3000 HKD)</td>
<td>Induced debt bondage</td>
<td>Deception and misinformation</td>
<td>No</td>
<td>Underpayment</td>
<td>22 hours</td>
<td>Shared room</td>
</tr>
<tr>
<td>Fatimah</td>
<td>23</td>
<td>Female</td>
<td>3 months</td>
<td>(7 months x $3000 HKD)</td>
<td>Confiscated by Hong Kong agent</td>
<td>Deception and misinformation</td>
<td>2 days</td>
<td>No</td>
<td>24 hours</td>
<td>Shared bed</td>
</tr>
<tr>
<td>Ini</td>
<td>29</td>
<td>Male</td>
<td>4 months</td>
<td>(5 months x $1700 HKD)</td>
<td>Confiscated by Hong Kong agent</td>
<td>Deception and misinformation</td>
<td>No</td>
<td>Underpayment</td>
<td>19 hours</td>
<td>Insufficient</td>
</tr>
<tr>
<td>Nina</td>
<td>26</td>
<td>Female</td>
<td>2 months</td>
<td>(7 months x $3000 HKD)</td>
<td>Confiscated by Hong Kong agent</td>
<td>Deception and misinformation</td>
<td>No</td>
<td>Underpayment</td>
<td>20 hours</td>
<td>Insufficient</td>
</tr>
<tr>
<td>Ginah</td>
<td>24</td>
<td>Male</td>
<td>1 year 10 months</td>
<td>(4 months x $2000 HKD)</td>
<td>Confiscated by Hong Kong agent</td>
<td>Deception and misinformation</td>
<td>2 partial</td>
<td>No received</td>
<td>17 hours</td>
<td>Verbal</td>
</tr>
<tr>
<td>Tatikah</td>
<td>52</td>
<td>Male</td>
<td>5 years 9 months</td>
<td>(3 months x $2000 HKD)</td>
<td>Confiscated by employer</td>
<td>Deception and misinformation</td>
<td>1 rest</td>
<td>Underpayment</td>
<td>17 hours</td>
<td>Verbal</td>
</tr>
<tr>
<td>Ana</td>
<td>29</td>
<td>Male</td>
<td>6 months</td>
<td>(5 months x $1800 HKD)</td>
<td>Confiscated by Hong Kong agent</td>
<td>Deception and misinformation</td>
<td>No</td>
<td>Underpayment</td>
<td>19 hours</td>
<td>Verbal</td>
</tr>
</tbody>
</table>

### 3.5 Comparisons with Other Studies

The findings of our study are consistent with those of other researchers, as well as recent surveys conducted by NGOs. The first significant academic study of MDWs in Hong Kong was conducted by Nicole Constable in the mid-1990s.\(^{36}\) Constable interviewed numerous Filipina domestic workers and documented cases of underpayment and

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\(^{36}\) Nicole Constable, *Maid to Order in Hong Kong: Stories of Filipina Workers* (Ithaca: Cornell University Press 1997).
excessive workload. When Constable published her book in 1997, Filipinas made up the largest group of MDWs in Hong Kong and little attention was given to MDWs from other countries. However, in recent years, the number of Indonesian MDWs has rapidly increased and they now represent 43% of the total MDW population. Indonesian MDWs are more vulnerable to exploitation than Filipina MDWs, in part because they are generally less fluent in English and have less education. Moreover, the Indonesian government requires all Indonesian MDWs to be “processed” through an employment agency, effectively putting these women at the mercy of employment agencies. In 2000, Carol Tan published an article documenting how Indonesian MDWs receive even worse treatment than Filipina MDWs, as well as the difficulties that they encounter when seeking to enforce their rights.  

Her findings, based upon interviews and her work at a paralegal advice centre, are consistent with our study. For example, Tan concluded that:

Agencies routinely charge six months wages, arranging with the employer to divert to them the helper’s wages. Other methods involve making the employee take out a loan amounting to the agency fee, with the loan company paying off the agency fee. This is probably done to avoid fees greater than the maximum of 10% of the first month’s wages being detected.

Evidence of debt bondage and abuse also has been documented in NGO studies and newspaper reports. In 2005, both the Association for Indonesian Migrant Workers (ATKI) and the Asian Migrant Centre (AMC) conducted large-scale quantitative surveys on the experiences of Indonesian migrant workers in Hong Kong. Released in September 2005, the ATKI survey obtained responses from 2,777 Indonesian MDWs in Hong Kong. 2578 respondents (93%) reported employment agency overcharging; 1478 respondents (53%) reported underpayment of salary; 1262 respondents (45%) reported denial of rest days; 1580 respondents (57%) reported denial of statutory holidays; 1102 respondents (40%) reported the confiscation of passports and employment contracts; and 1581 respondents (57%) reported long working hours. When compared to a 2001 survey by ATKI, the 2005 survey reveals that employment agencies are charging increasingly

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38 Carol G.S. Tan (n 37 above) pp 356-7.
39 The Association of Indonesian Migrant Workers in Hong Kong (ATKI-HK) is a migrant worker member-based organization in Hong Kong that aims to organize, empower and campaign for the rights of Indonesian migrant workers. The abbreviation refers to the Bahasa Indonesian name of the organization -Asosiasi Tenaga Kerja Indonesia di Hong Kong (ATKI-HK).
40 The Asian Migrant Centre is an NGO based in Hong Kong that produces research publications on migrant workers throughout Asia.
41 Asosiasi Tenaga Kerja Indonesia di Hong Kong (ATKI), 2nd Survey on the Condition of Indonesian Migrant Workers in Hong Kong (Hong Kong: ATKI, Sep. 2005).
exorbitant placement fees. The survey also reveals an increase in the practice of abrupt terminations once the MDW has managed to pay off the illegal fee.\footnote{Interview with Eni Lestari, chairperson of ATKI, 2 Sep. 2005 (on file with authors).} It appears that employment agencies are promoting “replacement” offers to employers, which in turn generate more fees for the agency (a practice also described in Constable’s study). The AMC survey conducted among 1,017 Indonesian MDW respondents and released in August 2005\footnote{Asian Migrant Centre, \textit{Underpayment Systematic Extortion of Indonesian Migrant Workers in Hong Kong} (Hong Kong: Asian Migrant Centre, Aug. 2005) p. 37.} had similar findings.\footnote{AMC 2005 survey findings: 42% of the 1,017 Indonesian MDW respondents reported underpayment of salary. 62% reported denial of rest days and 97% reported paying extortionate agency fees through debt bondage arrangements. (Out of the 97% who were subjected to debt-bondage, 77% reported paying an agency fee of HKD $21,000.)} Indeed, the practice of charging illegal placement fees has become so common that Indonesian NGOs have started public campaigns against excessive fees.\footnote{See, for example, Asian Migrant Centre, \textit{Underpayment – Research on Indonesian Domestic Workers in Hong Kong: Systematic Extortion of Indonesian Migrant Workers in Hong Kong} (Sept. 2005), available at: \url{http://www.asian-migrants.org/index.php?option=com_content&task=view&id=4&Itemid=29} (visited 9 Apr. 2006).}

