

The Price of Justice

Migrant
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experience
of trying
to resolve
labour
disputes in
Hong Kong

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This research project was initiated and designed by the Executive Committee of the Federation of Asian Domestic Workers Unions (FADWU). The research was conducted between February and July 2019 by members of the Progress Labor Union of Domestic Worker (PLU), an affiliate of FADWU, and a small team of Indonesian migrant domestic worker volunteers.

Technical and logistical support were provided by the Hong Kong Confederation of Trade Unions (HKCTU)¹, the International Labour Organization (ILO)² through the International Programme on Fair Recruitment, and Rights Exposure³. The Law Faculty at the University of Hong Kong collaborated with FADWU in providing data from their observation project on the Labour Tribunal. Additional support was provided by Oxfam Hong Kong.

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

Hong Kong Federation of Asian Domestic Workers Unions (FADWU)

FADWU is the only registered trade union federation of domestic workers in Hong Kong organising local and migrant domestic workers. It is an affiliate of the Hong Kong Confederation of Trade Unions (HKCTU) and International Domestic Workers Federation (IDWF). Its current affiliates include the Hong Kong Domestic Workers General Union (HKDWGU), Thai Migrant Workers Union in Hong Kong (TMWU), Union of Nepalese Domestic Workers in Hong Kong (UNDW), Overseas Domestic Workers Union (ODWU) and Progressive Labor Union of Domestic Workers in Hong Kong (PLU). It currently has 853 paying members via its affiliates.

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¹ The Hong Kong Confederation of Trade Unions was founded in July 1990. It consists of more than 90 affiliates and represents more than 170,000 members. HKCTU is independent from any regime, political party or consortium (<http://www.hkctu.org.hk/cms/index.jsp>).

² The International Labour Organization is a tripartite UN agency bringing together governments, employers and workers of 187 member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men (<http://www.ilo.org>).

³ Rights Exposure is an award-winning international human rights consultancy providing solutions for positive social change. Founded in 2014 by a team of human rights and communication professionals, it offers a range of consultancy services to NGOs, IGOs, governments, trade unions, communities and social enterprises (<https://www.rightsexposure.org>).

Executive Summary

Progressive Labor Union of Domestic Workers Hong Kong (PLU)

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

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

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- Faculty of Law, University of Hong Kong
- ILO International Programme on Fair Recruitment (FAIR)
- Oxfam Hong Kong
- Rights Exposure

At the end of 2018, there were a total of **386,075 migrant domestic workers employed in Hong Kong**.⁴ Locally referred to as “foreign domestic helpers” (FDHs), they provide essential household services, contributing US\$12.6 billion to Hong Kong’s economy in 2018 or 3.6% of its GDP.⁵ The vast majority are Filipinos and Indonesians who total 210,897 and 165,907 respectively.⁶

Over the last six years, FADWU and several other organisations have documented evidence of the widespread exploitation of migrant domestic workers in Hong Kong.⁷ The current research aims to better understand why so few migrant domestic workers utilise the existing legal remedies available in Hong Kong to enforce their statutory and contractual rights.

As part of this research, FADWU carried out qualitative, semi-structured interviews with 33 migrant domestic workers (27 from the Philippines and six from Indonesia) who accessed a Labour Department redress mechanism in 2018 or 2019 to try and resolve work-related problems.

4 HKSAR Census and Statistics Department, “Foreign Domestic Helpers by Nationality and Sex”, Labour Force Characteristics, available at: https://www.censtatd.gov.hk/hkstat/sub/gender/labour_force/, accessed 30 August 2019.

5 Experian and Enrich, *The Value of Care: Key contributions of migrant domestic workers to economic growth and family well-being in Asia*, 2019, p6, available at: http://www.enrichhk.org/wp-content/uploads/2019/02/Final_The-Value-of-Care_Full-Report.pdf, accessed 12 June 2019.

6 HKSAR Census and Statistics Department, “Foreign Domestic Helpers by Nationality and Sex”, Labour Force Characteristics, available at: https://www.censtatd.gov.hk/hkstat/sub/gender/labour_force/, accessed 30 August 2019.

7 See for example: FADWU, Agents of Change? Assessing Hong Kong employment agencies’ compliance with the Code of Practice, 2018; FADWU, Between a Rock and a Hard Place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong, October 2016; Justice Centre, Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong, March 2016; Amnesty International, Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong, November 2013; Alliance of Progressive Labor in the Philippines (APL), Alliance of Progressive Labor – Hong Kong (APL-HK) and Progressive Labor Union of Domestic Workers in Hong Kong (PLU), License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong, 2013;.

Key Information Relating to the Claims

All 33 migrant domestic workers interviewed for this research filed a claim at the Labour Department and subsequently attended a conciliation meeting to try and reach a settlement with their employer.

The most common claims which interviewees made related to: wages (30), food and travelling allowance (26), return flight ticket (26), denial of sick leave, maternity leave or medical care (8), and statutory weekly rest days and holidays (8).

The monetary claims submitted by the interviewees averaged HK\$27,391 (US\$3,498).⁸ In the 25 cases where the employers attended the conciliation meeting, the average amount they offered was HK\$12,459 (US\$1,591). On average, employers only offered 51% of the amount claimed by the migrant domestic workers.

Of the 14 interviewees who accepted their employer's offer at conciliation, seven settled for less than the full amount that they claimed. The most common reasons for accepting were that: they urgently needed the money; they could not afford to stay longer in Hong Kong without any guarantee that they would recoup the money; and they needed to work again so that they could provide for their family.

Only one interviewee took their claim on to the Minor Employment Claims Adjudication Board (MECAB), which

deals with claims of up to HK\$8,000 (US\$1,022). This is because the financial costs of staying in Hong Kong to pursue smaller claims will often be greater than the amount ultimately received. This leads many to accept an offer below their claim at conciliation rather than take their case to the MECAB.

Seventeen interviewees took their cases on to the Labour Tribunal, which considers claims above HK\$8,000 (US\$1,022).⁹ The claims submitted averaged HK\$34,300 (US\$4,380), but the average amount awarded was HK\$13,822 (US\$1,765). This represents just 40% of what was claimed.

⁸ The currency conversion throughout the report is HK\$1 = US\$0.1277 with rounded figures.

⁹ HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, para2.1, available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

Financial pressure on migrant domestic workers to settle

Using the redress mechanisms in Hong Kong is an expensive and time-consuming process for most migrant domestic workers. Official data shows that in 2018, it took an average of 50 days from the first appointment at the Labour Department until a case reached first hearing in the Labour Tribunal.¹⁰ If a migrant domestic worker wishes to pursue a claim beyond first hearing at the Tribunal and take it to trial, it is likely to take at least twice as long. The average time interviewees in the current research had to wait between filing their case and having it settled at the MECAB/Labour Tribunal was 58 days (12 interviewees).

Migrant domestic workers who take a complaint to the Labour Department are almost certain to lose their jobs and their entitlement to work in Hong Kong. This is because the Two-Week Rule stipulates that a migrant domestic worker must find new employment and process their visa within two weeks of having their contract terminated or otherwise leave Hong Kong. This can rarely be done, as it takes the HKSAR Immigration Department 4-6 weeks to process an application for new employment.¹¹

Visas are granted to migrant domestic workers who are using the redress procedures to try and resolve labour disputes, but each visa costs HK\$230 (US\$29.30) and, crucially, they do not allow the recipient to work. Twenty-three interviewees paid an average HK\$400 (US\$51) for visas to pursue their claim, averaging around two visa extensions per person.

To take a case to the Labour Tribunal, a claimant must pay a filing fee of HK\$20-50 (US\$2.56-6.40), depending on the size of the claim, and HK\$10 (US\$1.30) for serving the defendant with the necessary documents.¹² Other possible expenditure on the case could include: copying and posting costs for documents; costs of translations/certification of translations; obtaining copies of Tribunal documents; or issuing and serving subpoenas.¹³

However, the biggest expenditure for most migrant domestic workers will be the cost of their living expenses (accommodation, food, transport, etc.) during the weeks or months it may take to resolve their case. It is this cost, along with not being able to work, which makes the redress process prohibitively expensive for the majority of migrant domestic workers.

At least 14 interviewees who took part in this research were only able to take their cases because they stayed at shelters/individual's house where food and accommodation were provided for free or largely subsidised. This allowed them to pursue their claims at minimal expense, particularly if they concluded them at conciliation. This is why the 14 migrant domestic workers who settled at conciliation spent on average just HK\$1,139 (US\$145) resolving their claim. Those interviewees

¹⁰ HKSAR Judiciary, "Caseload, Case Disposal and Waiting Time at Different Court Levels", Hong Kong Judiciary Annual Report 2018, available at: https://www.judiciary.hk/en/publications/annu_rept_2018/eng/caseload_lb.html, accessed 26 June 2019.

¹¹ Information provided by the HKSAR Immigration Department on 28 May 2018.

¹² HKSAR Immigration Department, "Fees Table", available at: <https://www.immd.gov.hk/eng/services/fee-tables/>, accessed 5 July 2019.

¹³ The approximate costs of these types of items are: certification of translations costs: HK\$15 a page; obtaining copies of Tribunal documents: HK\$5 a page; issuing and serving a subpoena: HK\$25 for each witness. Cited in Justice Without Borders, *A Practitioner's Manual for Migrant Workers: Pursuing Civil Claims in Hong Kong and from Abroad*, December 2015, p223.

Concerns around fairness and equality of arms in the procedures

who took their claims to the Labour Tribunal/MECAB spent an average of HK\$3,239 (US\$414), which is almost three times as much – even though some of these migrant domestic workers were also supported at shelters.

These time and cost pressures explain why many interviewees settled their cases, even though they were dissatisfied with the amount they were offered. Similarly, the Labour Department recorded in 2018 that it handled 1,062 employment claims involving migrant domestic workers. Of these claims, about 764 or 72% were settled through the conciliation service.¹⁴

When interviewees were asked what the biggest obstacle was they faced in trying to resolve problems at work and access redress mechanisms, the single most important issue identified was the risk of losing their employment (17 interviewees). The second biggest challenge identified was financial problems/the costs of filing a claim (14 interviewees).

The research confirmed that migrant domestic workers struggle to access and navigate the redress mechanisms by themselves. This is for a variety of reasons, including their unfamiliarity with Hong Kong laws and regulations, a lack of information about the procedures and support to enable them to use them; and an inability to speak Cantonese or English fluently. Although free interpretation can be provided, some interviewees experienced problems accessing interpretation and/or with the quality of the service they received.

In addition, many interviewees were intimidated by their employers and found it hard to challenge them at the conciliation meeting or in court. Rita explained how difficult it was to deal with her employer at the conciliation meeting and how this led her to drop her claim of HK\$4,000 (US\$511) for unpaid annual leave:

“She was very angry with me. I was shocked at her behaviour because she disagreed and challenged everything I said and refused to give me any more money. She threatened me, saying that she would submit a counterclaim against me because according to her, she had already given me more money than I was entitled to. I was scared and traumatised so I decided to not pursue my claim.”¹⁵

¹⁴ Information provided by the HKSAR Labour Department on 25 September 2019.

¹⁵ FADWU interview with Hazel on 5 February 2019.

All 18 of the interviewees who took their claim to the MECAB or Labour Tribunal told FADWU that an organisation (e.g. civil society organisations, trade unions, religious organisations, etc.) or an individual had supported them with their claim and that they could not have taken their case without their help. Hazel, a 40-year-old Filipino interviewee, explained the importance of this assistance:

“For sure no, I would not have been able to take my case to the Labour Tribunal by myself because I don’t exactly know the procedure to file a case and being alone, it is not that easy to fight with your employer. The leader of my church and my agent, who had helped me, also gave me confidence to pursue my case.”¹⁶

Even when migrant domestic workers were supported in using the complaints procedures, they still faced significant challenges in getting redress. One widespread issue was providing sufficient evidence to prove their case. For example, it is extremely difficult for a migrant domestic worker to provide evidence that they were forced to work on statutory holidays/days off when there is no physical proof and any witnesses to the fact will probably be from the employer’s family and therefore very likely to corroborate the employer’s version of events.

Another issue was the perceived bias of the system towards employers. While officials are supposed to be neutral arbitrators of the dispute, several interviewees did not consider officials at the conciliation meeting or in the Labour Tribunal to be impartial and 27 interviewees believed the conciliation process and other redress mechanisms favoured the employer.

Many of the concerns outlined above are reflected in the case of Baby Jane Allas. She had her contract terminated in January 2019 shortly after being diagnosed with stage three cervical cancer. Her termination letter specifically stated “diagnosed with cervical cancer” as the reason for ending her employment. Once her contract was terminated, Allas lost her access to free healthcare in Hong Kong.¹⁷

With the help of her sister and her sister’s employer, Allas filed a claim of HK\$84,061 (US\$10,735) with the Labour Department for unpaid wages and her other statutory entitlements, including sick leave. Allas described what happened at the conciliation meeting:

“My employer did not show up because she was ill and instead sent two lawyers to represent her. It was so unfair that the Labour Department allowed my employer to send representatives while they told me that I had to come in person. I sacrificed my health to come even though I was scheduled for chemotherapy that day.”

Despite not speaking English well, the Labour Department did not provide Allas with a Tagalog interpreter. The employer’s lawyers made an offer of HK\$10,492 (US\$1,340), which Allas refused and so the case went to the Labour Tribunal where it was heard in April.

¹⁶ FADWU interview with Hazel on 5 February 2019.

¹⁷ Elaine Yu, “‘I feel lost’: Fired cancer patient exposes plight of Hong Kong’s domestic workers”, *AFP*, 8 March 2019, available at: <https://www.hongkongfp.com/2019/03/08/i-feel-lost-fired-cancer-patient-exposes-plight-hong-kongs-domestic-workers/>, accessed 29 June 2019.

At the Tribunal, Allas's employer increased the offer to HK\$30,000 (US\$3,831). This was less than 40% of her claim, but the employer's lawyer and the Tribunal Officer both told her that she "needed to accept" her employer's offer.¹⁸ Although Allas felt that the Tribunal had "failed to award me what my employer owed me", she found it very difficult and tiring to pursue her case because she was so ill and so she reluctantly accepted the offer. Consequently, Allas received less than half of what she was entitled to under Hong Kong law, despite having written evidence that she was fired because she had cancer.¹⁹

The issues raised in this case exemplify many of the problems interviewees identified with the redress system, including: a reliance on others to use the procedures; unequal treatment of the employer and the domestic worker by officials; multiple pressures to settle the claim; and a failure of the system to protect statutory rights.

The Labour Tribunal is described as offering "a quick, informal and inexpensive way of settling monetary disputes between employees and employers" in which parties "are always encouraged to explore settlement as a means of resolving their dispute".²⁰ However, in practice, migrant domestic workers are frequently coerced into settling for less than they are entitled to by a system, which makes it financially onerous, if not entirely cost ineffective, for them to pursue their claims beyond the conciliation meeting.

The Two-Week Rule and the general prohibition on working while pursuing a claim put migrant domestic workers at an immediate and serious disadvantage. The longer the case continues, the more money they spend on living expenses and lose in terms of forfeited earnings, making it increasingly likely that they will not recoup their losses by pursuing their case. This fact was pointed out to several interviewees by officials at conciliation meetings and the Labour Tribunal.

There are numerous other factors that put migrant domestic workers at a disadvantage vis-a-vis their employer, including: the imbalance of power between the two parties in the negotiating process; migrant domestic workers' unfamiliarity with procedures and/or court languages; the lack of support they receive in pursuing their

¹⁸ FADWU interview with Baby Jane Allas on 3 March 2019.

¹⁹ FADWU interview with Baby Jane Allas on 3 March 2019.

²⁰ HKSAR Judiciary, Labour Tribunal: Guide to Court Services, February 2019, paras 1.1 & 3.1 available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

claims; and their difficulty in providing sufficient evidence to prove their case.