4. HONG KONG’S OBLIGATIONS UNDER INTERNATIONAL AND DOMESTIC LAW

As noted in Section 2 of this report, the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1957) applies to Hong Kong and obligates it to prohibit practices of debt bondage. This section further elaborates on Hong Kong’s legal obligation to protect MDWs from abuse by private actors.

4.1 Obligations under the ICCPR, the Hong Kong Basic Law, and the Bill of Rights Ordinance

The International Covenant on Civil and Political Rights\footnote{International Covenant on Civil and Political Rights (1966), adopted by GA Resolution 2200 A(XXI), Article 4(2).} (hereinafter the “ICCPR”) was extended to Hong Kong by the United Kingdom’s ratification in 1976. The British government submitted reports to the United Nations Human Rights Committee on the implementation of the treaty in Hong Kong until the resumption of Chinese sovereignty in July 1997. The ICCPR has not yet been ratified by the Chinese national government
but it agreed (in the Sino-British Joint Declaration 1984\textsuperscript{47}) that the treaty would continue to apply to Hong Kong. The ICCPR was first incorporated into Hong Kong’s domestic law in 1991, through the enactment of the Bill of Rights Ordinance (Cap. 383). The British government simultaneously amended Hong Kong’s colonial constitution, the Letters Patent, by adding a clause that precluded the local legislature from enacting a law that violated the ICCPR.

On 1 July 1997, Hong Kong became a Special Administrative Region (“SAR”) of China and the Letters Patent ceased to have effect. The Bill of Rights Ordinance continues to be in force, although some amendments were made at the time of the handover.\textsuperscript{48} Moreover, Article 39 of the Basic Law (Hong Kong’s constitution since July 1997) provides that the provisions of the ICCPR, as applied to Hong Kong, “shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.” The Hong Kong Court of Final Appeal has held that this language has the effect of incorporating the ICCPR into the Basic Law, giving it constitutional force.\textsuperscript{49}

The prohibition on all forms of slavery and forced labour is stated in Article 8 of the ICCPR and in section 8, Article 4, of the Hong Kong Bill of Rights Ordinance. It provides that:

(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
(2) No one shall be held in servitude.
(3) (a) No one shall be required to perform forced or compulsory labour.

Section 7 states that the Bill of Rights Ordinance is binding on the government and all public authorities, or anyone acting on their behalf.

The UK government added a reservation to the application of the ICCPR to Hong Kong allowing it to continue to apply immigration legislation governing entry into, stay in, and


\textsuperscript{48} Under Article 8 of the Basic Law, most pre-existing ordinances would continue to be part of Hong Kong law after the handover. Article 160 of the Basic Law gave the Standing Committee of the National People’s Congress the power to “not adopt” certain provisions of Hong Kong’s pre-existing law when it became a Special Administrative Region of China. Although the Chinese government had initially threatened to repeal the entire Bill of Rights Ordinance, it ultimately decided to repeal only three preliminary provisions, the removal of which has had had no real impact upon the ICCPR’s application in Hong Kong. For further discussion see Peter Wesley-Smith, “Maintenance of the Bill of Rights”, 27 Hong Kong Law Journal 15 (1997).

\textsuperscript{49} HKSAR v Ng Kung Siu [2002] 2 HKC 117 (CFA).
departure from Hong Kong. The Bill of Rights Ordinance similarly contains an exemption in section 11: “As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect any immigration legislation governing entry into, stay in, and departure from Hong Kong, or the application of any such legislation.” This reservation does not mean, however, that all matters related to immigration are unaffected by the Bill of Rights Ordinance and indeed many of the cases litigated under the Bill of Rights Ordinance and Article 39 of the Basic Law have challenged immigration laws or policies. In this context, it should be noted that the right not to be subjected to forced labour is so important that the ICCPR states that no derogation from it is permitted, even in times of public emergency.\(^{50}\) Thus the obligation of the government to prevent such acts is a particularly heavy one.

Unfortunately, in the Hong Kong SAR’s Second Periodic Report to the United Nations Human Rights Committee, the Government insisted that the employment situation of MDWs in Hong Kong does “not in any sense entail slavery, servitude, forced, or compulsory labour.”\(^{51}\) This attitude is not helpful. The government needs to acknowledge that laws are being violated and that MDWs need more and better protection against coercive practices, including debt bondage and passport confiscation.

### 4.2 Obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights\(^{52}\) (hereinafter the “ICESCR”) was extended to Hong Kong by the United Kingdom’s ratification in 1976 and the British government originally submitted reports to the United Nations Committee on Economic, Social and Cultural Rights on the implementation of the treaty in Hong Kong. Since China is also now a State Party to the ICESCR, Hong Kong’s report is submitted with China’s report, although the Committee on Economic, Social and Cultural Rights continues to issue separate concluding comments on Hong Kong.

Article 39 of the Hong Kong Basic Law provides that the provisions of the ICESCR, as applied to Hong Kong, “shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.” The Committee on Economic, Social and Cultural Rights has urged the Hong Kong government to enact an ordinance that

\(^{50}\) ICCPR (n 46 above), Article 4(2).


expressly incorporates each provision of the ICESCR into domestic law.\textsuperscript{53} Although the Hong Kong government has declined to enact a “Bill of Rights equivalent” for the ICESCR, it insists that the provisions of the Covenant are already fully incorporated into Hong Kong’s domestic law through other ordinances and articles of the Basic Law.\textsuperscript{54}

Unfortunately, there is a widespread perception that the ICESCR does not contain justiciable rights, in part because Article 2 of the ICESCR provides that States Parties undertake to achieve “progressively the full realisation of the rights” recognised in the treaty and permits “developing countries” to determine the extent to which they will guarantee economic rights. Hong Kong, however, has a highly developed economy and should not rely upon Article 2 to delay implementation of the ICESCR. Indeed, the United Nations Committee on Economic Social and Cultural Rights has worked hard to counter this perception and has urged the Hong Kong government “not to argue in court proceedings that the Covenant is only ‘promotional’ or ‘aspirational’ in nature.”\textsuperscript{55} Interestingly, the Hong Kong government responded to this comment (in its next periodic report) by stating that: “We note the Committee’s observation that the Covenant is not merely ‘promotional’ or ‘aspirational’ in nature and accept that it creates binding obligations at the international level”.\textsuperscript{56} Thus it would appear that the Hong Kong government agrees that it has a legal obligation to implement the treaty through its laws and policies.