These multiple challenges were summarised by Lilibeth, a 52-year-old Filipino woman who had her contract terminated after working for the same employer for 14 years:

“I lacked the information needed to file a claim properly. I also didn’t have any support from the Labour Department or Tribunal – they favoured the employer. What’s worse, I could not work while my case was ongoing. This put a lot of pressure on me to give up and settle because I didn’t have money.”²¹

This is not to say that the system does not work for any migrant domestic workers. Twelve interviewees were satisfied with the process and outcome of the conciliation service (9) or the MECAB/Labour Tribunal (3). This is primarily because they received the full amount they claimed (9) or close to it (on average 83% of their claim).

The conciliation service worked well for seven interviewees because their employers were generally willing to pay them what they were owed. They consequently only spent an average of just HK\$300 (US\$38) on resolving their claims and only one of them needed to get a visa extension. However, it should be noted that several of these interviewees were still dependant on others for accommodation, food and help in accessing the redress mechanism.

It should also be stressed that all 33 interviewees, including those who were satisfied with the process and outcome, recognised that: it was difficult to make a complaint without losing your right to work in Hong Kong. All but one of the interviewees also

believed that it was very difficult to support yourself while pursuing a claim; domestic workers did not know how to properly use the redress procedures; and it is hard to provide the required evidence to prove your case.

While some migrant domestic workers do get what they are entitled to through the existing redress procedures, they are the exception rather than the rule. The great majority of migrant domestic workers whose statutory or contractual rights are violated by their employers do not access the redress mechanisms at all, for fear of losing their job, their accommodation (Hong Kong’s mandatory live-in requirement forces migrant domestic workers to live in their employer’s home) and their right to stay in Hong Kong.

Of those interviewed for this research who used the redress mechanism to try and protect their rights, more than two-thirds were dissatisfied with the process and outcome of both the conciliation service (22/31) and MECAB/Labour Tribunal (8/11). They generally believed that the system was not fair and that the money they were offered/received was not what they were owed and entitled to. Angela spoke for many interviewees when she said that she thought that the Hong Kong government needed to do more to:

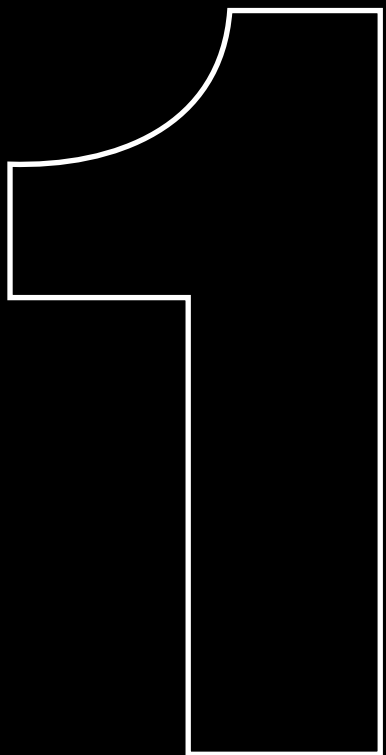
“...help us when we don’t get the money and benefits, which are written in our employment contract or part of Hong Kong labour laws but our employers don’t abide by this.”²²

²¹ FADWU interview with Lilibeth on 10 March 2019.

²² FADWU interview with Angela on 9 May 2019.

On the basis of the research findings, FADWU makes the following recommendations to the Government of Hong Kong SAR:

- Repeal the Two-Week Rule and ensure that migrant domestic workers have sufficient time to secure a new job after a contract has been terminated and thereby are better able to pursue redress mechanisms.
- Repeal the live-in requirement and allow migrant domestic workers to reach agreement with their employer or potential employer on whether to reside in the employing household. Ensure that those living outside receive an appropriate housing allowance.
- Grant all migrant domestic workers with a pending case in the conciliation service, MECAB, Labour Tribunal or criminal court visa extensions, which allow them to work while their case is being pursued, and waive their visa fees.
- Ensure that migrant domestic workers seeking compensation for human or labour rights abuses have effective access to support measures, including adequate information on redress mechanisms and how to use them; free professional interpretation; and access to shelters for those with no other means of supporting themselves while pursuing their claim.
- Allow all migrant domestic workers with a pending case in the conciliation service, MECAB, Labour Tribunal or criminal court to have access to public health care services at eligible persons' rates of charges.
- Allow in all instances third parties, including trade unions, NGOs or individuals, to pursue a claim at the conciliation service, MECAB or Labour Tribunal on behalf of a migrant domestic worker.
- Reduce the evidential burden of proof on migrant domestic workers and require employers to demonstrate that they have complied with their statutory requirements.
- Strengthen the capacity of the MECAB and Labour Tribunal so that the amount of time it takes to conclude claims is reduced.
- Facilitate migrant domestic workers to pursue a claim at the conciliation service, MECAB or Labour Tribunal via video link if they return to their country of origin prior to the resolution of their case.



Introduction

At the end of 2018, there were a total of 386,075 migrant domestic workers employed in Hong Kong.²³ Locally referred to as “foreign domestic helpers” (FDHs), they provide essential household services, contributing US\$12.6 billion to Hong Kong’s economy in 2018 or 3.6% of its GDP.²⁴ The vast majority are Filipinos and Indonesians who total 210,897 and 165,907 respectively.²⁵

Over the past four years, the Hong Kong Federation of Asian Domestic Workers Unions (FADWU) has carried out in-depth research documenting a range of problems migrant domestic workers face in the recruitment process and in the workplace.

FADWU’s 2016 report, *Between a Rock and a Hard Place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong*, found that in the great majority of cases the fees charged to Filipino migrant domestic workers by employment agencies in the Philippines and Hong Kong were far in excess of the legally permitted maximum in the respective territories.

The report also documented exploitative terms and conditions of work with the majority of interviewees stating that: they did not receive a full day’s rest each week (60 out of 65 interviewees); they were not free to leave their employer’s home during their time off (35 out of 66); their working conditions were either bad or extremely bad (38 out of 67); and that they had been threatened or punished by a member of the employer’s household (37 out of 67). In a significant number of cases, the Hong Kong employment agencies were either directly or indirectly complicit in their exploitation. Despite the range of work-related problems, only two interviewees complained to the Hong Kong authorities.²⁶

FADWU’s most recent research report, *Agents of Change? (2018)*, found that 96% (434 out of 452) of interviewees’ employment agencies were not complying with key aspects of the Code of Practice for Employment Agencies and that the majority of interviewees (56% or 253 out of 450) were still paying illegal agency fees. The research confirmed that these were not the activities of a few rogue agencies, as 148 registered Hong Kong employment agencies were identified as not being fully compliant with the Code. Similarly, only 44 out of 347 interviewees (13%) complained to their employment agency regarding any work-related problems, of which a mere 14 (32%) stated that their agency tried to help resolve the problem.²⁷

²³ HKSAR Census and Statistics Department, “Foreign Domestic Helpers by Nationality and Sex”, Labour Force Characteristics, available at: https://www.censtatd.gov.hk/hkstat/sub/gender/labour_force/, accessed 30 August 2019.

²⁴ Experian and Enrich, *The Value of Care: Key contributions of migrant domestic workers to economic growth and family well-being in Asia*, 2019, p6, available at: http://www.enrichhk.org/wp-content/uploads/2019/02/Final_The-Value-of-Care_Full-Report.pdf, accessed 12 June 2019.

²⁵ HKSAR Census and Statistics Department, “Foreign Domestic Helpers by Nationality and Sex”, Labour Force Characteristics, available at: https://www.censtatd.gov.hk/hkstat/sub/gender/labour_force/, accessed 30 August 2019.

²⁶ FADWU, *Between a Rock and a Hard Place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong*, October 2016, available at: <http://en.hkctu.org.hk/content/between-rock-and-hard-place-english-versionphilippine-and-hong-kong-governments-fail-stop>, accessed 12 June 2019.

²⁷ FADWU, *Agents of Change? Assessing Hong Kong employment agencies’ compliance with the Code of Practice*, 2018, available at: <http://en.hkctu.org.hk/content/agents-change-assessing-hong-kong-employment-agencies-compliance-code-practice>, accessed 12 June 2019.

FADWU, and other organisations that have undertaken substantive research on this issue²⁸, have drawn attention to the fact that, despite documented evidence of widespread exploitation of migrant domestic workers, very few attempt to seek justice in Hong Kong. For example, in 2018 less than 0.3% of the total migrant domestic worker population filed an employment claim at the Labour Department.²⁹

Therefore, FADWU has undertaken the current research to better understand the reasons why migrant domestic workers are generally not utilising the legal remedies available when they encounter work-related problems in Hong Kong. The research specifically examines the conciliation service, Minor Employment Claims Adjudication Board and Labour Tribunal, how accessible these redress mechanisms are to migrant domestic workers, and how effective they are in resolving disputes and enforcing migrant domestic workers' statutory and contractual rights.

²⁸ See: Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, November 2013, available at: <https://www.amnesty.org/download/Documents/12000/asa170292013en.pdf>, accessed 12 June 2019; Alliance of Progressive Labor in the Philippines (APL), Alliance of Progressive Labor – Hong Kong (APL-HK) and Progressive Labor Union of Domestic Workers in Hong Kong (PLU), *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 12 June 2019; and Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016, available at: <http://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>, accessed 12 June 2019.

²⁹ Information provided by the HKSAR Labour Department on 25 September 2019.

2

Methodology

In previous FADWU research reports, interviews were conducted with migrant domestic workers who had work-related problems, irrespective of whether they had accessed redress mechanisms. In the current research, FADWU has carried out qualitative, semi-structured interviews with migrant domestic workers who accessed a Labour Department redress mechanism in 2018 or 2019 to try and resolve a work-related problem so that it could identify whether they are encountering problems in using the mechanisms. A total of 33 interviews were conducted with migrant domestic workers – of whom 27 were from the Philippines and six from Indonesia. These two nationalities were selected because they represent an overwhelming 98% of the migrant domestic worker population in Hong Kong. All but one of the interviewees were women and they were aged between 22 and 56 years.

The qualitative interviews were conducted between February and July 2019, and took place in Hong Kong Island, Kowloon Peninsula, the New Territories, as well as remotely via messaging, especially in cases where the interviewees had returned to their home country. Interviews were facilitated by civil society and religious organisations, the Philippine Consulate and the University of Hong Kong, as well as through social media, personal contacts and referrals.

Interview questions focused on migrant domestic workers' experience of pursuing a claim through Hong Kong's labour redress mechanisms, including: the work-related problems they experienced; how they sought to resolve these problems; the difficulties they encountered; and how they assessed the procedures they used (see Appendix I for the full list of interview questions). To protect the identities of the migrant domestic workers who were interviewed, their names have been changed and they are only identified by their age, nationality and gender with the exception of those whose name and case are already in the public domain.

Throughout the report, different numbers of interviewees are given as responding to particular questions. This is due to the fact that not all interviewees were able to answer all the questions, primarily because they could not remember or because the questions were not relevant to their situation.

3

Interviewees' experience of using Hong Kong's redress mechanisms for labour-related issues

Background information on how the redress mechanisms work

The Labour Department is the main governmental body responsible for labour administration in Hong Kong. Its responsibilities include ensuring workers' health and safety, safeguarding their rights and benefits, and resolving labour disputes with their employer.³⁰ The Labour Relations Division in the Labour Department is a key point of contact for migrant domestic workers with work-related disputes and claims, as it provides a free conciliation service for employees and employers.

At the conciliation service, a Labour Department conciliation officer acts as a "neutral intermediary" to assist both parties to understand the issues in dispute, the relevant legal requirements and facilitate a mutually acceptable settlement. The conciliation officer cannot compel either party to attend and cannot adjudicate claims. However, if either party fails to attend a meeting or no settlement is reached, the officer can, at the request of the party in attendance, submit a claim to the Minor Employment Claims Adjudication Board (MECAB) or the Labour Tribunal where the dispute can be adjudicated.³¹ There are no restrictions on having legal representation in the conciliation meetings provided that both parties agree to the arrangement.³²

The MECAB and the Labour Tribunal are both mandated to hear claims arising from disputes on statutory or contractual employment rights, but only if the claimant has already gone to the conciliation service and a settlement has not been reached. Legal representation is not permitted at either the MECAB or the Labour Tribunal, although a party can be represented by a registered trade union or an authorised employers' association if they have been granted permission by the Board/Tribunal in advance of any hearing.³³

The Labour Relations Division, MECAB and Labour Tribunal do not handle disputes between migrant domestic workers and their employment agencies. The Employment Agencies Administration (EAA) of the Labour Department is responsible for this, including enforcing Part XII on Employment Agencies of the Employment Ordinance (Cap. 57) and the Employment Agency Regulations (Cap. 57A).³⁴

The MECAB and Labour Tribunal provide similar services with the only major difference being that claims in the MECAB cannot exceed HK\$8,000 (US\$1,022) per claimant or involve more than 10 claimants in each case,³⁵ while claims in the Labour Tribunal must be for more than HK\$8,000 (US\$1,022) or have more than 10 claimants.³⁶

The most common claims lodged in the Labour Tribunal by employees, including migrant domestic workers, include: unpaid wages; one month's wages in lieu of notice of termination of an employment contract; pay for statutory holidays, annual leave or rest days; and long service payment.³⁷

To file a claim in the Labour Tribunal, an appointment must be made with a Tribunal officer either by phone or online. At the appointment, the Tribunal officer will interview the claimant to obtain a statement, supporting documents and any other relevant

³⁰ HKSAR Labour Department, "Vision and Mission", available at: <https://www.labour.gov.hk/eng/vm/content.htm>, accessed 18 June 2019.

³¹ HKSAR Labour Department, *Conciliation Service of the Labour Relations Division*, p1, available at: <https://www.labour.gov.hk/eng/public/wcp/ConciliationServiceLRD.pdf>, accessed 18 June 2019.

³² Information provided by the HKSAR Labour Department on 25 September 2019.

³³ HKSAR Labour Department, *A Simple Guide to the Minor Employment Claims Adjudication Board*, pp1-3, December 2016, available at: <https://www.labour.gov.hk/eng/public/mecab/SGMECAB.pdf>, accessed 23 June 2019 and HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, paras9.1.1-9.15, available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

³⁴ See: <https://www.eaa.labour.gov.hk/en/home.html>, accessed 1 September 2019.

³⁵ HKSAR Labour Department, *A Simple Guide to the Minor Employment Claims Adjudication Board*, p1, December 2016, available at: <https://www.labour.gov.hk/eng/public/mecab/SGMECAB.pdf>, accessed 23 June 2019.

³⁶ HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, para2.1, available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

³⁷ Long service payments are made to workers, including migrant domestic workers, who have five years or more of continuous contract. See: HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, para2.3, available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

information, and will then assist the claimant to fill out the required forms (this must be done in either English or Chinese). Filing a claim costs between HK\$20-50 (US\$2.56-6.40) depending on the amount they claimed for.

The Tribunal officer will then investigate the claim, including by interviewing the defendant to obtain a statement and any supporting evidence. Once this is done, a summary of the relevant allegations from both the claimant and the defendant is submitted directly to the presiding officer in advance of the first hearing.³⁸

Both parties must attend the first hearing (also called the “call-over hearing”) and any subsequent hearings in person. At the first hearing, the presiding officer will check that both parties have filed sufficient documentary evidence to support their case, explain the issues and the relevant laws and explore the possibility of settlement. The presiding officer may adjourn the case to another date for mention (a short hearing to assess whether the parties are ready for trial and/or give directions for the furtherance of the case) or trial.³⁹

During the trial, the presiding officer will generally:

“explain the procedures to be adopted during trial, [...] hear each party’s case; allow the claimant and the defendant to question each other and their witnesses; order the parties to provide further evidence or to call further witnesses and adjourn the hearing to a later date if necessary; deliver his judgment at the end of the hearing or fix a date to deliver his judgment.”⁴⁰

The conciliation service

In 2018, the Labour Relations Division of the Labour Department handled a total of 13,691 claims, of which 1,062 involved migrant domestic workers.⁴¹ Of these claims, 764 were settled through the conciliation service. Similarly, as of the end of August

2019, there were 9,183 claims, of which 719 involved migrant domestic workers and 542 of these claims were settled at conciliation.⁴²

All 33 migrant domestic workers interviewed for this research filed a claim at the Labour Department and attended the conciliation meeting. In eight cases, the employer did not attend.

The three most common claims made by migrant domestic workers were in relation to wages (30 out of 33 interviewees), food and travelling allowance (26 out of 33), and flight ticket (26 out of 33). Other common claims included: denial of sickness allowance, maternity leave or medical treatment (8 out of 33) and statutory weekly rest day and holidays – not given and/or not paid for (8 out of 33).

Migrant domestic workers’ entitlements in respect to these issues are set out in Hong Kong legislation and in the Standard Employment Contract for migrant domestic workers (see Appendix 2). For example, the Standard Employment Contract, which is the legally required contract for all migrant domestic workers in Hong Kong, states that if employers terminate the contract without one month’s notice, they must pay the worker one month’s wages in lieu of notice (paragraph 10). In addition, upon

³⁸ HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, paras6.3-6.4, available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

³⁹ HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, paras9.2.1-9.2.3, available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

⁴⁰ HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, paras9.3.1-9.3.2, available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

⁴¹ Claims filed by migrant domestic workers against their employers and those filed by employers against their migrant domestic workers.

⁴² Information provided by the HKSAR Labour Department on 25 September 2019.

Claim item	Calculation
Monthly wages	HK\$4,520 ⁴³
One month's wages in lieu of notice	HK\$4,520
Food allowance in lieu of the provision of meals	HK\$1,075 per month ⁴⁴
Sickness allowance	Average daily wage x 4/5 ⁴⁵
Weekly rest day ⁴⁶ (continuous period of not less than 24 hours)	1 day for every period of seven days
Holiday	12 statutory holidays with pay ⁴⁷
Annual leave	7 days with pay ⁴⁸
Maternity leave	10 weeks with pay ⁴⁹
Medical treatment	Cost depending on the treatment ⁵⁰
Long service ⁵¹	(Last month wages x 2/3) ⁵² x reckonable years of service
Return flight ticket	HK\$1,500-3,000
Food and travelling allowance for travel back home	HK\$100 per day ⁵³

Figure 1: Interviewees' range of items of payment in a claim

- ⁴³ The current Minimum Allowable Wage for migrant domestic workers is HK\$4,520 per month (US\$577, since 29 September 2018). Previously, it was HK\$4,410 (US\$563, since 30 September 2017). Thus, this would be the minimum amount migrant domestic workers would be owed. See: HKSAR, "Minimum Allowable Wage and food allowance for foreign domestic helpers to increase", 28 September 2018, available at: <https://www.info.gov.hk/gia/general/201809/28/P2018092800357.htm>, accessed 25 June 2019.
- ⁴⁴ The Standard Employment Contract for migrant domestic workers states that employers are required to provide food free of charge. However, employers may opt to pay a food allowance in lieu of the provision of meals. The current food allowance is not less than HK\$1,075 per month (US\$137, since 29 September 2018). Previously, it was not less than HK\$1,053 (US\$134, since 30 September 2017). See: HKSAR, "Minimum Allowable Wage and food allowance for foreign domestic helpers to increase", 28 September 2018, available at: <https://www.info.gov.hk/gia/general/201809/28/P2018092800357.htm>, accessed 25 June 2019.
- ⁴⁵ To be paid sickness allowance, migrant domestic workers, like other workers, must accumulate enough sickness days with sick leave not less than four consecutive days and supported by a medical certificate. The days are accumulated at the rate of two paid sickness days for each completed month of employment during the first 12 months, and four paid sickness days for each completed month of employment thereafter, not exceeding 120 days at any one time. See: https://www.labour.gov.hk/eng/faq/cap57g_whole.htm, accessed 6 July 2019.
- ⁴⁶ A rest day is a continuous period of not less than 24 hours. See: HKSAR Labour Department, *Practical Guide for Employment of Foreign Domestic Helpers*, January 2019, p12, available at: <https://www.fdh.labour.gov.hk/res/pdf/FDHguideEnglish.pdf>, accessed 26 June 2019.
- ⁴⁷ For workers who have been employed under a continuous contract for not less than three months. See: https://www.labour.gov.hk/eng/faq/cap57f_whole.htm, accessed 26 June 2019.
- ⁴⁸ After serving every period of 12 months under a continuous contract. From the third year, the paid annual leave increases by one day for each year served up to the ninth year where it reaches a maximum of 14 days. See: https://www.labour.gov.hk/eng/faq/cap57i_whole.htm#q1, accessed 26 June 2019.
- ⁴⁹ For women employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled maternity leave. See: https://www.labour.gov.hk/eng/faq/cap57h_whole.htm, accessed 26 June 2019.
- ⁵⁰ Clause 9(a) of the Standard Employment Contract states that in the event that a migrant domestic worker "is ill or suffers personal injury", regardless of whether this arises out of employment, "the Employer shall provide free medical treatment to the Helper. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment".
- ⁵¹ For workers with five years or more of continuous contract. See: <https://www.labour.gov.hk/eng/public/wcp/ConciseGuide/11.pdf>, accessed 26 June 2019.
- ⁵² This sum should not exceed two-thirds of HK\$22,500 (US\$2,873). See: https://www.labour.gov.hk/eng/faq/cap57l_whole.htm, accessed 26 June 2019.
- ⁵³ See: HKSAR Labour Department, *Practical Guide for Employment of Foreign Domestic Helpers*, January 2019, p31, available at: <https://www.fdh.labour.gov.hk/res/pdf/FDHguideEnglish.pdf>, accessed 26 June 2019.
- ⁵⁴ The currency conversion throughout the report is HK\$1 = US\$0.1277 with rounded figures.

termination or completion of a contract, employers are legally obliged to provide “free return passage to his/her place of origin” and “a daily food and travelling allowance of HK\$100 [US\$13] per day” (paragraph 7).⁵⁵

Consequently, if migrant domestic workers are aware of their full statutory rights and/or can access assistance from trade unions, civil society organisations or their consulate, they should then be able to prepare an itemised list of the outstanding wages and other entitlements owed to them by their employer. Figure 1 lists the principal types of claim made by the migrant domestic workers who were interviewed in this research and the corresponding financial entitlement under Hong Kong law.

The monetary claims submitted by the interviewees ranged from HK\$4,000 to HK\$122,520 (US\$511 to US\$15,646) and averaged HK\$27,391 (US\$3,498).⁵⁶ In the 25 cases where the employers attended the conciliation meeting, the average amount they offered was HK\$12,459 (US\$1,591), including four employers who did not offer any money. On average, employers only offered 51% of the amount claimed by the migrant domestic workers.

Of the 14 interviewees who accepted their employer’s offer at conciliation, seven settled for less than the full amount they claimed. The most common reasons for accepting were that: they urgently needed the money; they could not afford to stay longer in Hong Kong without any guarantee that they would recoup the money; and they needed to work again so that they could provide for their family. Hong Kong regulations, such as the Two-Week Rule, also impacts on the urgency of migrant domestic workers to settle their claim as soon as possible (see section 4).

A case in point is Flora, a 46-year-old Filipino woman, who had a claim of HK\$25,483 (US\$3,254) against her employer. She claimed for unpaid wages, one month’s wages in lieu of notice, food allowance, flight ticket, and food and travelling allowance.⁵⁷ At the conciliation meeting, her employer offered her just HK\$3,000 (US\$383), 12%

of her claim. Although Flora was dissatisfied with the process and outcome, she nonetheless accepted the offer:

“If I refuse the offer, then I would have to remain in Hong Kong. It would be a long process and I don’t think I would get the money from my employer. I didn’t want to stay any longer also because I have to work for my family especially for my children’s education.”⁵⁸

Dewi, a 40-year-old woman from Indonesia, had a similar experience. Her employer terminated her contract in April 2019 and left her out in the streets without any money. A friend took her to a religious organisation, which helped her itemise what was owed to her, file a case at the Labour Department and accompanied her to the conciliation meeting in May. Her claim included compensation for unpaid wages, one month’s wages in lieu of notice, annual leave, flight ticket, and food and travelling allowance. Dewi explained her predicament:

“My claim was for HK\$11,185 [US\$1,428].⁵⁹ At first my employer accused me of lying and refused to pay. But after further negotiations, she agreed to give me HK\$5,700 [US\$728]. I accepted because if I didn’t, I would have to waste more time in Hong Kong, which means no income to support my family.”⁶⁰

⁵⁵ For migrant domestic workers’ other legal entitlements (e.g. payment in lieu of any untaken annual or maternity leave, weekly rest days or holidays, long service payments, etc.), see: HKSAR Labour Department, Practical Guide for Employment of Foreign Domestic Helpers, January 2019, p26, available at: <https://www.fdh.labour.gov.hk/res/pdf/FDHguideEnglish.pdf>, accessed 26 June 2019.

⁵⁶ The currency conversion throughout the report is HK\$1 = US\$0.1277 with rounded figures.

⁵⁷ Wages HK\$8,996; one month’s wages in lieu of notice HK\$4,410; food allowance (9 months) HK\$9,477; flight ticket HK\$2,500; and food and travelling allowance HK\$100.

⁵⁸ FADWU interview with Flora on 28 April 2019.

⁵⁹ Wages HK\$4,140; one month’s wages in lieu of notice HK\$4,520; annual leave HK\$150; flight ticket HK\$2,175; food and travelling allowance HK\$200.

⁶⁰ FADWU interview with Dewi on 10 May 2019.

Another interviewee, Ratna, a 22-year-old Indonesian woman, was underpaid for five out of the six months she worked for her employer and was made to do intensive daily gardening work, which was not part of her contract. She was only given half a day off per week and if it rained, her employer told her not to work but deducted this from her salary. Ratna sought help at a civil society organisation in May 2019 and they assisted her to report her employer to the Labour Department for contractual discrepancy and underpayment:

“My claim of HK\$87,045 [US\$11,116] was for unpaid wages, rest days, one month’s wages in lieu of notice, annual leave, flight ticket, and food and travelling allowance.⁶¹ At the conciliation meeting, my employer only offered me HK\$55,000 [US\$7,024]. I was not happy with this amount because it was not what I was owed. But I had to accept it because I wanted to solve this problem as soon as possible so that I could start working again.”⁶²

Angela, a 43-year-old Filipino woman, told her employer in February 2018 that she was pregnant. It is illegal to dismiss workers, including migrant domestic workers, simply because they are pregnant,⁶³ but Angela’s employer forced her to write and sign a resignation letter. Angela later found a civil society organisation to help her file a claim of HK\$16,000 (US\$2,043) for unpaid wages, one month’s wages in lieu of notice and pregnancy discrimination. Her employer did not show up at the conciliation meeting and at the time of writing, her case was still pending at the Labour Tribunal.⁶⁴

PathFinders is a civil society organisation that provides welfare services and health care to children and their mothers in Hong Kong, and helps them access justice. It notes that firing or pressuring pregnant migrant domestic workers to resign is a significant problem with serious consequences:

“Once a pregnant women’s contract has been terminated, she faces unfathomable obstacles and hardships including becoming homeless. Within two weeks she loses access to all public welfare support and healthcare for vital prenatal screening. For those unable to return home, their children are typically undocumented, stateless and lack access to critical and essential services including medical care and immunisations, helter and education.”⁶⁵

The Minor Employment Claims Adjudication Board (MECAB)

In 2018, there were a total of 607 claimants at the MECAB, of which 53 were migrant domestic workers. As of the end of August 2019, 33 out of 380 claimants were migrant domestic workers.⁶⁶

Only one out of the 18 interviewees who took their claim beyond the conciliation process used the MECAB. This is unsurprising given that the maximum claim that can be made at the MECAB is HK\$8,000 (US\$1,022) and the financial costs of staying in Hong Kong to pursue such a claim will often be greater than the amount ultimately received. For many migrant domestic workers pursuing smaller claims, it will make more sense to accept an offer below their claim at conciliation rather than take their case to the MECAB.

⁶¹ Wages and rest days HK\$79,029; one month’s wages in lieu of notice HK\$4,410; annual leave HK\$506; flight ticket HK\$3,000; and food and travelling allowance HK\$100.

⁶² FADWU interview with Ratna on 7 June 2019.

⁶³ The Sex Discrimination Ordinance (Cap. 480) makes it unlawful for employers to discriminate against a worker who is pregnant (including by terminating their contract, forcing them to leave or firing on their return from maternity leave. See: https://www.elegislation.gov.hk/hk/cap480!en@2016-05-27T00:00:00?xid=ID_1438403244392_003, accessed 9 July 2019 and also HKSAR Labour Department, *Practical Guide for Employment of Foreign Domestic Helpers*, January 2019, p19, available at: <https://www.fdh.labour.gov.hk/res/pdf/FDHguideEnglish.pdf>, accessed 26 June 2019.

⁶⁴ FADWU interview with Angela on 9 May 2019.

⁶⁵ FADWU interview with Catherine Gurtin (CEO of PathFinders) on 24 July 2019.

⁶⁶ Information provided by the HKSAR Labour Department on 26 September 2019.

The only interviewee to use the MECAB was Dolores, a 33-year-old Filipino woman, who had her contract terminated by her employer in April 2019. She filed a claim for HK\$7,308 (US\$933) for unpaid wages, one month's wages in lieu of notice, flight ticket, food and travelling allowance, and compensation for working on five rest days.⁶⁷ Dolores stated that on her rest days she had to "wake up at 6:30am to prepare breakfast for the whole family. I then had to come back by 8:30pm and then do more work – clean the kitchen, mop the floor, replace the water dispenser, wash the children's clothes, etc."⁶⁸

During the conciliation meeting, the employer did not offer any money, so Dolores decided to take her case to the MECAB:

"My case was heard in May 2019. The adjudication officer did not award me the full amount – only HK\$5,200 [US\$664]. This was because my employer counterclaimed that I was not working all of the days which I had claimed and also, the adjudication officer said there was a lack of evidence that I had actually worked during my five days off."

The Labour Tribunal

Seventeen interviewees took their case to the Labour Tribunal and their claims ranged from HK\$8,500 to HK\$122,520 (US\$1,085 to US\$15,646) and averaged HK\$34,300 (US\$4,380). The average amount awarded to the 11 claimants whose case had been concluded was HK\$13,822 (US\$1,765).⁶⁹ On average, the amount awarded was just 40% of what was claimed.

Lilibeth, a 52-year-old Filipino woman, had her contract terminated just before going on her annual leave in November 2018. She had worked for the same employer for 14 years. Her employer paid her HK\$10,000 (US\$1,277) and refused during the conciliation meeting to give her any more money. In December, Lilibeth took her case to the Labour Tribunal with a claim of HK\$51,098 (US\$6,525) for long service, rest

days, holidays, annual leave, flight ticket, and food and travelling allowance.⁷⁰ She expressed frustration at the outcome of the trial:

"I really wanted to get my long service and all those rest days and holidays I didn't go out but worked instead. But for all that, the Labour Tribunal only awarded me HK\$20,000 [US\$2,554]. It's not even half of my claim – not even close to compensating for the amount of sacrifice that I had made for 14 years!"

Despite her disappointment, Lilibeth accepted the amount because she had urgent family matters in the Philippines to attend to.⁷¹

Similarly, Nur, a 45-year-old woman from Indonesia, worked for the same employer for more than five years. In February 2018, she requested annual leave so that she could attend her daughter's university graduation in August. It was initially granted but rescinded later in May. Instead, her employer asked Nur to write a resignation letter, which she refused. Her employer became angry and told her to pack her things and leave the house without giving her any compensation. After calling a friend, Nur got advice to get help from a nearby shelter.

Nur's claim of HK\$26,583 (US\$3,395) consisted of unpaid wages, one month's wages in lieu of notice, long service, flight ticket, and food and travelling allowance.⁷²

⁶⁷ Wages (3 days) HK\$445; one month's wages in lieu of notice HK\$4,520; flight ticket HK\$1,500; food and travelling allowance HK\$100; and statutory weekly rest days (5) HK\$743.

⁶⁸ FADWU interview with Dolores on 1 and 26 May 2019.