Article 7 of the ICESCR is particularly relevant to MDWs. It protects the right to just and favourable conditions of work, which should include fair wages, safe and healthy working conditions, rest, reasonable limitations on working hours, and periodic holidays. The Hong Kong government therefore has a duty to enact legislation setting maximum working hours for MDWs, which it has not done.

The government also has an obligation to review and amend policies that make it difficult for MDWs to enforce their rights under existing labour laws and the standard form contract. The Committee on Economic Social and Cultural Rights recognises that there is a direct link between the two-week rule and the vulnerability of MDWs to abuse. In


\textsuperscript{55}Concluding Observations (n 53 above), paras 16 and 27. The Committee made this comment because it was disappointed by certain court judgments in Hong Kong which referred to the treaty as being primarily “aspirational” in nature. See, for example, Chan To Foon v Director of Immigration (11/4/2001, HCAL 58/1998).

\textsuperscript{56}Second Report (n 54 above), Part II, para 2.12.
2001,\textsuperscript{57} and again in 2005,\textsuperscript{58} the Committee called upon the Hong Kong government to change the two-week rule as a “principal subject of concern”.

\textbf{4.3 Obligations under ILO Conventions on Forced Labour}

Hong Kong’s ILO obligations are constitutionally entrenched under the Article 39 of the Basic Law, which states that the provisions of “the international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.” Hong Kong is a party to both ILO conventions on forced labour, ILO Convention No. 29 (1930) and ILO Convention No. 105 (1957).

ILO Convention No. 29 (1930) defines forced labour (as discussed in section 2.1 of this report) and obligates Members to prohibit and prevent forced labour. Article 4(1) states:

\begin{quote}
The competent authority shall not impose or \textit{permit} the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.\textsuperscript{59}
\end{quote}

The HKSAR is also obligated to make forced labour a criminally punishable offence. Article 25 states:

\begin{quote}
The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.\textsuperscript{60}
\end{quote}

Similarly, the ILO Abolition of Forced Labour Convention No. 105 (1957) requires each member to take “effective measures to secure the immediate and complete abolition of forced or compulsory labour . . .”\textsuperscript{61} Thus it is not sufficient for the Hong Kong government simply to abstain from exacting forced labour. Rather, it has an obligation to take all necessary steps to prevent it from occurring in the private sector, particularly with respect to MDWs because they have been brought to Hong Kong under a special

\textsuperscript{57}Concluding Observations (n 53 above), para 15(f).
\textsuperscript{59}C29 Forced Labour Convention (n 25 above), Article 4(1) (emphasis added).
\textsuperscript{60}C29 Forced Labour Convention (n 25 above), Article 25.
programme administered by the government and are subject to special restrictions. As the ILO has noted, “[m]igrant domestic workers are in a particularly precarious position because of their insecure legal status in the host country.” If government policies (like the two-week rule in Hong Kong) make migrant workers even more vulnerable to abuse then the host government has a greater obligation to prevent and remedy that abuse.

4.4 **Obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter “CEDAW”) was extended to Hong Kong in 1996. The first periodic report by the Hong Kong government (which was submitted as part of China’s combined third and fourth periodic reports) was reviewed by the Committee on the Elimination of Discrimination Against Women (hereinafter the “CEDAW Committee”) in 1999. Hong Kong’s second periodic report will be reviewed as part of China’s fifth periodic report in August 2006.

Article 11 of CEDAW obligates State Parties to “take all appropriate measures” to eliminate discrimination against women in the field of employment, including protecting women’s right to work and to receive fair remuneration for their work. Failure by a host government to take the steps that are necessary to prevent debt bondage would constitute a breach of Article 11. The CEDAW Committee considers the treatment of women migrant workers to be an important issue in the implementation of the treaty. As the chairperson of the CEDAW Committee commented:

> The reality is that there is almost no aspect of the denial of the rights of migrant women workers that is not intimately tied up with gender discrimination . . . the harms that these women suffer are very often because of the added dimension of gender discrimination . . .

The CEDAW Committee thus regularly requests information regarding the status and conditions of migrant women and has urged governments to do more to protect them.

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from human rights violations. In 1999, the CEDAW Committee commended the Hong Kong government for issuing a standard form contract with a minimum wage. It also expressed concern, however, that MDWs are vulnerable to “abuse and custodial violence” and recommended that the government take further steps to protect them.

In 2003, the United Nations Special Rapporteur on the Human Rights of Migrants expressed support for the CEDAW Committee’s efforts on behalf of migrant women. Emphasizing that MDWs are particularly vulnerable due to the “hidden character of domestic work”, the Special Rapporteur urged the CEDAW Committee to issue a General Recommendation on Migrant Women. The CEDAW Committee has since discussed a draft of the General Recommendation. Once the final version is issued, the CEDAW Committee may intensify its efforts to obtain information from State Parties on the status of migrant women and on the concrete steps that State Parties are taking to protect migrant women from practices of debt bondage and forced labour.

5. **RECOMMENDATIONS FOR LEGISLATIVE AND POLICY REFORMS**

The common practices of debt bondage and passport confiscation are not being addressed in Hong Kong, perhaps because the government fails to recognize these practices as modern forms of forced labour and slavery. As stated by the ILO, “slavery is a form of forced labour” and there are many overlaps “between forced labour situations and slavery-like practices.” While the Hong Kong government does not impose forced labour, gaps in the law and policy failures help to perpetuate forced labour and situations of debt bondage.

MDWs can only come to Hong Kong under the government’s foreign domestic helper programme. They are prohibited from engaging in other forms of work or from switching employers mid-contract. Having restricted the mobility and bargaining power of MDWs in this manner, the government has a special duty to protect them from abuse by opportunistic employment agencies and unscrupulous employers. In particular, we

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recommend the following:

5.1 Abolish the Two-Week Rule and Punitive Immigration Policies

As discussed in Section 1, the Hong Kong government’s “two week rule” penalizes MDWs for premature termination of the employment contract, regardless of which party initiates the termination or the underlying reasons. For more than a decade UN human rights monitoring bodies have criticized this rule and called for its abolition. The Hong Kong government’s only response has been to maintain that the rule prevents MDWs from “job-hopping” and from undertaking unapproved employment. In practice, the two-week rule has encouraged employers to violate the standard form contract and to “maid hop”, generating even more fees for employment agencies.

The two-week rule facilitates practices of forced labour by putting a “menace of penalty” in the hands of every employment agent and employer. As one solicitor commented, “The two-week rule effectively equips the employer with the power to terminate the work visa.” Knowing this, an unscrupulous employer can deny rest days, underpay the MDW, and violate a host of laws with little fear of the MDW filing a complaint.

A MDW who does file a complaint cannot possibly obtain redress within two weeks and thus must seek an extension of her visa. The Immigration Department generally gives unrealistically short extensions, requiring the MDW to repeatedly pay the $135 visa extension fee while her claim is being investigated and conciliated by the Labour Department. Since the MDW is not permitted to work during this period, her former employer has enormous bargaining power, knowing that she is living on charity and anxious to receive at least some of the money that is owed to her before she returns home. It is therefore not surprising that none of the women in our study received full compensation. In some cases women who have filed complaints with the EOC have not even been granted the necessary visa extensions and have been compelled to return home before their complaints could be fully investigated and conciliated by the EOC.

The HKSAR should abolish the two-week rule and abide by international human rights
norms. In particular, the ILO recommends that “the loss …[of] employment should not in itself imply the withdrawal of [a migrant worker’s] authorization of residence” and that migrant workers should be “allowed sufficient time to find alternative employment … [and] the authorization of residence should be extended accordingly.”

Hong Kong could comply with this by issuing MDWs a fixed-term employment visa that is not tied to any single employer. This would make it easier for MDWs to enforce their rights and give employers a greater incentive to comply with the standard form contract and the Employment Ordinance.

5.2 Enact Domestic Legislation Prohibiting Forced Labour and Debt Bondage

Both the UK and the USA have enacted specific legislation prohibiting forced labour and all forms of slavery and the HKSAR government should enact similar laws. Forced labour and debt bondage are “a severe violation of human rights and restriction of human freedom.”

The UN Working Group on Contemporary Forms of Slavery has therefore urged all states to:

- ensure that forced labour is criminalized and that sanctions are commensurate with the gravity of the offences,
- that public information campaigns are launched,
- that relief and assistance to freed forced labourers are provided to facilitate their social reintegration,
- that unions and NGOs that defend the rights of forced labourers receive support.

The ban on excessive placement fees could be better enforced if the Employment Ordinance and the Money Lenders Ordinance were amended to expressly define and prohibit practices of debt bondage. Given the special vulnerability of MDWs, it should be a criminal offence for an employer to pay any portion of a MDW’s salary to a third party. It should also be a criminal offence for an agency or finance company to instruct the employer to underpay a MDW or to receive a portion of a MDW’s salary directly from

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73 ILO, R151 Migrant Workers Recommendation (n 72 above), Article 31.
her employer.

5.3 Actively Investigate Employment Agencies and Finance Companies

The government has acknowledged that employment agency overcharging is a problem but revoked only two licenses of employment agencies in 2004. The government could devote more resources to enforcing existing laws and to investigating the practices of agencies and finance companies. For example, the Labour Department has been made aware that employment agencies routinely use finance companies to collect excessive placement fees. Yet, to our knowledge, there has been no prosecution of such practices and no attempt to investigate them. Our interviews (and the documents at Appendix Two) indicate that finance companies are very likely assisting agencies to collect excessive placement fees and then sharing the proceeds. At a minimum, the finance companies are breaching the Money Lenders Ordinance by failing to furnishing a copy of the “loan” agreement to the MDW at the time of signing.

It is our understanding that the Employment Agencies Division takes the position that the Employment Ordinance does not authorize it to investigate cases in which excessive placement fees are imposed indirectly through a finance company. The Labour Department has also claimed that the regulation of such matters is outside the Hong Kong government’s jurisdiction, apparently because the Hong Kong agencies and finance companies allege that the “loans” are collected on behalf of Indonesian employment agencies as compensation for “training” provided in Indonesia. Solicitor Melville Boase rejects the Labour Department’s justification for failing to investigate, noting that these practices are conducted by Hong Kong companies, involve the diversion of salaries earned in Hong Kong, and victimize migrant workers authorized to work in Hong Kong.

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79 NGO representatives informed us that they have reported numerous cases of debt bondage to the Labour Department but that this has not led to further investigation or action. As reported during interviews with: Cynthia Tellez, Executive Director of Mission for Filipina Migrant Workers (2 Sept. 2005); Eni Lestari, Chairperson of Association of Indonesian Migrant Workers in Hong Kong (2 Sept. 2005); Holly Carlos Allan, Manager of Helpers for Domestic Helpers (6 Sept. 2005).


81 Interview with Simon Li Chi Chung, Labour Officer, Employment Agencies Division, Department of Labour, Hong Kong government, 3 Mar. 2005.

82 Representatives from the Labour Department expressed this view of its jurisdiction at a meeting with 30 migrant NGO representatives, on 15 Mar. 2005 (attended by one of the authors of this report).

There are frequent newspaper reports of undercover officers infiltrating brothels that are suspected of illegally hiring migrant women without work visas. Perhaps undercover officers could also be deployed to assist migrant workers with visas. For example, they might pose as potential employers to ascertain whether debt bondage arrangements are being made among finance companies, employment agencies, and employers.

5.4 **Enact Legislation Prohibiting Passport Confiscation**

The confiscation of passports, identity documents and employment contracts is a means of controlling MDWs, preventing them from enforcing their contractual rights and exercising their freedom of movement. When an employment agent or employer confiscates the passport of a MDW, it gains an element of control and ownership that can turn an abusive employment situation into a form of slavery.84

The UN Working Group on Contemporary Forms of Slavery has reiterated its recommendation for all states to prohibit identity document confiscation, particularly by employers or employment agents of MDWs.85 This recommendation has also been codified in Article 21 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (known as the Migrant Workers’ Convention),86 which states that “[i]t shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits.” Although Hong Kong is not a party to the Migrant Workers’ Convention, it does have international obligations to eliminate practices similar to slavery under the UN Supplementary Convention on the Abolition of Slavery (1957).87 Moreover, as a major importer of migrant labour the Hong Kong government should, as a matter of good practice, endeavor to comply with the Migrant Workers’ Convention.