⁶⁹ The claims of the remaining six interviewees were ongoing at the time of interview.

⁷⁰ Long service HK\$40,247; rest days (38 days) HK\$5,459; holidays (17 days) HK\$2,442; annual leave (27 days) HK\$2,730; flight ticket HK\$120 (balance); and food and travelling allowance HK\$100.

⁷¹ FADWU interview with Lilibeth on 10 March 2019.

⁷² Wages (one month) HK\$4,310; one month's wages in lieu of notice HK\$4,310; long service HK\$15,563; flight ticket HK\$2,300; and food and travelling allowance HK\$100.

At the conciliation meeting two weeks later, she rejected her employer's offer of HK\$10,000 (US\$1,277) and filed a case at the Labour Tribunal:

“Before our first hearing in July, my employer contacted the Tribunal and offered to pay me HK\$15,000 [US\$1,916], which I refused. But I started to get worried because the legal process was taking too long and I didn’t want to waste more time and money. Also, it was getting close to my daughter’s graduation. So, I reduced my claim to HK\$17,500 [US\$2,235], which my employer agreed. I then returned home to Indonesia.”⁷³

In another case, Hazel, a 40-year-old Filipino woman, went on maternity leave in June 2018, but when she returned to work in August, her employer illegally terminated her contract.⁷⁴ Hazel filed a claim of HK\$33,180 (US\$4,237) against her employer for unpaid wages, one month’s wages in lieu of notice, long service, annual leave, maternity leave, flight ticket, and food and travelling allowance.⁷⁵ Hazel explained what happened at the conciliation meeting:

“My employer offered me HK\$7,600 (US\$970) but I refused to accept it because that was not the amount I was owed. I felt at that time – win or lose – at least I will continue to fight for my rights. But at the Labour Tribunal in November 2018, my employer offered HK\$25,000 [US\$3,193]. I had to accept it because my application for a new job couldn’t be processed until this trial was over. I was not happy with the result – I lost 25% of my claim, which is a lot because for us domestic workers, we work hard for every cent. But at least I got more than my employer had first offered during the conciliation meeting.”⁷⁶

⁷³ FADWU interview with Nur on 9 January 2019.

⁷⁴ The Sex Discrimination Ordinance (Cap. 480) prohibits employers from discriminating against a worker who is pregnant, including by terminating their contract, forcing them to leave or firing them on their return from maternity leave. See: https://www.elegislation.gov.hk/hk/cap480!en@2016-05-27T00:00:00?xpid=ID_1438403244392_003, accessed 9 July 2019.

⁷⁵ Wages (25 days) HK\$3,475; one month’s wages in lieu of notice HK\$4,310; long service (5+ years) HK\$14,375; annual leave (12 days) HK\$1,668; maternity leave (65 days) HK\$7,452; flight ticket HK\$1,800; and food and travelling allowance HK\$100.

⁷⁶ FADWU interview with Hazel on 5 February 2019.

4

Access to
justice issues
arising from
the research

Problems relating to cost and time

When interviewees were asked what the biggest obstacle they faced was in trying to resolve problems at work and access redress mechanisms, the single most important issue identified was the risk of losing their employment (17 interviewees).⁷⁷ In addition, all 33 interviewees agreed with the statement that it was very difficult to make a complaint without losing their job and their right to work in Hong Kong.⁷⁸

Migrant domestic workers who make a complaint against their employer and lose their job will generally be left with nowhere to live, as Hong Kong's mandatory live-in requirement compels all migrant domestic workers to reside in the employer's residence.⁷⁹ Furthermore, under the Two-Week Rule (New Condition of Stay, 1987), once their contract is terminated they must find new employment and process their visa within two weeks or leave Hong Kong. This is extremely difficult to do, as it normally takes the HKSAR Immigration Department 4-6 weeks to process an application for new employment.⁸⁰

Consequently, most migrant domestic workers who experience problems with their terms and conditions of work will not raise this with their employer, let alone make a formal complaint at the Labour Department, for fear of losing their job, their accommodation and their right to stay in Hong Kong, which in turn may leave them unable to support their families. Indeed, many of the case studies cited in this research illustrate how migrant domestic workers only consider using the Labour Department's redress mechanisms after they have already had their contract terminated.

The negative role that the Two-Week Rule and the live-in requirement have played in terms of increasing migrant domestic workers' vulnerability to exploitation and making it more difficult for them to access justice has been raised repeatedly by different inter-governmental bodies over the last five years.⁸¹ Most recently in September 2018, the UN Committee on the Elimination of Racial Discrimination expressed its concern that:

“...the live-in requirement renders workers vulnerable to abuse, and that the rule requiring workers to leave the territory within two weeks of termination of contract hinders their ability to obtain redress for labour violations.”

The Committee recommended that “effective measures be taken to ensure non-discrimination” against migrant domestic workers and called for the “repeal of the ‘two weeks rule’ and the live-in requirement.”⁸²

Even when migrants are willing to file a complaint, they face considerable practical challenges, many of which relate to the cost of pursuing their claim. The second biggest obstacle identified by interviewees to resolving their problems and accessing redress mechanisms was financial problems/the costs of filing a claim (14 interviewees). All but one interviewee also agreed with the statement that it was very difficult to support yourself while pursuing a claim.

⁷⁷ Interviewees were asked an open question regarding what they perceived to be the biggest barrier to resolving their work-related problems and accessing redress mechanisms. See question 6 in Appendix 1 for details.

⁷⁸ Interviewees were also asked to respond to a series of nine statements based on their personal experience of trying to resolve work-related problems by stating whether they agree or disagree with the statement, or do not know. See question 8 in Appendix 1 for details.

⁷⁹ Standard Employment Contract for migrant domestic workers, clause 3. See Appendix 2.

⁸⁰ Information provided by the HKSAR Immigration Department on 28 May 2018.

⁸¹ See for example: the ILO Committee of Experts on the Application of Conventions and Standards, *Observation (CEACR) - adopted 2014, published 104th ILC session (2015): Migration for Employment Convention (Revised), 1949 (No. 97) - China - Hong Kong Special Administrative Region (Ratification: 1997)*, 2015; the Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of China (Hong Kong)*, UN Doc. CEDAW/C/CHN/CO/7-8, 14 November 2014, paras 64-65; and the Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, UN Doc. E/C.12/CHN/CO/2, 13 June 2014, para 43.

⁸² Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China)*, UN Doc. CERD/C/CHN/CO/14-17, 19 September 2018, paras 30-31.

Most migrant domestic workers who wish to pursue a claim against their employer will need to pay for a visa extension. This visa does not allow them to work and currently costs HK\$230 (US\$29.40).⁸³ Twenty-four interviewees thought the cost of the visa extensions was too expensive.

The 23 interviewees who got visa extensions paid an average of HK\$400 (US\$51) for them, indicating that migrant domestic workers will, on average, need to pay for two visa extensions. The other interviewees who did not get a visa extension were able to pursue their claim within the time remaining on their work visa, had only just started their claim at the time of the interview and may subsequently have applied for an extension, or had returned to their home country.

No interviewee applied for an exemption work visa. These visas are normally only granted by the Immigration Department when a case has been accepted for prosecution. Twenty-four interviewees believed that the Immigration Department would not grant an exemption work visa to migrants to allow them to work while pursuing their case and this, along with a lack of awareness that this option existed, would explain why no applications were made. Consequently, the only two interviewees who worked while pursuing their claims did so illegally.

To take a case to the Labour Tribunal, a claimant must pay a filing fee of HK\$20-50 (US\$2.56-6.40), depending on the size of the claim. A further HK\$10 (US\$1.30) per address fee is charged for serving the defendant with the necessary documents.⁸⁴ Additional expenditure, which may be required to take forward a case could include: mailing fees (copying and posting costs for documents); costs of translation/certification of translations; obtaining copies of Labour Tribunal documents; or issuing and serving subpoenas.⁸⁵

However, by far the biggest expenditure for most migrant domestic workers making a claim will be their living expenses, particularly their food and accommodation costs,

until their case is concluded. For many migrant domestic workers, the prospect of paying these costs for weeks or months while not being able to work will make the process prohibitively expensive.

Exactly how long a claim will take to resolve depends on various factors (e.g. whether employers are willing to settle at conciliation, how many claims are already pending in the Labour Tribunal, the time it takes for parties to produce the required documents, whether there are requests for rescheduling, etc.). The average time interviewees in the current research had to wait between filing their case and having it settled in the MECAB/Labour Tribunal was 58 days (12 interviewees).⁸⁶ The official data compiled by the HKSAR Judiciary shows that in 2018, it took an average of 25 days from the first appointment until the case was filed and a further 25 days from the filing of the case to the first hearing in the Labour Tribunal.⁸⁷

If a migrant domestic worker wishes to pursue a claim beyond first hearing (i.e. to mention or trial), it is likely to take at least twice as long because of the pressures of scheduling time at the Labour Tribunal. Research undertaken by the University of Hong Kong, in which students observed proceedings at the Labour Tribunal involving migrant domestic workers, found that where a case was not settled, the next hearing

⁸³ HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, paras5-5.1, available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

⁸⁴ HKSAR Immigration Department, "Fees Table", available at: <https://www.immd.gov.hk/eng/services/fee-tables/>, accessed 5 July 2019.

⁸⁵ The approximate costs of these types of items are: certification of translations costs HK\$15 a page; obtaining copies of Labour Tribunal documents HK\$5 a page; issuing and serving a subpoena HK\$25 for each witness. Cited in Justice Without Borders, *A Practitioner's Manual for Migrant Workers: Pursuing Civil Claims in Hong Kong and from Abroad*, December 2015, p223.

⁸⁶ The average time for the remaining six interviewees with a case at the Labour Tribunal could not be calculated because at the time of writing, their case was ongoing or they could not be reached.

⁸⁷ HKSAR Judiciary, "Caseload, Case Disposal and Waiting Time at Different Court Levels", Hong Kong Judiciary Annual Report 2018, available at: https://www.judiciary.hk/en/publications/annu_rept_2018/eng/caseload_lb.html, accessed 26 June 2019.

would not take place for another two months on average.⁸⁸

In this context, it is unsurprising that 28 interviewees agreed that the legal process was too slow and too expensive. At least 14 Interviewees who took part in the research stayed at shelters/individual's house where food and accommodation were provided for free or largely subsidised. This allowed them to pursue their claims at minimal expense, particularly if they concluded them at conciliation. This is why the 14 migrant domestic workers who settled at conciliation spent on average just HK\$1,139 (US\$145) resolving their claim. Ten interviewees, whose claim at the MECAB and Labour Tribunal had been concluded, spent an average of HK\$3,239 (US\$414),⁸⁹ which is almost three times as much – even though some of these migrant domestic workers were also supported at shelters.

These time and cost pressures explain why many migrant domestic workers settle their cases at conciliation or first hearing. In 2018, 72% of the claims involving migrant domestic workers were settled at the conciliation stage. Similarly, as of the end of August 2019, 74% of the claims involving migrant domestic workers were settled at conciliation.⁹⁰

Settling a case means that the claimant will not be able to claim back reasonable expenses they have incurred in taking the case (e.g. visa extension fees, travel and food costs to attend hearings, mailing fees, etc.) as this can only be done by the winning party at trial. However, settling a case does ensure that the migrant domestic worker will receive the agreed amount, whereas if they refuse the settlement and go to trial, they will have to spend more money and may still lose the case, thus, leaving them without any compensation and liable for the defendant's costs.

Video Link Testimony

In a landmark case on 16 September 2018, Hong Kong's Labour Tribunal allowed for the first time video testimony from outside Hong Kong. Mallorca Domingo, a Filipino domestic worker formerly employed in Hong Kong, gave evidence via live television link from the Philippines.⁹¹ Using video link testimony at the Labour Tribunal could be a positive step forward in providing migrant domestic workers better access to the Labour Tribunal, but there are issues with the process, which currently make it difficult for many claimants to use this mechanism.

First, the migrant domestic worker needs to request the use of video conferencing facilities in the High Court and availability of these facilities is limited. Moreover, the claimant needs to testify with an independent observer in a place with a high-quality internet connection and provide a significant amount of documentation (e.g. the claimant's statement, a letter to the Labour Tribunal, an authorisation form, photos, further evidence, etc.). This usually requires the claimant to travel to a law firm in a city, which can be very time consuming and expensive.

If video link testimony is to be a viable option for migrants, more needs to be done to ensure that the process is accessible and effective.

⁸⁸ Unpublished research by the University of Hong Kong on the HKSAR Labour Tribunal, undertaken in September-November 2017 and February-April 2019. The research involved students observing hearings at the Labour Tribunal involving migrant domestic workers (25 cases in 2017 and 35 cases in 2019). Information pertaining to each case was limited to what students could directly document from what they heard and saw at the Tribunal.

⁸⁹ The remaining two interviewees had their expenses paid for by third parties.

⁹⁰ Information provided by the HKSAR Labour Department on 25 September 2019.

⁹¹ Naomi Ng and Su Xinqi, "'Landmark decision' by Hong Kong Labour Tribunal lets domestic helper appear at hearing via video link from the Philippines", *South China Morning Post*, 20 February 2019, available at: <https://www.scmp.com/news/hong-kong/law-and-crime/article/2186882/landmark-decision-hong-kong-labour-tribunal-lets-helper>, accessed 12 June 2019.

Interviewee	Amount claimed (HK\$)	Amount received (HK\$)
1. Althea	7,047	7,047
2. Angel	9,690	4,700
3. Anisa	60,000	27,000
4. Baby Jane Allas	84,000	30,000
5. Cristina	9,993	9,993
6. Dewi	11,185	5,700
7. Dolores	7,308	5,200
8. Edna	7,000	6,000
9. Eka	9,000	5,000
10. Flora	25,483	3,000
11. Hazel	33,180	25,000
12. Jasmine	7,484	7,484
13. Jessa	64,958	59,094
14. Lilibeth	51,098	20,000
15. Marisol	10,456	10,456
16. Mary	4,310	5,000
17. Nenita	9,708	4,310
18. Nicole	10,151	11,558
19. Nur	17,500	17,500
20. Ratna	87,045	55,000
21. Rita	4,000	0
22. Rosamie	12,671	6,281
23. Samantha	11,525	11,525
24. Sinta	10,591	4,700
25. Teresa	14,862	0
26. Veronica	34,370	34,370

Percentage of claim received	Settled/awarded at
100%	Conciliation
49%	Conciliation
45%	Labour Tribunal
36%	Labour Tribunal
100%	Conciliation
51%	Conciliation
71%	MECAB
86%	Conciliation
56%	Labour Tribunal
12%	Conciliation
75%	Labour Tribunal
100%	Conciliation
91%	Conciliation
39%	Labour Tribunal
48%	Labour Tribunal
100%	Conciliation
119%	Labour Tribunal
100%	Conciliation
100%	Labour Tribunal
63%	Conciliation
0%	Conciliation
50%	Labour Tribunal
100%	Conciliation
44%	Labour Tribunal
0%	Labour Tribunal
100%	Conciliation

Figure 2:
Outcomes of
using the redress
mechanisms for
interviewees ⁹²

⁹²
Out of the 19
interviewees
who did not settle
at the conciliation
stage, one
withdrew his
claim. Also,
six cases at the
Labour Tribunal
were ongoing at
the time of
the interview.

Insufficient awareness of redress mechanisms and support in using them

Eight interviewees identified a lack of information and support as the biggest obstacle they faced in trying to resolve their problems at work and access redress mechanisms.⁹³ All but one agreed with the statement that migrant domestic workers do not know how to properly use the procedures to seek justice in Hong Kong.⁹⁴

FADWU's previous research has consistently shown that many migrant domestic workers are not aware of their rights in Hong Kong and that they are frequently not provided with the relevant information. For example, research conducted by FADWU in 2018 found that employment agencies were not complying with their obligations in the Code of Practice for Employment Agencies, as 54% of interviewees (241 out of 450) stated that their agency did not explain their rights under Hong Kong law; where they could seek assistance in case of disputes/complaints; or provide them with information pamphlets from the Labour Department on their rights.⁹⁵

The current research confirms that migrant domestic workers struggle to navigate the redress mechanisms by themselves. All 18 of the interviewees who took their claim to the MECAB or the Labour Tribunal told FADWU that an organisation or individual had supported them with their claim and that they could not have taken their case without their help. The assistance and support they received came from civil society organisations, trade unions, shelters, religious organisations and individuals.