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87 UN, Supplementary Convention on the Abolition of Slavery (n 31 above), Articles 1 and 6.
Our interviews with MDWs and resource persons indicate that frontline police officers may be reluctant to investigate allegations of passport theft made by MDWs, perhaps because Hong Kong law does not adequately address the issue. The Theft Ordinance (1997) defines theft as follows:

A person commits theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.\textsuperscript{88}

While the passport may \textit{belong} to the MDW it is technically the property of the issuing government. Moreover, employers and employment agencies routinely deny having the “intention of permanently depriving” the MDW of her passport and often claim that MDWs allowed them to hold the passport for security. Thus, when MDWs report passport confiscation to the police, the case is likely to be recorded as a mere labour dispute rather than as a crime. The police may also give undue deference to employers and agents who cite a prior “personal agreement that the employer holds the passport as security.”\textsuperscript{89} This approach fails to take into account the inherent imbalance of power between the agent or employer and a MDW seeking employment.

At present, only the Money Lenders Regulations (1988) has prohibitions against money lenders accepting identity documents as surety for a loan.\textsuperscript{90} We recommend that the law be amended to expressly prohibit employers and employment agencies from holding the passports or identity documents of MDWs. Literature produced by the Hong Kong government for MDWs and their employers could then be amended to warn employers that they risk criminal prosecution if they are found to be holding a passport or other identity document of a MDW. In light of the vulnerable position of migrant workers, the offense should be drafted so as to preclude waiver of the right to retain one’s own passport and identity documents. Thus, the new criminal provisions should make it clear that it shall not be a defense to claim that the MDW agreed to let the employer or employment agency hold her passport or other identity documents.

5.5 \textit{Abolish the Live-In Requirement and Enact Maximum Hours Legislation}

\textsuperscript{88} Theft Ordinance, Cap. 210 (1997) \textit{Laws of Hong Kong}, s1(1).
\textsuperscript{89} Correspondence with Police Department dated 20 Oct. 2004 (on file with authors).
\textsuperscript{90} Money Lenders Regulations, Cap 163A (1988) \textit{Laws of Hong Kong}, regulation 12. Prohibition of certain forms of security: No money lender shall demand or accept as security for any loan any- (a) identity card issued under the Registration of Persons Ordinance (Cap 177), passport, warrant card, or other document establishing the identity or nationality of the holder; (b) bank savings or deposit account book; or (c) photograph (whether developed or not) of the borrower or surety or of any member of the family of the borrower or surety.
The Immigration Department’s live-in requirement and the lack of legislation setting maximum work hours directly contribute to situations of forced labour in Hong Kong. Although many employers wish to hire MDWs for live-in employment, this arrangement should be made upon the offer of employment and not mandated by the government.

Legislation setting maximum work hours also should be enacted to comply with Hong Kong’s international human rights obligations. While such legislation will be difficult to enforce in private homes, it would constitute an important first step in defining the work hours of MDWs.

5.6 Increase Investigation and Prosecution of Abusive Employers

Our interviews indicate that serious labour rights violations are being committed against MDWs. The most common violations reported by our interviewees were: the denial of rest days and statutory holidays; excessive work hours; and non-payment or underpayment of salary, frequently compounded by illegal deductions for debt bondage arrangements. Less common violations included: denial of adequate food; improper accommodation; and verbal, physical or sexual abuse.

The Labour Department receives close to 2,000 complaints per year against employers, but secures convicted summonses in only a tiny percentage of cases (33 in 2004 and 29 in 2003).91 Notably none of our interviewees’ employers were prosecuted by the Labour Department for violations of the Employment Ordinance (Cap. 57). The HKSAR government has stated that “[p]rosecutions are pursued where there is sufficient evidence and the helpers concerned are willing to be witnesses for the prosecution.”92 This statement disregards the fact that the punitive policies of the Immigration Department discourage MDWs from coming forth as complainants or as prosecution witnesses.

In addition to amending the two-week rule, we recommend that the government take a more active role to obtain evidence of violations of the standard form contract and labour laws. At present, when MDWs who are still employed raise complaints, the Labour Department often responds in a passive manner, issuing a standard letter to the employer.

and enclosing Labour Department publications. We suggest that investigative staff make on-site visits to inspect labour conditions.

Another difficulty in securing convictions is that the MDW has the burden of proof and there are normally no witnesses outside the employer’s family. There are also many ways to conceal violations of the contract. For example, an unscrupulous employer who underpays a MDW can simply compel her to sign false receipts of “full payment”, under threat of termination. It has also been reported that some employers deposit the correct salary in a bank account opened by the employer for MDW, but then retain the ATM card and withdraw a portion of the money each month. This arrangement makes it almost impossible for the MDW to prove underpayment without active assistance from the police and/or the Labour Department. The Labour Department and the Presiding Officer at the Labour Tribunal should be given specific training about the vulnerability of MDWs to fraudulent practices and should adopt a more stringent approach to accessing the genuineness of evidence submitted by employers.

5.7 Uphold International Obligations with Sending-Country Governments

The policies of sending-country governments can also contribute to conditions of forced labour and debt bondage. For example, through its Ministerial Decree No. 104A of 2002 and its new Law on Placement and Protection of Indonesian Migrant Workers Abroad (2004), the Indonesian government has effectively delegated its obligation to protect migrant workers to private profit-seeking employment agencies. Whatever the motivation for this policy, it clearly has a negative impact. Requiring a MDW to use an employment agency (even when she finds an employer who is willing to directly hire her) makes her more vulnerable to abuse by non-state actors.

The Hong Kong government should ask, and if necessary require, sending-country governments to amend policies that expose MDWs to abuse. Sending-country governments depend on the remittance income of MDWs and will ultimately acquiesce if Hong Kong takes a decisive stand to eradicate all forms of debt bondage and forced labour that occur within its jurisdiction.

93 See, for example, Carol G.S. Tan (n 37 above); Nicole Constable (n 36 above), especially pp 137-138; “Employers should not underpay their foreign domestic helpers” (Hong Kong Government Press Release, 22 Feb. 2004); “Abused, alone, and lost in limbo”, South China Morning Post, 2 Aug. 2004, p. 14; Mary Ann Benitez, “Maid numbers ‘rising due to underpayment’ “, South China Morning Post, 4 Aug. 2004, p. 5.
APPENDIX ONE: CASE STUDIES

Each case study is based upon an in-depth interview with a MDW who had experienced abuse and sought para-legal assistance to file a complaint. Copies of documents were collected from the interviewees to confirm certain details of the interview including: police reports, statements to the Labour Department, medical reports, photos of injuries, and finance company instructions to employers detailing bank account to deposit the worker’s salary in order to pay off the illegal agency fee.

1. Bella’s story

Bella (Indonesian, age 23) was employed for a period of three months and four days in Hong Kong. Upon arrival in Hong Kong her passport and employment contract were confiscated by the Hong Kong employment agent. Both the Indonesian and Hong Kong employment agents told her that she must pay, in Hong Kong, agency fees of HK $21,000 through a debt bondage arrangement. Although the illegal fee amounted to seven monthly payments of HK $3000, Bella’s employer told her all of her HK $3,270 salary was deducted as payment of her “debt” to a Hong Kong finance company. Bella received no salary at all, as she escaped the employer’s residence after three months of repeated sexual and physical attacks.

Throughout her employment Bella was subjected to on-going sexual, physical and psychological abuse by her male employer. She was raped on four occasions, physically beaten and forced to perform sexual acts on the male employer when the female employer was not at home. After each sexual assault, the male employer ordered Bella to destroy any physical evidence and threatened her with violence should she report the incidents to the female employer. The male employer warned Bella that both employers worked as law enforcement officials and threatened punishment should she disclose the incidents to anybody. Bella was also deceived about her terms of employment and not granted any rest days, thus effectively denying her any opportunities to meet other MDWs and escape her abuse. She worked 19 hours a day with less than five hours of sleep per day.

Bella finally managed to escape when she encountered another Indonesian woman in her building, who was a member of an Indonesian migrant worker’s organization. Bella initially disclosed that she was physically abused by her employer but was too ashamed to talk about the incidents of rape and sexual assault. The Indonesian woman advised Bella that she should leave her employment immediately and assisted by bringing her to the migrants’ shelter. Bella reported the rapes and physical assault to the police who
conducted an investigation and decided not to proceed with prosecution. The last incident of sexual assault occurred two weeks before the day she escaped. Later, Bella filed a sexual harassment complaint with the Hong Kong Equal Opportunities Commission (EOC). Although the Immigration Department was informed about her EOC case, they refused to extend her visa. She was compelled to leave Hong Kong before her complaint could be concluded at the EOC.

2. **Vanna’s story**

Vanna (Indonesian, age 29) was employed for a period of four months and 24 days in Hong Kong. Upon arrival in Hong Kong, her passport and employment contract were confiscated by the Hong Kong employment agent. Both the Indonesian and Hong Kong employment agents told her that she must pay, in Hong Kong, agency fees of HK $21,000 through a debt bondage arrangement. She was made to sign documents under conditions of duress before departure in Indonesia and again upon arrival in Hong Kong. She was not allowed to read the documents that she was compelled to sign and was not given a copy of these documents. After arrival, the Hong Kong agent brought her to the finance company where she was photographed with a tag around her neck indicating her loan number. Together with other MDWs arriving in the same group, she was video-taped reading a statement declaring her loan payment obligation and interest charges on late or default of payment. The agency fee amounted to seven monthly payments of HK $3000, which her employer deducted from her salary of HK $3670 and paid to a Hong Kong finance company.

Vanna was held under the continued menace of penalty as her female employer subjected her to on-going physical and psychological abuse. She was violently assaulted four times by her female employer, who kicked her repeatedly in the abdomen. She sustained two fractured ribs and multiple bruises on her body from the assaults. Although her contractual salary and legal minimum wage at the time was HK $3,670, Vanna received no salary at all from the employer. She was denied sufficient food and was not granted any rest days. She had no means to meet with other MDWs and learn about her rights. She worked 18 hours a day with less than six hours of sleep per day.

Vanna only managed to escape when she met another Indonesian domestic worker. That day Vanna had been given an illegal order by her employer to work at the home of her employer’s sister-in-law. While Vanna was waiting for the sister-in-law to pick her up, another Indonesian in the same building noticed her bruises and gave her the telephone number for the Indonesian migrant workers’ association. Later Vanna was encouraged by
the Indonesian domestic worker (at the home of her employer’s sister-in-law) to contact the Indonesian migrant workers’ organization. Volunteers from the Indonesian migrant workers’ association eventually assisted her to escape. Vanna reported the physical assault to the police, who took a statement without providing her a translated copy. At the trial of her employer, due to incorrectly translated details in the statement and problems with the court Indonesian language translator, her employer was acquitted of physical assault. Vanna initiated civil claims for damages against her employer and has filed civil claims for refund of overcharged agency fees against her employment agency and finance company.

3. Umah’s story

Umah (Indonesian, age 33) was employed under conditions of forced labour and debt-for-two months and 17 days. Upon arrival in Hong Kong her passport and employment contract were confiscated by the employment agent. Both the Indonesian and Hong Kong employment agents told her that she would have to pay, in Hong Kong, extortionate agency fees amounting to HK $15,000, through a debt-bondage arrangement. This extortionate agency fee would be payable in five monthly installments of HK $3000. She was informed by the employment agent that her salary would be the legal minimum of HK $3,270 but her Hong Kong employer illegally underpaid her a salary of HK $2,870 per month, claiming (incorrectly) that she was also entitled to deduct the $400 “employers’ levy” from Umah’s salary. Umah was unable to pay the entire agency fee because the amount of salary she received was less than the debt bondage demanded from her and she only worked for two months.

Umah was held under the continued menace of penalty by her female employer, who had deceived her about the terms of her employment. Umah was also subjected to on-going sexual harassment by the employer’s 13 year old son. She was underpaid, denied all rest days, and forced to do cleaning work at the employer’s pet shop, which is illegal. She worked 16 hours a day with less than six hours of sleep per day. She was not provided with appropriate accommodation, as required by Hong Kong law, as she was made to share a room with the employer’s son.