As Hazel explained:

“For sure no, I would not have been able to take my case to the Labour Tribunal by myself because I don’t exactly know the procedure to file a case and being alone, it is not that easy to fight with your employer. The leader of my church and my agent, who had helped me, also gave me confidence to pursue my case.”⁹⁶

Reyna, a 39-year-old Filipino woman, further commented that:

“I wouldn’t know how to file the claim or what to do without assistance from the organisation. My agency was not helpful. When I complained to them, they didn’t do anything. They just told me that it’s ok since my employer was good.”⁹⁷

The research undertaken by the University of Hong Kong in 2017 and 2019 also indicates that migrant domestic workers often rely on support from external organisations or individuals to take cases to the Labour Tribunal. In nearly 50% of the cases observed in 2017 and 2019, students documented that assistance was provided to migrant domestic workers, most commonly from civil society organisations.⁹⁸

Twenty-nine interviewees agreed that there was not enough support for migrant domestic workers to take cases to the Labour Tribunal and three interviewees specifically identified language barriers and difficulty in communicating as the biggest

⁹³ Interviewees were asked an open question regarding what they perceived to be the biggest barrier to resolving their work-related problems and accessing redress mechanisms. See question 6 in Appendix 1 for details.

⁹⁴ Interviewees were also asked to respond to a series of nine statements based on their personal experience of trying to resolve work-related problems by stating whether they agree or disagree with the statement, or do not know. See question 8 in Appendix 1 for details.

⁹⁵ FADWU, *Agents of Change? Assessing Hong Kong employment agencies’ compliance with the Code of Practice*, 2018, p42, available at: <http://en.hkctu.org.hk/content/agents-change-assessing-hong-kong-employment-agencies-compliance-code-practice>, accessed 12 June 2019.

⁹⁶ FADWU interview with Hazel on 5 February 2019.

⁹⁷ FADWU interview with Reyna on 5 May 2019.

⁹⁸ Unpublished research by the University of Hong Kong on the HKSAR Labour Tribunal, undertaken in September-November 2017 and February-April 2019. The research involved students observing hearings at the Labour Tribunal involving migrant domestic workers (25 cases in 2017 and 35 cases in 2019). Information pertaining to each case was limited to what students could directly document from what they heard and saw at the Tribunal.

obstacle they faced in trying to resolve their work-related problems and access redress mechanisms.

Conciliation meetings, as well as the MECAB and Labour Tribunal hearings/trials, are conducted in the official court languages of Cantonese and/or English. If migrant domestic workers cannot communicate well enough in either of these languages, then free translation and interpretation services can be provided. According to the Labour Department:

“Where necessary, interpretation service would be arranged to ensure that the ethnic minorities’ access to conciliation service is not hampered owing to language barriers. Such interpretation service includes arranging for telephone or on-site interpretation by the Centre for Harmony and Enhancement of Ethnic Minority Residents (CHEER).”⁹⁹

The Labour Department further stated that migrant domestic workers, at the time of filing their case at MECAB, “would be asked whether they need interpretation service at hearings. If yes, interpreters for the relevant languages would be made available for the purpose”.¹⁰⁰

However, in practice, this does not always happen. For example, Baby Jane Allas, a 38-year-old Filipino woman, could not communicate fluently in either English or Cantonese and had requested for a Tagalog interpreter, but stated that the Labour Department failed to provide one for her at the conciliation meeting with her employer.¹⁰¹ According to the Labour Department, it had arranged for phone interpretation, but felt this was not needed as a Philippine Consulate staff was present.¹⁰²

Another interviewee, Dewi, does not speak Cantonese or English and, like Allas, was not provided with interpretation services at her conciliation meeting:

“The language barrier at the conciliation meeting was for me the biggest obstacle when trying to get my rights. I am new to Hong Kong and I do not understand Cantonese. Even though there were those [civil society staff] who accompanied me to the meeting with the employer, I still did not understand.”¹⁰³

In cases where interpretation was provided, some interviewees experienced problems. A case in point is Dolores:

“When I attended the MECAB hearing, I had a Tagalog interpreter. She interpreted clearly and I understood what was going on. But previously at the conciliation meeting, I only had access to interpretation through a telephone service. It didn’t work properly and I couldn’t understand what was said in the meeting.”¹⁰⁴

Ka Mei Lau, Organizing Secretary at the Hong Kong Confederation of Trade Unions (HKCTU), who has accompanied migrant domestic workers on multiple occasions to their conciliation meetings, explained that:

⁹⁹ Information provided by the HKSAR Labour Department on 25 September 2019.

¹⁰⁰ Information provided by the HKSAR Labour Department on 26 September 2019.

¹⁰¹ FADWU interview with Baby Jane Allas on 3 March 2019.

¹⁰² Raquel Carvalho, “‘Unfair’, ‘problematic’ Labour Department hearing in Hong Kong for Filipino domestic worker fired after employer found out she has cervical cancer”, *South China Morning Post*, 14 March 2019, available at: <https://www.scmp.com/week-asia/society/article/3001752/unfair-problematic-labour-department-hearing-hong-kong-filipino>, accessed 30 August 2019.

¹⁰³ FADWU interview with Dewi on 10 May 2019.

¹⁰⁴ FADWU interview with Dolores on 1 and 26 May 2019.

“Interpretation service is not guaranteed. Migrant domestic workers need to request this service when they register their case at the Labour Department. But even when they do, it is sometimes not provided due to unavailability of an interpreter. Another problem is that the conciliation officers often speak Cantonese to the employer, which most migrant domestic workers cannot understand. In one case, the Tagalog interpreter was not able to interpret for the Filipino worker because the interpreter did not understand Cantonese. This meant that the worker did not understand most of the discussions during the one-hour meeting and certainly was not able to engage in the dialogue.”¹⁰⁵

Concerns around fairness and equality of arms in the procedures

Three interviewees specifically identified intimidation by their employer as the biggest obstacle they faced in trying to resolve their problems at work and access redress mechanisms.

Several interviewees stated they were afraid or intimidated by their employer and described how difficult it was to face them in a conciliation meeting or court. Dewi noted how avoiding further meetings with her employer was a factor in her accepting the offer made at conciliation:

“Dealing with my employer at the conciliation meeting was so traumatising. Face to face with her, she reversed facts and told lies about me. She behaved in such an inhuman way.”¹⁰⁶

Nur also explained the emotional difficulty of going through the redress process:

“I had to overcome my fear of my employer in order to face up to her. She intimidated me. But even though I only retrieved two-thirds of my

claim at the Labour Tribunal, at least I was able to stand up for myself when my employer said lies about what happened in the household. I overcame my fear to face her in court.”¹⁰⁷

Rita, a 45-year-old Filipino woman, decided not to renew her contract in March 2019 after working for the same employer for 14 years. Her employer responded by telling her to leave that night and giving her HK\$6,410 (US\$814) for one month's wages in lieu of notice, flight ticket and food and travelling allowance.¹⁰⁸ With the help of a civil society organisation, Rita filed a claim of HK\$4,000 (US\$511) for unpaid annual leave at the Labour Department. She explained what happened when she met her employer at the conciliation meeting:

“My employer came with her daughter-in-law and I brought a friend for support. She was very angry with me. I was shocked at her behaviour because she disagreed and challenged everything I said and refused to give me any more money. She threatened me, saying that she would submit a counterclaim against me because according to her, she had already given me more money than I was entitled to. I was scared and traumatised so I decided not to pursue my claim. It wasn't worth the money because to continue with the case, I would have to argue with my employer at every meeting, which would just hurt my feelings more and increase my trauma.”¹⁰⁹

¹⁰⁵ FADWU interview with Ka Mei Lau on 26 August 2019.

¹⁰⁶ FADWU interview with Dewi on 10 May 2019.

¹⁰⁷ FADWU interview with Nur on 9 January 2019.

¹⁰⁸ One month's wages in lieu of notice HK\$4,310; flight ticket HK\$2,000; and food and travelling allowance HK\$100.

¹⁰⁹ FADWU interview with Rita on 28 April 2019.

Other interviewees also believed that their employer made/threatened to make a counterclaim against them as a means of delaying the process and pressuring them into accepting a low offer. The research undertaken by the University of Hong Kong documented that out of the 35 cases they observed in 2019, 14 (40%) involved a counterclaim from the employer.¹¹⁰

Anisa, a 40-year-old Indonesian woman, who suffers from high blood pressure, was refused medical care and had her contract terminated by her employer when she found out about her condition. With the help of a civil society organisation, Anisa filed a claim at the Labour Tribunal for HK\$60,000 (US\$7,662) for denial of sick leave and medical care:

“My employer made an offer of HK\$27,000 [US\$3,448]. I settled for this amount because of my high blood pressure. I just wanted to go back to Indonesia as soon as possible so that my family could take care of me. Also, I was afraid that my employer would counterclaim for a part-time job I did for her outside the household, which I got paid HK\$600 [US\$77] for three days work.”¹¹¹

Another Indonesian woman, 33-year-old Sinta, had a claim of HK\$10,591 (US\$1,352) against her employer for unpaid wages, one month's wages in lieu of notice, annual leave, flight ticket, statutory holidays, and food and travelling allowance.¹¹² The employer did not attend the conciliation meeting scheduled in June 2019. Instead, she filed a claim at the MECAB for HK\$7,851 (US\$1,003) against Sinta:

“My employer claimed that I had broken or damaged items in her house, including clothes hangers but I didn't. They were already old, rusty and damaged when I started to work for her. In fact during the ten months of my employment, she deducted my salary each month and forced me to buy items such as shower hose, brooms,

spoons and gloves claiming that I had damaged them. She also made me buy bleach with my own money to clean the stairs outside her house because according to her, my cleaning wasn't good enough.”

Sinta's employer withdrew her claim in July and at the Labour Tribunal, Sinta was awarded HK\$4,700 (US\$600) or 44% of her claim because she could not disprove her employer's claim that she had left her employer without notice.¹¹³

The difficulty migrant domestic workers have in negotiating face-to-face with their employer is exacerbated by the fact that most migrants do not speak Cantonese and are unfamiliar with local laws and procedures. In addition, migrant domestic workers must provide sufficient evidence to prove their case on the balance of probabilities (i.e. what they claim is more likely than not to be the case), which is often difficult to do.

For example, it is extremely hard for a migrant domestic worker to provide evidence that they were forced to work on statutory holidays/days off when there is no physical proof and any witnesses to the fact will most probably be the employer's family members who are unlikely to corroborate the migrant domestic worker's version of events. It is for this reason that all but one of the interviewees agreed that it was hard to provide the required evidence to prove their case.

¹¹⁰ Unpublished research by the University of Hong Kong on the HKSAR Labour Tribunal, undertaken in September-November 2017 and February-April 2019. The research involved students observing hearings at the Labour Tribunal involving migrant domestic workers (25 cases in 2017 and 35 cases in 2019). Information pertaining to each case was limited to what students could directly document from what they heard and saw at the Tribunal.

¹¹¹ FADWU interview with Anisa on 5 May 2019.

¹¹² Unpaid wages HK\$1,764; one month's wages in lieu of notice HK\$4,410; annual leave HK\$435; flight ticket HK\$3,000; statutory holidays HK\$882; and food and travelling allowance HK\$100.

¹¹³ FADWU interview with Sinta on 31 July 2019.

The relevant officials at the Labour Department are supposed to act as neutral arbitrators and support migrant domestic workers to access and navigate their way through the relevant procedures. The Labour Department describes the role of the conciliation officer as:

“a neutral intermediary who assists both parties to understand the problem and to have a frank dialogue so as to remove each other's differences and prevent the issue from deteriorating. He also endeavours to seek a settlement which is acceptable to both parties.”¹¹⁴

Despite this, several interviewees did not consider officials at the conciliation meeting or in the Labour Tribunal to be impartial. Twenty-seven interviewees thought the conciliation process and other redress mechanisms favour the employer and two interviewees specifically identified biased Labour Department/Tribunal officers as the biggest obstacle they faced in trying to resolve their problems at work.

Rosamie, a 30-year-old Filipino woman, submitted a claim for HK\$12,671 (US\$1,618) at the Labour Department in June 2019. It was for unpaid wages, one month's wages in lieu of notice, annual leave, flight ticket, food and travelling allowance, and compensation for working on rest days and holidays.¹¹⁵ She relayed her dissatisfaction with the officer at the conciliation meeting:

“The conciliation officer just wanted me to accept the offer of HK\$4,000[US\$511] made by my employer. He didn't bother to look at my situation and the facts. When I complained, he didn't do anything. At the end, I told him that I would not accept the offer and would pursue my claim at the Labour Tribunal. He then said ‘Then go on, if that's what you want!’”

At the Labour Tribunal, Rosamie settled for HK\$6,281 (US\$798) – about half of what she was owed – because she “just wanted to be finished with this case so that I can work again”. She was also influenced by the presiding officer who told her that trying to get the full claim would be “a waste of time”.¹¹⁶

In Rita's case, she felt the conciliation officer intervened inappropriately:

“During the meeting, the conciliation officer told me that I must consider the amount of money that my employer had already given me. In the end, I was not able to get my rights because the officer was biased and took the employer's side. Conciliation officers should not make us domestic workers who try to claim our rights feel scared and guilty about doing this.”¹¹⁷

Hazel described how the conciliation officer tried to influence her decision:

“The officer discouraged me from rejecting my employer's offer [HK\$7,600 or US\$970, less than a quarter of her claim] saying that if I pursued my complaint, it would take a long time and I would have to wait with no guarantee that I would win my case and get 100% of my claim.”¹¹⁸

¹¹⁴ HKSAR Labour Department, *Conciliation Service of the Labour Relations Division*, p2, available at: <https://www.labour.gov.hk/eng/public/wcp/ConciliationServiceLRD.pdf>, accessed 21 June 2019.

¹¹⁵ Wages (HK\$3,067); one month's wages in lieu of notice (HK\$4,520); annual leave (HK\$702); flight ticket (HK\$1,500); food and travelling allowance (HK\$100); and compensation for working on rest days (HK\$1,168) and holidays (HK\$1,614).

¹¹⁶ FADWU interview with Rosamie on 24 July 2019.

¹¹⁷ FADWU interview with Rita on 28 April 2019.

¹¹⁸ FADWU interview with Hazel on 5 February 2019. It should be noted that the conciliation officer was not necessarily acting inappropriately in this case and could simply have been trying to outline the risks to the migrant domestic worker of pursuing her claim under the current redress system in Hong

Marisol, a 45-year-old Filipino woman filed a claim of HK\$10,456 (US\$1,335) at the Labour Tribunal in March 2019. The claim was for unpaid wages, rest days, holidays, flight ticket, and food and travelling allowance.¹¹⁹ She recounted:

“At our first hearing, my employer offered me HK\$5,000 [US\$639]. I was undecided but the Tribunal officer encouraged me to accept it claiming that if I continued to pursue the case, the next available hearing date wouldn’t be until November. As I couldn’t afford to stay for that long, I decided to accept the offer.”¹²⁰

Lilibeth had a similar experience at the Labour Tribunal:

“The Tribunal and presiding officers told me that if I did not accept the amount of HK\$20,000 [US\$2,554], then I would have to wait three to six months to resolve the problem. They told me that it would be too long for me, especially since I could not work during this time.”¹²¹

If either party is unhappy with the presiding officer’s determination, they can ask for the judgment to be reviewed or appeal the decision. However, a review will still be heard by the same presiding officer and is therefore unlikely to change the initial outcome, while an appeal can only generally be brought if the presiding officer has erred in law and will not be an option for most migrant domestic workers, as it prolongs the process and increases their costs and liabilities with no guarantee of success.