The sexual harassment began shortly after the start of her employment. At first Umah ignored the attentions of the son, as she thought he was merely a young and playful boy. The female employer was a single mother who was rarely home and her son often consumed pornography at home. On two occasions the son sexually assaulted Umah by

94 See note 6 above for information on the employers’ levy, instituted in 2003.
grabbing her breasts and pulling her onto the bed. Umah eventually escaped the employment to avoid further sexual harassment and obtained assistance at a migrant worker association.

4. Fatimah’s story

Fatimah (Indonesian, age 23) was employed in Hong Kong for a period of three months. Upon arrival in Hong Kong Fatimah’s passport and employment contract was confiscated by the Hong Kong employment agent. Both the Indonesian and Hong Kong employment agents told her that she must pay, in Hong Kong, extortionate agency fees amounting to HK $21,000, through a debt-bondage arrangement. The debt bondage arrangement amounted to seven monthly payments of HK $3000 which would be deducted from her salary of HK $3270 and paid to a Hong Kong finance company.

Fatimah was held under the continued menace of penalty as her female employer regularly physically abused her. The female employer was a paraplegic who employed four migrant domestic workers in her household. Fatimah’s task was to tend to her disabled employer’s every need. She was on duty almost 24 hours a day, as she was required to turn and massage her female employer throughout the night every 20 minutes. She did not have any privacy as she had to share a bed with her female employer and was slapped whenever she failed (or was late) to turn and massage her employer. She was also denied adequate food and only granted two out of four weekly rest days a month. All of her salary was deducted to pay the illegal agency fees.

Fatimah managed to run away from the forced labour and debt-bondage after three months. She escaped without any belongings and it took several attempts, despite police assistance, before she could retrieve her passport from the employment agency.

5. Ini’s story

Ini (Indonesian, age 24) was employed for a period of four months and one week in Hong Kong. In Indonesia, she was informed that her salary would be HK $1700 although the legal minimum wage at the time was HK $3270. Both the Indonesian and Hong Kong agents told her that she would have to pay, in Hong Kong, extortionate agency fees through a debt bondage arrangement. She was required to pay a total of HK $8500, through five monthly installments of HK $1700 per month, thus losing all of her already underpaid salary. Upon arrival in Hong Kong, her passport and employment contract were taken from her by the employment agent. After she attained a Hong Kong identity card, it
was also confiscated by her employer. The retention of identity documents is a means for the employment agent and employer to deny her freedom of movement, as she is required by law to carry identity documents at all times and will be reluctant to escape from her employment.

Ini was held under the continued menace of penalty as her female employer subjected her to on-going verbal and physical abuse. She did not earn any money as the employer told her that all of her salary was deducted to pay the extortionate agency fees. She was denied all rest days and statutory holidays and also denied sufficient food. Her employer only portioned food for her every three days and she had to eat rotten vegetables and rice to survive. A Filipino domestic worker and her employer in the same building felt sorry for Ini and occasionally donated food to her. She worked 19 hours a day with less than 5 hours of rest per night.

On the day before Ini escaped, her female employer got angry with her and dug her nails into her ears, cutting both of her earlobes. Although she was bleeding, she was initially too afraid to escape. Waiting until after her employer went to bed, in the middle of the night, Ini managed to run away to the flat of the Filipino domestic worker and employer who had previously donated food to her. They helped to call the police who later brought Ini to the hospital for treatment. She sustained permanent scarring on her ears. She was later brought to safety at a migrant workers shelter.

6. Nina’s story

Nina (Indonesian, age 26) was employed for two months and four days in Hong Kong. Both the Indonesian and Hong Kong employment agents told her that she must pay, in Hong Kong, extortionate agency fees amounting to HK $21,000 through a debt-bondage arrangement. Upon arrival in Hong Kong her passport and employment contract were taken by the Hong Kong agent who told her that they had been confiscated “for safe-keeping and to prevent her from running away from her employer.” The extortionate agency fees were to be paid through seven monthly installments of HK $3000, which were deducted by her employer from her monthly salary of HK $3270.

Nina was held under the continued menace of penalty as she was subjected to on-going verbal, psychological and physical abuse. She only received HK $200 per month from her employer and was told that the rest was deducted to pay the extortionate agency fee. She was denied all rest days, denied sufficient food and made to work 20 hours a day with less than four hours of sleep per night. At times she had only one meal a day and survived by
drinking sugar water.

When the employer got angry with Nina she was punished with forced labour and degrading treatment. On occasion she was forced to work all night without sleep, made to copy out Chinese characters 100 times, made to hold her ears while standing in a corner and locked outside in the hallway for hours. She was regularly slapped and hit by her female employer. At first, she was too afraid to leave her employment and did not know where to seek assistance. The physical violence escalated when the female employer kicked her on multiple occasions on her back, causing painful back injuries.

Nina finally managed to escape when she encountered another Indonesian who advised her to seek immediate medical attention at the hospital for her back pain. The hospital referred the physical assault case to the police. As she did not know anyone in Hong Kong, Nina returned to the employment agency that held her passport. The employment agent told the police that Nina would not stand as prosecution witness against her abusive employer. After waiting at the employment agency for weeks without being told anything about her case, an Indonesian helped Nina to escape and seek assistance at the migrant workers’ shelter. Thereafter she was assisted by the shelter to pursue her civil claims and follow-up her police report of physical assault.

7. Ginah’s story

Ginah (Indonesian, age 24) was employed in Hong Kong for a period of one year, ten months and five days. She paid an initial recruitment agency fee in Indonesia of 325,000 rupiah (equivalent to HK $325). Although she was initially informed that her salary would be the legal minimum wage of HK $3670, one day before departure to Hong Kong she was forced to sign a document stating that her salary would only be HK $2,000, well below the statutory minimum wage for MDWs in Hong Kong. Upon arrival in Hong Kong, Ginah’s passport and employment contract were confiscated by the Hong Kong employment agent. It was only then that Ginah was informed of the debt-bondage arrangement. She would be required to pay, in Hong Kong, agency fees amounting to HK $8000. This was to be paid by four monthly installments of HK $2000 that would be deducted by her employer from her already underpaid salary. For the first four months Ginah received no salary and thereafter received only $2,000 per month.

Ginah was held under the continued menace of penalty because she was both verbally and physically abused by her female employer. Ginah was denied all statutory holidays, only granted two of her weekly rest days per month. Moreover, she was never given a
complete day of rest because the employer required her to do some work (cook and do laundry) at the beginning and at the end of her “rest day”. Ginah did not have adequate accommodation, as required by the standard form contract and Hong Kong law, as she was made to sleep on a bunk-bed located in the living-room. This meant that she could not rest until her employer’s family finished watching television at 2:00 or 3:00am each night.