Many of the concerns expressed above by interviewees regarding the fairness of the redress mechanism are reflected in the case of Baby Jane Allas who had her contract terminated in January 2019 shortly after being diagnosed with stage three cervical cancer.¹²² In the termination letter, it specifically stated “diagnosed with cervical cancer” as the reason for ending her employment. As her employment contract had been terminated, Allas no longer had access to free healthcare in Hong Kong.¹²³

With the help of her sister and her sister’s employer, Allas filed a claim of HK\$84,061 (US\$10,735) with the Labour Department for unpaid wages, one month’s wages in lieu of notice, statutory holidays, rest days, annual leave, sick leave, flight ticket, food and travelling allowance, medical expenses, and damages for loss of earning.¹²⁴ Allas described what happened at the conciliation meeting:

“My employer did not show up because she was ill and instead sent two lawyers to represent her. It was so unfair that the Labour Department allowed my employer to send representatives while they told me that I had to come in person. I sacrificed my health to come even though I was scheduled for chemotherapy that day.”

Despite her request for a Tagalog interpreter, the Labour Department did not provide Allas with one. The employer’s lawyers made an offer of HK\$10,492 (US\$1,340), which Allas refused because she felt that her employer should pay her the full amount so the case went to the Labour Tribunal.

¹¹⁹ Wages HK\$6,828; rest days HK\$1,617; holidays HK\$291; flight ticket HK\$1,620; and food and travelling allowance HK\$100.

¹²⁰ FADWU interview with Marisol on 24 March 2019.

¹²¹ FADWU interview with Lilibeth on 10 March 2019.

¹²² Clause 9(a) of the Standard Employment Contract states that if migrant domestic workers are ill during the period of employment, “the Employer shall provide free medical treatment”, and that the workers are entitled to sickness allowance if they have accumulated sufficient number of paid sickness days; the sick leave taken is at least four consecutive days; and leave is supported by a medical certificate. The days are accumulated at the rate of two paid sickness days for each completed month of employment during the first 12 months, and four paid sickness days for each completed month of employment thereafter, not exceeding 120 days at any one time. See: https://www.labour.gov.hk/eng/faq/cap57g_whole.htm, accessed 6 July 2019.

¹²³ Elaine Yu, “‘I feel lost’: Fired cancer patient exposes plight of Hong Kong’s domestic workers”, AFP, 8 March 2019, available at: <https://www.hongkongfp.com/2019/03/08/i-feel-lost-fired-cancer-patient-exposes-plight-hong-kongs-domestic-workers/>, accessed 29 June 2019.

¹²⁴ Unpaid wages HK\$2,994; one month’s wages in lieu of notice HK\$4,310; statutory holidays HK\$847; rest days HK\$8,764; annual leave HK\$1,263 sick leave HK\$1,700; flight ticket HK\$2,405; food and travelling allowance HK\$100; medical expenses HK\$1,500; and damages for loss of earning HK\$60,178.

At the Labour Tribunal in April, Allas’s employer increased the offer to HK\$30,000 (US\$3,831). This was less than 40% of her claim, but the employer’s lawyer and Tribunal officer both told her “that I needed to accept my employer’s offer”.¹²⁵ Although Allas felt that the Tribunal had “failed to award me what my employer owed me”, she found it very difficult and tiring to pursue her case because she was so ill and so she reluctantly accepted the offer:

“I’m not happy with the result of my case because the amount was far lower than what I was claiming, but I decided to accept the offer because I didn’t want to return to the Labour Tribunal. I will wait instead for a better result from my claim at the EOC [Equal Opportunities Commission].”

On 19 February 2019, Allas filed a claim for HK\$60,178 (US\$7,685) at the EOC for unlawful dismissal of employee/illegal termination and disability discrimination.¹²⁶ She explained her motivation:

“It’s not a matter of how much I will be able to get. What I want is for my employer to pay all my losses from the day I was terminated until the end of my contract. She should be punished so that other employers will not do the same and learn to respect the rights of their domestic workers.”

At the time of writing, Allas’s case at the EOC was still pending.¹²⁷

Issues raised in this case mirror those identified by other interviewees as being obstacles to solving their problems and accessing the redress system, including: a reliance on others to use the procedures (in this case, Allas’s sister’s employer); unequal treatment of the employer and the domestic worker by officials; multiple pressures to settle the claim (from the employer’s lawyer and Tribunal officer, because

of health problems, etc.); and a failure of the system to protect statutory rights (in Allas’s case, she had written evidence that she was fired because she had cancer, but she did not get even half of what she was entitled to under Hong Kong law).¹²⁸

Obstacles	No. of interviewees
Loss of employment	17
Financial problems	12
Lack of information	8
Language barriers	3
Employer intimidation	3
Costs of filing claim	2
Biased officials	2

Figure 3: Issues identified by interviewees as being the biggest obstacles they faced in trying to resolve their problems at work and access redress mechanisms

¹²⁵ FADWU interview with Baby Jane Allas on 3 March 2019.

¹²⁶ For more information on the complaints procedure, see: <http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx>, accessed 3 September 2019.

¹²⁷ FADWU interview with Baby Jane Allas on 3 March 2019.

¹²⁸ Migrant domestic workers can seek remedies for unreasonable and unlawful dismissal under the Employment Protection (chapter 10) of the Employment Ordinance. See: HKSAR Labour Department, *Practical Guide for Employment of Foreign Domestic Helpers*, January 2019, p18, available at: <https://www.fdh.labour.gov.hk/res/pdf/FDHguideEnglish.pdf>, accessed 26 June 2019.

5

Conclusion
and
recommendations

The conciliation service is designed to operate as an “informal, time saving and relatively simple procedure” to help resolve labour disputes and facilitate the parties to “reach a mutually acceptable settlement”.¹²⁹ Similarly, the Labour Tribunal is described as offering “a quick, informal and inexpensive way of settling monetary disputes between employees and employers”¹³⁰ and notes that “Parties may settle their case at any stage of the proceedings and are always encouraged to explore settlement as a means of resolving their dispute”.¹³¹

These redress mechanisms do regularly secure a relatively quick resolution to labour disputes, but this often does not equate with a just or fair settlement. In practice, migrant domestic workers are frequently coerced into settling by a system, which makes it financially onerous, if not entirely cost-ineffective, to pursue their claims beyond the conciliation service.

The Two-Week Rule and the general prohibition on working while pursuing a claim put migrant domestic workers at an immediate and serious disadvantage. Every day the case remains unresolved, they have to pay for their living expenses and cannot earn any money. There may also be additional expenditure on visa extensions or issues related to the claim.

Consequently, the longer the case continues the greater the likelihood that the migrant domestic workers will spend more on pursuing the challenge than they will receive through their claim – a fact that was pointed out to more than one interviewee by officials at the conciliation service and the Labour Tribunal.

There are numerous other factors that put migrant domestic workers at a disadvantage vis-a-vis their employer, including: the imbalance of power between the two parties in the negotiating process (as migrants are often intimidated by their employer); migrant domestic workers’ unfamiliarity with procedures and/or court languages; the lack of support they receive in pursuing their claims; and their difficulty in providing sufficient

evidence to prove their case because of the nature of domestic work.

These multiple challenges were summarised by Lilibeth:

“I lacked the information needed to file a claim properly. I also didn’t have any support from the Labour Department or Tribunal – they favoured the employer. What’s worse, I could not work while my case was ongoing. This put a lot of pressure on me to give up and settle because I didn’t have money.”¹³²

And Rosamie:

“At the beginning I didn’t know how to file a claim and needed help from others. While my case is going on, I have no money to provide for the needs of my family. Even if I find a new employer, I still can’t process it while my case is ongoing.”¹³³

This is not to say that the system does not work for any migrant domestic workers. A total of 12 interviewees were satisfied with the process and outcome of the conciliation service (9) and the MECAB/Labour Tribunal (3). This is primarily because they received the full amount they claimed (9) or close to it (on average 83% of their claim).

¹²⁹ HKSAR Labour Department, *Conciliation Service of the Labour Relations Division*, p1, available at: <https://www.labour.gov.hk/eng/public/wcp/ConciliationServiceLRD.pdf>, accessed 21 June 2019.

¹³⁰ HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, para 1.1 available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

¹³¹ HKSAR Judiciary, *Labour Tribunal: Guide to Court Services*, February 2019, para 3.1 available at: https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf, accessed 23 June 2019.

¹³² FADWU interview with Lilibeth on 10 March 2019.

¹³³ FADWU interview with Rosamie on 24 July 2019.

The conciliation service worked well for seven interviewees because their employers were generally willing to pay them what they were owed; they were supported by civil society organisation; they spent an average of just HK\$300 (US\$38) on resolving their claims; and only one of them needed to get a visa extension. However, it should be noted that several of these interviewees were still dependant on others for accommodation, food and help in accessing the redress mechanism.

It should also be stressed that all the interviewees who were satisfied with the process and outcome also recognised that: it was difficult to make a complaint without losing their right to work in Hong Kong and that it was very difficult to support themselves while pursuing a claim. All interviewees of this group also believed that domestic workers did not know how to properly use the redress procedures and that it was hard to provide the required evidence to prove their case.

While some migrant domestic workers do get what they are entitled to through the existing redress procedures, they are the exception rather than the rule. The great majority of migrant domestic workers whose statutory or contractual rights are violated by their employers do not access the redress mechanisms at all.¹³⁴

This research specifically examined the experience of those migrant domestic workers who did use the official complaint mechanisms and found that more than two-thirds of interviewees were dissatisfied with the process and outcome of both the conciliation service (22/31) and MECAB/Labour Tribunal (8/11).

Interviewees generally believed that the system was not fair and that the money they were offered/received was not what they were owed and entitled to. All the interviewees who took cases to the MECAB/Labour Tribunal did so with help from organisations or individuals and stated that they would not have been able to do so without their assistance.

Interviewees repeatedly talked about using the redress mechanism to protect their rights as set out in Hong Kong law: “to get what was rightfully mine”; “I want to fight for my rights and fight for what I deserve to receive”; “I want to get all my rights”; and “I want to claim my rights”.¹³⁵

Moreover, Angela felt that:

“The Hong Kong government needs to pay more attention to us and provide us with better support, especially when we have work problems. For example, they need to help us when we don’t get the money and benefits, which are written in our employment contract or part of Hong Kong labour laws but our employers don’t abide by this.”¹³⁶

When Interviewees were asked what they thought the HKSAR government should do to make it easier for migrant domestic workers to resolve disputes, the most prevalent answer was that the redress mechanisms should be fairer and treat migrant

¹³⁴ See: Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, November 2013, available at: <https://www.amnesty.org/download/Documents/12000/asa170292013en.pdf>, accessed 12 June 2019; Alliance of Progressive Labor in the Philippines (APL), Alliance of Progressive Labor – Hong Kong (APL-HK) and Progressive Labor Union of Domestic Workers in Hong Kong (PLU), *License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong*, 2013, available at: <http://www.idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>, accessed 12 June 2019; and Justice Centre, *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong*, March 2016, available at: <http://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>, accessed 12 June 2019.

¹³⁵ FADWU interviews with Reyna on 5 May 2019, Hazel on 5 February 2019; Darna on 24 February 2019; and Nur on 9 January 2019.

¹³⁶ FADWU interview with Angela on 9 May 2019.

domestic workers and employers equally (11). The other most common responses were that there should be better access to information (6); the redress process should be simplified (5); and employers should be vetted before they are allowed to hire migrant domestic workers (4). At least two interviewees also thought that more needed to be done to enforce Hong Kong labour laws; the redress process should be faster; and that migrant domestic workers should be allowed to work while their cases are ongoing.

Many of the proposals put forward by interviewees were summarised by Hazel:

“The Hong Kong government must make pursuing a claim easier for us. They have the laws but many are not properly implemented. If an employer does not pay our wages and other benefits, then they should be blacklisted. While we are pursuing our claim, we should be allowed to work. The Government must also not be one-sided but instead look at the details of the cases thoroughly. They must be fair and not biased against us because we are not Chinese. They should not always side with the employers.”¹³⁷

¹³⁷ FADWU interview with Hazel on 5 February 2019.

On the basis of the research findings, FADWU makes the following recommendations.

To the Government of Hong Kong SAR:

- Repeal the Two-Week Rule and ensure that migrant domestic workers have sufficient time to secure a new job after a contract has been terminated and thereby are better able to pursue redress mechanisms.
- Repeal the live-in requirement and allow migrant domestic workers to reach agreement with their employer or potential employer on whether to reside in the employing household. Ensure that those living outside receive an appropriate housing allowance.
- Grant all migrant domestic workers with a pending case in the conciliation service, MECAB, Labour Tribunal or criminal court visa extensions, which allow them to work while their case is being pursued, and waive their visa fees.
- Ensure that migrant domestic workers seeking compensation for human or labour rights abuses have effective access to support measures, including adequate information on redress mechanisms and how to use them; free professional interpretation; and access to shelters for those with no other means of supporting themselves while pursuing their claim.
- Allow all migrant domestic workers with a pending case in the conciliation service, MECAB, Labour Tribunal or criminal court to have access to public health care services at eligible persons' rates of charges.
- Allow in all instances third parties, including trade unions, NGOs or individuals, to pursue a claim at the conciliation service, MECAB or Labour Tribunal on behalf of a migrant domestic worker.

- Reduce the evidential burden of proof on migrant domestic workers and require employers to demonstrate that they have complied with their statutory requirements.
- Strengthen the capacity of the MECAB and Labour Tribunal so that the amount of time it takes to conclude claims is reduced.
- Facilitate migrant domestic workers to pursue a claim at the conciliation service, MECAB or Labour Tribunal via video link if they return to their country of origin prior to the resolution of their case.

Appendix 1: Sample Research Questionnaire on Access to Justice

Name: _____ Year of birth: _____

Nationality: _____ Start/End dates of problem job: _____

Mobile: _____ Email: _____

Date of interview: _____ Place of interview: _____

1. What type of problem(s) did you experience (circle all that applies)?

- a. Wages (including underpayment, late payment and wages in lieu of notice)
- b. Agency fees (from HK EAs, including excessive fees and illegal deductions)
- c. Rest day and holidays (not given and/or not paid for)
- d. Food and travel allowance
- e. Air ticket
- f. Other contractual discrepancy
- g. Document confiscation
- h. Physical/sexual violence, abuse or threats
- i. Denial of sick leave, maternity leave or medical care
- j. Injury or disease while working
- k. Other (state what the problem was): _____

2. Please provide full details of the problem(s) you faced (including the dates it started and ended).

3. Did you complain to the Labour Department? Yes / No

If “No”, why not (circle as many reasons as provided by the interviewee)?

- a. Didn't believe they would help to solve the problem
- b. Didn't know they could help
- c. Didn't know how to access the remedy
- d. Couldn't afford to pursue the claim
- e. Other (state what the reason was): _____

If “Yes”:

- Did you attend a conciliation meeting with the employer? Yes / No

If “No”, why did you choose not to?

If “Yes”:

- What was the amount you asked for (please provide a breakdown of what the money was for)?
- What was the amount that the employer offered?
- Did you accept it? Yes / No
- Why or why not?
- Were you satisfied with the process and outcome? Yes / No
- Why or why not?

- Did you take your case to the Labour Tribunal (LT)/the Minor Employment Claims Adjudication Board (MECAB)? Yes / No / N/A

If “No”, why not?

If “Yes”, specify which one: LT MECAB

- What was your reason for doing so?
- What was the amount that you asked for (if different from above please provide a breakdown)?

- How much did the LT/MECAB award you?
 - Were you satisfied with the process and outcome? Yes / No
 - Why or why not?
 - When did you file your case with the LT or MECAB?
 - When was your case settled or is it on-going?
 - Did anyone/any organisation help you take your case to the LT/MECAB? Yes / No
- If “Yes”:
- Who helped you and how?
 - Do you think you could have taken the case without their help? Yes / No

4. Did you consider trying to resolve your employment problem(s) through any other means? Yes / No

If “Yes”, how (e.g. by going to the employment agency, consulate, police, employer)?

Did you make a complaint? Yes / No

If “No”, why not (circle all that applies)?

- I didn’t believe they would help to solve the problem.
- I didn’t know they could help.
- I didn’t know how to access the remedy.
- Other (state what the reason was): _____

If “Yes”, list all the institutions you complained to and answer the following questions for each one:

- Did they try to help you resolve the problem(s)? Yes / No
- If “No”, provide details.
- Were they successful in resolving the problem(s)? Yes / No
- If “No”, provide details.

5. Approximately how much did you spend trying to resolve your employment issue (e.g. living costs in Hong Kong, filing the case, copy costs, attending court, visa renewal, transportation, etc.)?

- Were you able to claim back any of these costs? Yes / No / N/A

If “Yes”, what for and how much?

- Did you get a visa extension or an exemption work visa to pursue your claim?

Yes / No / N/A

If “No”, did you ask for one? Yes / No

- If “Yes”, which visa did you ask for and why was it refused?

If “Yes”, which visa did you have and how much did it cost?

- Were you working for any of the time while you tried to resolve your employment problems? Yes / No / N/A

If “Yes”, please provide details.

6. What do you think was the biggest obstacle/s you faced when trying to resolve your problems at work and access redress mechanisms?

7. What do you think the Hong Kong government should do to make it easier for migrant domestic workers to resolve disputes with their employer or employment agency?

8. Below are nine statements. Based on your personal experience of trying to resolve work-related problems, please state whether you (1) agree or (2) disagree with the following statements about problems migrant domestic workers have accessing justice in Hong Kong. If you are not sure, then state (3) I don't know.

- Migrant domestic workers do not know how to properly use the procedures to resolve problems at work or seek justice in Hong Kong.
- There is not enough support for migrant domestic workers to take cases to the Labour Tribunal (e.g. legal advice, translation services, etc.).
- The legal process is too slow and too expensive.
- It is hard to provide the required evidence to prove your case (e.g. proving that you were forced to work excessive hours or that you were not given statutory holidays, etc.).
- The conciliation process and other redress mechanisms favour the employer.
- It is very difficult to make a complaint without losing your job and your right to work in Hong Kong.
- It is very difficult to support yourself while pursuing a claim.
- The cost of visa extensions allowing migrant domestic workers to stay in Hong Kong to pursue their claims is too expensive.
- The Immigration Department will not grant an exemption work visa to allow migrants to work while pursuing their cases.

EMPLOYMENT CONTRACT
(For A Domestic Helper recruited from abroad)

This contract is made between
("the Employer") and ("the Helper")
on and has the following terms:

1. The Helper's place of origin for the purpose of this contract is

2. (A)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Helper arrives in Hong Kong.

(B)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on, which is the date following the expiry of D.H. Contract No. for employment with the same employer.

(C)† The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Director of Immigration grants the Helper permission to remain in Hong Kong to begin employment under this contract.

3. The Helper shall work and reside in the Employer's residence at

4. (a) The Helper shall only perform domestic duties as per the attached Schedule of Accommodation and Domestic Duties for the Employer.

(b) The Helper shall not take up, and shall not be required by the Employer to take up, any other employment with any other person.

(c) The Employer and the Helper hereby acknowledge that Clause 4.(a) and (b) will form part of the conditions of stay to be imposed on the Helper by the Immigration Department upon the Helper's admission to work in Hong Kong under this contract. A breach of one or both of the said conditions of stay will render the Helper and/or any aider and abettor liable to criminal prosecution.

5. (a) The Employer shall pay the Helper wages of HK\$ per month. The amount of wages shall not be less than the minimum allowable wage announced by the Government of the Hong Kong Special Administrative Region and prevailing at the date of this contract. An employer who fails to pay the wages due under this employment contract shall be liable to criminal prosecution.

(b) The Employer shall provide the Helper with suitable and furnished accommodation as per the attached Schedule of Accommodation and Domestic Duties and food free of charge. If no food is provided, a food allowance of HK\$ a month shall be paid to the Helper.

(c) The Employer shall provide a receipt for payment of wages and food allowance and the Helper shall acknowledge receipt of the amount under his/her* signature.

6. The Helper shall be entitled to all rest days, statutory holidays, and paid annual leave as specified in the Employment Ordinance, Chapter 57.

7. (a) The Employer shall provide the Helper with free passage from his/her* place of origin to Hong Kong and on termination or expiry of this contract, free return passage to his/her* place of origin.

(b) A daily food and travelling allowance of HK\$100 per day shall be paid to the Helper from the date of his/her* departure from his/her* place of origin until the date of his/her* arrival at Hong Kong if the travelling is by the most direct route. The same payment shall be made when the Helper returns to his/her* place of origin upon expiry or termination of this contract.

8. The Employer shall be responsible for the following fees and expenses (if any) for the departure of the Helper from his/her place of origin and entry into Hong Kong:—

- (i) medical examination fees;
- (ii) authentication fees by the relevant Consulate;
- (iii) visa fee;
- (iv) insurance fee;
- (v) administration fee or fee such as the Philippines Overseas Employment Administration fee, or other fees of similar nature imposed by the relevant government authorities; and
- (vi) others:

In the event that the Helper has paid the above costs or fees, the Employer shall fully reimburse the Helper forthwith the amount so paid by the Helper upon demand and production of the corresponding receipts or documentary evidence of payment.

* Delete where inappropriate.
† Use either Clause 2A, 2B or 2C whichever is appropriate.

9. (a) In the event that the Helper is ill or suffers personal injury during the period of employment specified in Clause 2, except for the period during which the Helper leaves Hong Kong of his/her* own volition and for his/her* own personal purposes, the Employer shall provide free medical treatment to the Helper. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The Helper shall accept medical treatment provided by any registered medical practitioner.

(b) If the Helper suffers injury by accident or occupational disease arising out of and in the course of employment, the Employer shall make payment of compensation in accordance with the Employees' Compensation Ordinance, Chapter 282.

(c) In the event of a medical practitioner certifying that the Helper is unfit for further service, the Employer may subject to the statutory provisions of the relevant Ordinances terminate the employment and shall immediately take steps to repatriate the Helper to his/her* place of origin in accordance with Clause 7.

10. Either party may terminate this contract by giving one month's notice in writing or one month's wages in lieu of notice.

11. Notwithstanding Clause 10, either party may in writing terminate this contract without notice or payment in lieu in the circumstances permitted by the Employment Ordinance, Chapter 57.

12. In the event of termination of this contract, both the Employer and the Helper shall give the Director of Immigration notice in writing within seven days of the date of termination. A copy of the other party's written acknowledgement of the termination shall also be forwarded to the Director of Immigration.

13. Should both parties agree to enter into new contract upon expiry of the existing contract, the Helper shall, before any such further period commences and at the expense of the Employer, return to his/her* place of origin for a paid/unpaid* vacation of not less than seven days, unless prior approval for extension of stay in Hong Kong is given by the Director of Immigration.

14. In the event of the death of the Helper, the Employer shall pay the cost of transporting the Helper's remains and personal property from Hong Kong to his/her* place of origin.

15. Save for the following variations, any variation or addition to the terms of this contract (including the annexed Schedule of Accommodation and Domestic Duties) during its duration shall be void unless made with the prior consent of the Commissioner for Labour:

(a) a variation of the period of employment stated in Clause 2 through an extension of the said period of not more than one month by mutual agreement and with prior approval obtained from the Director of Immigration;

(b) a variation of the Employer's residential address stated in Clause 3 upon notification in writing being given to the Director of Immigration, provided that the Helper shall continue to work and reside in the Employer's new residential address;

(c) a variation in the Schedule of Accommodation and Domestic Duties made in such manner as prescribed under item 7 of the Schedule of Accommodation and Domestic Duties; and

(d) a variation of item 4 of the Schedule of Accommodation and Domestic Duties in respect of driving of a motor vehicle, whether or not the vehicle belongs to the Employer, by the helper by mutual agreement in the form of an Addendum to the Schedule and with permission in writing given by the Director of Immigration for the Helper to perform the driving duties.

16. The above terms do not preclude the Helper from other entitlements under the Employment Ordinance, Chapter 57, the Employees' Compensation Ordinance, Chapter 282 and any other relevant Ordinances.

17. The Parties hereby declare that the Helper has been medically examined as to his/her fitness for employment as a domestic helper and his/her medical certificate has been produced for inspection by the Employer.

Signed by the Employer _____
(Signature of Employer)

in the presence of _____
(Name of Witness) (Signature of Witness)

Signed by the Helper _____
(Signature of Helper)

in the presence of _____
(Name of Witness) (Signature of Witness)

* Delete where inappropriate.



SCHEDULE OF ACCOMMODATION AND DOMESTIC DUTIES

1. Both the Employer and the Helper should sign to acknowledge that they have read and agreed to the contents of this Schedule, and to confirm their consent for the Immigration Department and other relevant government authorities to collect and use the information contained in this Schedule in accordance with the provisions of the Personal Data (Privacy) Ordinance.

2. Employer's residence and number of persons to be served

A. Approximate size of flat/house square feet/square metres*

B. State below the number of persons in the household to be served on a regular basis:

..... adult minors (aged between 5 to 18) minors (aged below 5) expecting babies.

..... persons in the household requiring constant care or attention (excluding infants).

(Note: Number of Helpers currently employed by the Employer to serve the household)

3. Accommodation and facilities to be provided to the Helper

A. Accommodation to the Helper

While the average flat size in Hong Kong is relatively small and the availability of separate servant room is not common, the Employer should provide the Helper suitable accommodation and with reasonable privacy. Examples of unsuitable accommodation are: The Helper having to sleep on made-do beds in the corridor with little privacy and sharing a room with an adult/teenager of the opposite sex.

Yes. Estimated size of the servant room square feet/square metres*

No. Sleeping arrangement for the Helper:

Share a room with child/children aged

Separate partitioned area of square feet/square metres*

Others. Please describe

.....

.....

B. Facilities to be provided to the Helper:

(Note: Application for entry visa will normally not be approved if the essential facilities from item (a) to (f) are not provided free.)

(a) Light and water supply Yes No

(b) Toilet and bathing facilities Yes No

(c) Bed Yes No

(d) Blankets or quilt Yes No

(e) Pillows Yes No

(f) Wardrobe Yes No

(g) Refrigerator Yes No

(h) Desk Yes No

(i) Other facilities (Please specify) _____



4. The Helper should only perform domestic duties at the Employer's residence. Domestic duties to be performed by the Helper under this contract exclude driving of a motor vehicle of any description for whatever purposes, whether or not the vehicle belongs to the Employer.

5. Domestic duties include the duties listed below.

Major portion of domestic duties:—

1. Household chores

2. Cooking

3. Looking after aged persons in the household (constant care or attention is required/not required*)

4. Baby-sitting

5. Child-minding

6. Others (please specify)

.....

.....

.....

.....

6. When requiring the Helper to clean the outside of any window which is not located on the ground level or adjacent to a balcony (on which it must be reasonably safe for the Helper to work) or common corridor ("exterior window cleaning"), the exterior window cleaning must be performed under the following conditions:—

(i) the window being cleaned is fitted with a grille which is locked or secured in a manner that prevents the grille from being opened; and

(ii) no part of the Helper's body extends beyond the window ledge except the arms.

7. The Employer shall inform the Helper and the Director of Immigration of any substantial changes in items 2, 3 and 5 by serving a copy of the Revised Schedule of Accommodation and Domestic Duties (ID 407G) signed by both the Employer and the Helper to the Director of Immigration for record.

Employer's name and signature

Date

Helper's name and signature

Date

* delete where inappropriate

tick as appropriate



此外，Angela認為：

香港政府應該多關注我們，給我們更多支援，尤其是當我們遇到工作上的困難時。例如，我們的僱主因為不守法，使我們得不到僱傭合約寫明、在香港法例下保障我們應該得到的薪金和福利時，政府應該幫我們。 119

當受訪者被問到他們認為香港特區政府應該如何幫助移工解決勞資糾紛時，最關鍵的答案是申索機制應該對移工和僱主都是公平的（11位受訪者）。另外多位受訪者提到的答案是，有關資訊應該更容易得到（6位）；申索機制應該更簡化（5位）；僱主應該先通過評估，才能聘用移工（4位）。起碼兩位受訪者也認為，政府應該更積極執行香港勞工法例；申索機制應該運作更快；以及應該允許移工在個案審議期間工作。

很多受訪者的提議可以INNO的一番話作結：

香港政府必須使申索程序更簡易。他們有法律但沒有好好執行。如果一個僱主不支付工資和其他福利，他們必須被列入黑名单。當我們跟進索償時，政府應該允許我們工作。政府應該審視個案雙方的細節，不只是一方的。他們應該保持公允，不要因為我們不是中國人而偏私。他們不應該只站在僱主一方。 120

根據我們的調查結果，FADWU現作出以下建議：

給香港特區政府的建議：

- 廢除兩星期規定，確保移工在合約終止後，有足夠時間找新工作，因而處於一個較有利的情況去使用索償機制。
- 廢除強制性留宿規定，容許移工與僱主或准僱主達成協議是否在僱主家中住宿，並確保在外居住的移工得到適當的住宿津貼。
- 對於有個案在小額薪酬索償仲裁處、勞資審裁處或刑事法庭程序中的移工，提供簽證續期，並容許在個案審理期間他們繼續工作和免除她們的簽證費用。
- 確保如果移工的人權或勞工權益受到剝削，她們能有效地使用申索機制索償，並為她們提供足夠的支援措施，包括有關申索機制流程和如何使用機制的充足資料；提供免費的專業傳譯；對案件正在處理而沒有其他方法為生的移工提供庇護所。
- 容許所有案件正在調停服務、小額薪酬索償仲裁處及勞資審裁處處理的移工，以她們合資格的收費率，使用公共醫療服務。
- 減低移工舉證的要求，並要求僱證明示他們有遵從各項法定要求。
- 加強小額薪金薪酬索償仲裁處和勞資審裁處的辦事能力，以減低處理申索的時間。
- 移工若是在調停服務、小額薪酬索償仲裁處或勞資審裁處案件審理完成前返國，為她們提供視像鏈接，協助她們繼續跟進個案。

119 FADWU 與 Angela 於 2019 年 5 月 9 日密訪記

120 FADWU 與 Hazel 於 2019 年 2 月 5 日的訪記

我也不能開始工作，因為我的個案仍然在審理中。 116

這不是說申索機制完全不能幫助移工。一共有12位受訪者對程序和結果感到滿意，包括調停服務（9位）和小額薪酬索償仲裁處／勞資審裁處（3位）。這主要是因為她們得到索償的全數金額（9位），或是接近全數的金額（平均是他們索償金額的83%）。

調停服務順利讓1位受訪者收回僱主欠她們的款項；她們都是得到公民社會組織的幫忙；她們平均只是花了港幣300元（美金38元）就得到他們的索償；而她們之中只有一位需要簽證續期。可是，注意她們之間的一些受訪者仍讓需要依賴其他人或組織，為她們提供住宿、食物，和協助以使用申索機制。

此外，所有對申索機制感到滿意的受訪者，也同意這一點：在香港提出投訴是很難不會失去留港工作的機會，而且在跟進索償的過程中很難支持自己的生活。所有受訪者都相信，移工不懂得如何有效地使用申索機制，而且要就索償提供證據是很難。

當然某些受訪者是通過機制，得到她們所應得的，但她們的個案並不普遍，只是例外的情況。絕大部分的移工被僱主剝削了合約中的權益，都不會使用索償機制。117 例如2018年間，勞資關係科共處理了1062宗有關移工的申所個案。這些個案中，764宗或72%通過調停服務得到和解。118

本研究深入了解了移工使用正式的申索機制的經驗，結果發現超過三分之二的受訪者對於過程與結果都不滿意，包括調停服務（31位中的22位），以及小額薪酬索償仲裁處／勞資審裁處（11位中的8位）。

受訪者一般相信制度對她們不公平，而她們最後得到的賠償也低於她們被欠或應得的。所有案件於小額薪酬索償仲裁處／勞資審裁處審理的受訪者，都需要組織或個別人士的協助，她們也同意如果沒有得到協助，她們沒有能力獨自跟進。