Ginah finally escaped from the forced labour and debt-bondage after an incident of wounding when her female employer ironed her arm. On that day Ginah had accidentally broken a ceramic coin-bank while cleaning and was about to inform the female employer. The female became angry and accused her of stealing coins from inside the coin-bank. Ginah was ironed four times on her right arm by the employer and sustained permanent burn marks. She finally ran away and met a member of an Indonesian migrant workers’ association that brought her to a migrants’ shelter.

8. **Tatikah’s story**

Tatikah (Indonesian, age 42) was employed for five years and nine months in Hong Kong. She was deceived by the Indonesian agent, who told Tatikah that she was only entitled to receive HK $2,200 salary (although the legal minimum wage for MDWs was HK $3670 at the time). Upon arrival in Hong Kong, her passport and contract were confiscated by her employer to deter her from leaving her employment. She was told that she would have to pay, in Hong Kong, extortionate agency fees amounting to HK $6000, through a debt-bondage arrangement. The extortionate agency fees would be paid through three monthly installments of HK $2,000 that her employer deducted from her already illegally underpaid salary of HK $2,200.

Tatikah was held under the continued menace of penalty as her female employer held her identity documents for over five years and continued to illegally underpay her salary during three separate employment contracts. During the first two-year contract the employer paid only HK $2,200 (and, during the first three months, deducted $2,000 for the illegal agency fee). During her second and third contracts, Tatikah was paid only HK $2,500, well below the legal minimum wage. At the time of the third contract the employer claimed that Tatikah was being given a “raise” to HK $2,900 but that she would still receive only $2,500 (because the employer would illegally deduct $400 for the levy imposed on employers).

Tatikah remained deceived about her terms of employment for over five years. As the
employer was Indonesian-Chinese and communicated to her only in Bahasa Indonesian, Tatikah did not learn any English or Chinese. She was granted only one weekly rest day a month and denied all statutory holidays. On three occasions, her employer brought her to China for a week and forced her to clean their three-storey factory. It was only when she had to change her Hong Kong identity card at the Immigration Department that she learned from a poster, written in Bahasa, that she was being underpaid.

Tatikah escaped after meeting an Indonesian woman from a migrant worker association, who told her she had the right to leave because her employer was illegally underpaying her and denying her rest days and holidays. After she left, Tatikah’s employer falsely accused her of theft and Tatikah was arrested when she reported to the Immigration Department. She was very afraid as she did not understand why she was being arrested. The theft allegations were later dropped because they could not be substantiated.

9. **Ana’s story**

Ana (Indonesian, age 28) was employed for a period of six months and 24 days in Hong Kong. Upon arrival, the Hong Kong employment agent confiscated her passport and employment contract. Both the Indonesian and Hong Kong employment agents told her that she must pay, in Hong Kong, agency fees amounting to HK $9,000 through a debt bondage arrangement. The fee was paid through five monthly payments of HK $1800, which her employer deducted from her salary and paid to a Hong Kong finance company. Ana was also deceived about her terms of employment. She was told that she was not entitled to the legal minimum wage of HK $3270 because she was a new “inexperienced” Indonesian worker who could only be paid HK $1800 per month. However, Ana’s employer ordered her to sign false receipts of full payment of salary, which she signed under duress and threat of termination. Since her entire salary was diverted to the finance company for five months, Ana received no salary for the first five months and only HK $1800, for the last month before her termination. She was also not granted rest days and worked 19 hours a day, with less than five hours of sleep each night.

Ana escaped after meeting a MDW from an Indonesian migrant workers’ organization who advised Ana to leave her employer and assisted by bringing her to the migrants’ shelter. Even after her termination the Hong Kong employment agent refused to return her passport and the employer lodged a malicious complaint of theft with the police. When Ana sought police assistance to retrieve her confiscated passport, she was arrested, strip-searched and hand-cuffed due to the theft complaint. She has since filed a complaint against the police officers who handled her case.
APPENDIX TWO: DEBT BONDAGE EXHIBITS

1. Finance Company Instructions to Employer

<table>
<thead>
<tr>
<th>Name:</th>
<th>Loan No.</th>
<th>Monthly payment: HK$ 3,000 x 7 months</th>
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</table>

**FOR THE EMPLOYER INFORMATION ONLY**

All Indonesian maid that arrived in Hong Kong carried with them an agent loan for training fee in Indonesia. This loan should be paid to [Redacted] Finance and payment must be made punctually every month through:

(Please refer to your Loan Card for monthly amount & due date)

   Finance and Credit Co. Ltd.
   A/C no.: [Redacted]

   **Please call to 2311 [Redacted] to report the payment OR mark the maid's loan number in the receipt and fax to us at 2367- [Redacted]**

   OR

2. Any branch of Finance and Credit Co. Ltd.

### 繳費指示

僱傭到達香港後，需履行在印尼所簽訂之合約，每月繳予 [Redacted] Finance。

作為在印尼訓練營之所有費用，請依以下方式，準時繳交：

(月費及到期日，請参照賬戶呪)

1. (1) 中國銀行
   戶口名稱: [Redacted] Finance and Credit Co. Ltd.
   戶口號碼: [Redacted]

   繳交後請報告:
   1. 僱傭之賬戶號碼 (Loan No.)
   2. 銀行之備查號碼

   電話: 2311- [Redacted] 或 傳真: 2367- [Redacted]

或

2. (2) 於辦工時間到任何一間分行繳交。

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**Identifying Details Removed**

Office Hour

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<tr>
<th>Mon – Friday</th>
<th>Sat</th>
<th>Sunday</th>
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<tbody>
<tr>
<td>9 am – 5 pm</td>
<td>9 am – 1 pm</td>
<td>8:30 am – 5 pm</td>
</tr>
</tbody>
</table>
2. Debt-Bondage Arrangements and Payment Receipts
Reduced Debt Arrangement for Underpaid MDW (5 months x HK$1800)

Identifying Details Removed

A/C NAME:
A/C NO.:
Trans Code:
Ref. No.:

Ingat untuk masukkan nomor reff anda saat membayar

- 40 -


No. 5: Roda Mushkat: “‘Fair Trial’ As A Precondition To Rendition: An International Legal Perspective”, July 2002.