受訪者也重複提到，使用申索機制的目的是保障她們在香港法例下的權益：「我要爭取我在法律中應得的」；「我想為我的權益和我應該得到而爭取」；「我想得到我的所有權益」；「我想爭取我的權益」。

116 FADWU 與 Rosamie 於 2019 年 3 月 10 日的訪談

117 見：國際特赦組織，《Exploited for Profit, Failed by Governments》（榨取利潤導致剝削，政府失職而被放棄），2013年11月；可見於 <https://www.amnesty.org/download/Documents/12000/asa170292013en.pdf>。截取於2019年6月12日。進步勞工聯盟香港分會，進步勞工工會，《License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong, 2013》（持牌剝削：菲律賓移民家務工於香港受聘過程中所經歷的招聘手法與問題，2013）。可見於 <http://www.idwad.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong>。截取於2019年6月12日。Justice Centre “Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong” (Coming Clean: 香港外籍家庭傭工遭受強迫勞動以及強迫勞動的目的或人口販運的普遍程度) 2016年3月，可見於 <http://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf>。截取於2019年6月12日。

118 香港勞工處於2019年9月25日提供的資料。

調停服務的目的，是要提供「不拘形式和比較簡單、快捷和省時的方法」以「協助勞資雙方解決勞資糾紛，達成和解」。¹¹²同樣地，勞資審裁處的成立，是「為市民解決勞資雙方的金錢糾紛，程序簡單快捷，所需費用不多」¹¹³，而且「雙方可以在訴訟程序的任何階段提出將案件和解。審裁處亦鼓勵雙方嘗試尋求和解以解決彼此間的爭議。」¹¹⁴

這些申索機制的確是在一般情況下，能做到快捷地解決勞資糾紛，可是這不等於和解的結果是符合公義的。實際上，移工經常被迫接受和解，而壓迫她們的這麼一個制度，讓她們如果不滿意調停服務，便要在承受巨大財政壓力，甚至是完全反成本效益的情況下，繼續索償。

兩星期規定和不允許在索償期間工作的規定，使移工處於劣勢。一旦案件不得已解決，她們就要支出多一天的生活費，並且少一天的收入。申索期間的簽證續期，以及其他與申索有關的事情，也要額外的開支。

因此，案件需時越長，移工在索償期間的開支越大機會高於她們索償所得的金額。不只一位受訪者指出，調停服務或勞資審裁處職員曾經提醒她們這一點。

移工與僱主的角力中，有幾個因素使移工處於劣勢，包括：雙方在商討時不對等的權力（移工經常收到僱主的威嚇）；移工對程序

的不熟悉，或是無法使用法庭的語言；追討索償時缺乏支援；以及由於移工的工作性質，使她們難於就申索提供證據。

Libbeth 在訪問中總結了移工的多個難處：

我沒有關於提出申索的資訊。勞工處處和審裁處也沒有給我任何支援——他們是偏幫僱主的。更糟的是案件審理期間不能工作。因為我沒有錢，這個情況使我有很大壓力去接受和解。¹¹⁵

Rosamie 說：

一開始的時候我也不懂得怎樣提出索償，我需要其他人的幫忙。案件審理期間，我不能寄錢回家。即使我找到新的僱主，

112 香港政府勞工處《勞資關係科的調停服務》第一頁 <https://www.labour.gov.hk/te/public/pdf/wcp/ConciliationServiceLRD.pdf>，截取於 2019 年 6 月 21 日。

113 香港司法機構《勞資審裁處法庭服務簡介》第 1.1 段 https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf，截取於 2019 年 6 月 23 日。

114 香港司法機構《勞資審裁處法庭服務簡介》第 3.1 段 https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf，截取於 2019 年 6 月 23 日。

115 FADWU 與 Libbeth 於 2019 年 3 月 10 日的訪問。

5

難處	受訪者人數
失去工作	17
財務問題	12
缺乏資訊	8
語言障礙	3
受僱主威嚇	3
提出申索的費用	2
不中立的職員	2

圖表 2 受訪者指出在使用申索機制解決工作問題期間，遇到的最大難處

四月在勞資審裁處，Alias 的僱主將賠款提高至港幣 30,000 元（美金 3,831 元），金額低於她索償的 40%，可是僱主律師與審裁處都對 Alias 說她「應該接受僱主提出的金額」。雖然 Alias 感到審裁處「未能使僱主賠償欠我的金額」¹⁰⁸，但是在疾病纏身下，她也再無力繼續追討，最後她在不情願下接受了這個和解：

我不滿意這個結果，因為這是低於索償的金額，但我決定接受因為我不想再回到勞資審裁處。我寧願在平等機會委員會等一個更好的索償結果。

2019 年 2 月 19 日，Alias 就僱主非法解僱／非法終止合約及殘疾歧視，於平等機會委員會提出港幣 60,178 元（美金 7,685 元）的索償。¹⁰⁹她解釋她的動機：

這不是關於我能夠得到多少。我希望的是僱主會賠償我在確診到合約完結期間的損失。她應該被懲罰，所以其他僱主才會做同樣的事，學會尊重移工的權利。

編寫此報告時 Alias 在平等機會委員會的案件仍有待審理。¹¹⁰

這個案件反映了很多其他受訪者在使用申索機制解決問題時的難處，包括：需要依賴別人幫助才能使用程序（在 Alias 的案例中，她得到姐姐僱主的幫忙）；機制中公職人員對移工和僱主的不公平對待；多方的壓力迫使移工接受和解（壓力來自僱主的律師和審裁處的職員，以至健康問題等）；以及制度未能保障法定權益（在 Alias 的案例中，她即使有書面證明她是因為患上癌症而被解僱，也不能得到她在香港法例下應有的一半賠償）。¹¹¹

108 FADWU 訪 Baby Jane Alias 於 2019 年 3 月 3 日的訪問

109 有關投訴程序的詳細資料，可見 <http://www.eoc.org.hk/eoc/graphics/folder/complaint.aspx>。截取於 2019 年 9 月 3 日。

110 FADWU 訪 Baby Jane Alias 於 2019 年 3 月 3 日的訪問

111 移工可以根據《僱傭條例》下《就業保障》（第 10 章）就不合理或不合法的解僱提出索償。可見《僱傭外傭外籍家庭傭工實用指南》<https://www.fdh.labour.gov.hk/res/pdf/FDHguideChinese.pdf>。截取於 2019 年 6 月 26 日

第一次聆訊時，我的僱主提出和解港幣 5,000 元（美金 639 元）的和解金額。我未能決定，但審裁處的職員鼓勵我要接受，因為如果我繼續追討，下一次聆訊的檔期是二月。我不能負擔等這麼久了，於是決定接受和解。¹⁰⁴

Lilbeth 在勞資審裁處也有類似的經歷：

審裁處和那裏的職員跟所說如果我不接受港幣 20,000 元（美金 2,554 元）的和解金額，案件可能要等三到六個月才能審結。他們告訴我這樣的話對我來說是太長了，尤其是在這段期間不能工作。¹⁰⁵

如果雙方對調停主任的決定不滿意，他們可以要求重新審議判詞，或上訴。可是，重新的審議仍然會由同一位職員負責，所以結果很可能不會改變，而只有在調停主任犯了法律上的錯誤，才可以上訴，這個不會是移工的一般選擇，因為這樣會將申訴過程延長，增加她們的開支，亦沒有必勝的把握。

受訪者很多關於申索程序的公平問題，都反映在 Baby Jane Alias 的個案中。她確診換上第三期子宮頸癌後，合約隨即在 2019 年 1 月被中止。¹⁰⁶在終止合約的信中，清楚寫明合約被終止的原因是「確診換上子宮頸癌」。由於合約被終止，Alias 失去了香港的免費醫療服務。

Alias 在她的姐姐和姐姐僱主的協助下，向勞工處提交港幣 84,061 元（美金 10,735 元）的欠薪、一個月待通知金、法定假期、休息日、年假、病假、機票、膳食及交通津貼、醫療開支，以及失去收入的損失。¹⁰⁷Alias 如此形容調解會議的情況：

我的僱主並沒有出席，因為她病了。她派了兩位律師替她出席。我覺得勞工處一方面容許她派代表出席，另一方面跟我說我要親身出席，很不公平。那天我原本是要進行化療的，結果我犧牲了健康來參與這個會議。

雖然 Alias 已經要求了菲律賓語（Tagalog）的即時傳譯，勞工處沒有為她提供這個服務。僱主的律師提出和解金額港幣 10,492 元（美金 1,340 元），而 Alias 拒絕了，因為她覺得僱主應該賠償她要求的全數，案件於是提上了勞資審裁處。

¹⁰⁴ FADWU 與 Marsol 於 2019 年 3 月 24 日的訪談。

¹⁰⁵ FADWU 與 Lilbeth 於 2019 年 3 月 10 日的訪談。

¹⁰⁶ 標準僱傭合約第 9 條 (a) 訂明，「如果移工在受僱期間生病，僱主必須免費提供所有醫療服務」，而僱員生病了，有薪病假累計到了某個數目，可以得到疾病津貼。僱員按連續性合約受僱，在最初受僱的 12 個月內每服務滿 1 個月，便可累積 2 天有新病假；之後每服務滿 1 個月可累積 4 天。有薪病假可在整個受僱期間持續累積，但在任何時間不得超過 120 天 https://www.labour.gov.hk/tc/faq/cap57g_whole.htm 截取於 2019 年 7 月 6 日。

¹⁰⁷ 欠薪港幣 2994 元；一個月待通知金港幣 4310 元；法定假期港幣 847 元；休息日港幣 8764 元；年假港幣 1263 元；病假港幣 1700 元；機票港幣 2405 元；膳食與交通津貼港幣 100 元；醫療開支港幣 1500 元；失去收入損失港幣 60,178 元。

雖然如此，有幾位受訪者並不同意調停會議或勞資審裁處的職員是中立的。27位受訪者認為調停的過程和其他的申索機制都是有利於僱主的，而兩位受訪者更特別指出，勞工處／勞資審裁處的職員是他們在解決工作問題時的最大阻礙。

Rosennie，30歲的菲律賓女士，於2019年六月在勞工處提出港幣12,671元（美金1,618元）的索償。索償項目包括欠薪、一個月待通知金、年假、機票、膳食與交通津貼，以及在休息日與假日工作的薪金。¹⁰⁰她表達對調停會議主任的不滿：

那個調停主任只是想我接受僱主提出的港幣4,000元（美金511元）和解。他根本沒有看過我的情況和個案的事實。當我提出投訴，他沒有回應。最後，我告訴他我不會接受僱主提出的金額，而希望將申索提交至勞資審裁處。他就對我說，「好呀，如果這是你想要的！」

在勞資審裁處，Rosennie的申索獲裁定得到港幣6,281元（美金798元）——大概是她被欠的一半——因為她「只想案件完結然後再次工作」。她也受到審裁處職員的影響，認為嘗試得到全數賠償是「浪費時間」。¹⁰¹

在Ria的個案中，她感到調停主任曾作不適當的干預：

會議中，調停主任告訴我一定要考慮僱主已經提出的賠償金額。最後，我的權益沒有得以保障，是因為調停主任偏幫僱主。調停主任不應該讓我們移工在為自己爭取權益的時候，感到害怕和羞愧。

Hazel形容調停主任如何嘗試影響她的決定：

調停主任勸我不要拒絕僱主提出的和解金額（港幣7,600元或美金970元，少於她索償的四分之一），他說如果我繼續追索，會花很多時間，而我的等待不會保證我會贏得100%的索償。¹⁰²

Marisol，45歲的菲律賓女士，在2019年三月向勞資審裁處提出港幣10,456元（美金1,335元）的索償。償項目包括欠薪、休息日、假期、機票、及膳食與交通津貼。¹⁰³她憶述：

¹⁰⁰ 薪金（港幣3067元）；一個月待通知金（港幣4520元）；年假（港幣702元）；機票（港幣1500元）；膳食與交通津貼（港幣100元）；在休息日與假日工作薪金（港幣1168元）；假期（港幣1614元）。

¹⁰¹ FADWU與Rosamie於2019年7月24日的訪問。

¹⁰² FADWU與Hazel在2019年2月5日的訪問。注意調停主任在這個個案中的行為不一定是適當的，他可能只是說出移工在追討索償時，在現時機制下的危機。

¹⁰³ 薪金港幣6828元；休息日港幣1617元；假日港幣291元；機票港幣1620元；膳食與交通津貼港幣100元。

我的僱主提出賠償港幣 27,000 元（美金 3,448 元）。我因為高血壓，接受了這個金額。我只是希望儘快回到印尼，讓我的家人照顧我。我也擔心僱主會因為我在外面的一个兼職，反過來向我索償。那個兼職只是三天，我賺了港幣 600 元（美金 77 元）。%

另外一位印尼女士，33 歲的 Sinta，就欠薪、一個月待通知金、年假、機票、法定假期、膳食和交通津貼，向僱主索償港幣 10,591 元（美金 1,352 元）。⁹⁷ 她的僱主沒有出席原定於 2019 年 6 月的調停會議。反之，她在小額薪酬索償仲裁處向 Sinta 索償港幣 7,851 元（美金 1,003 元）：

我的僱主說我弄壞或打破了她家裏的東西，包括衣架，但我沒有。我開始工作的時候，這些東西已經很舊，生鏽或是已經爛了。其實在這個僱主家中工作的十個月來，她每個月減扣我的薪金，並強迫我去買家居用品如花灑頭、地拖、湯匙、手套，因為她說是我弄壞了這些東西。她也要求我用我自己的錢買漂白水，去清潔家門口外的樓梯，因為她覺得我的清潔工作做得不夠好。

Sinta 的僱主最終收回她的索償，七月勞資審裁處裁定 Sinta 應獲賠償港幣 4,700 元（美金 600 元），只是她索償的 44%，這是因為她不能提出證據反駁僱主的指控，而且後來她也在沒有通知僱主就離職了。⁹⁸

移工不懂得廣東話，和對本地法律和程序的不熟悉，使她們與僱主面對面談判的時候更加困難。此外，移工必須在可能性衡量上，提供證據來支持她們的申索（即是要證明她們所指的事有較大機會是事實），這是往往很難做到的。

例如，移工要提供證據證明她們被迫在法定假期／假日工作，是很難會找到實體的證物，而證人往往就是僱主家人，他們不大可能會同意移工對事件描述的版本。因為這些原因，除了一位以外，所有受訪者都同意申索過程中提供證據是一個難處。

勞工處的有關人員應該是擔當中立的中間人角色，並協助移工使用各項程序。勞工處形容調停主任的角色為：

中立的中間人，幫助勞資雙方了解問題和坦誠對話，消除彼此的歧見，以免事件惡化，及協助尋求雙方接受的解決方法。⁹⁹

96 FADWU 與 Anisa 於 2019 年 5 月 5 日的訪問

97 欠薪港幣 1764 元；一個月待通知金港幣 4410 元；年假港幣 435 元；機票港幣 3000 元；法定假期港幣 882 元；膳食與交通津貼港幣 100 元。

98 FADWU 與 Sinta 於 2019 年 7 月 31 日的訪問

99 香港政府勞工處《勞資關係科的調停服務》第二頁 <https://www.labour.gov.hk/tc/public/pdf/wcp/ConciliationServiceLRD.pdf>，載取於 2019 年 6 月 21 日

幾位受訪者都有表示她們害怕僱主，並描述在調停會議或法庭面對僱主如何困難。Dewi 表示，避免與僱主再碰面，是她接受調停和解的原因之一。

在調停會議上面對僱主的過程使我精神受到重創。她就在我面前，將事實扭曲，她說有關我的事都不是事實。她這樣做很不人道。⁹¹

Nur 也解釋在申索過程中的情緒：

我要克服對僱主的恐懼。她讓我感到害怕。即使我在勞資審裁處只是得到索償金額的三分之二，起碼我面對了僱主，她形容家裏發生什麼事的時候說假話，但我能為自己辯護。我克服了在法庭上面對僱主的恐懼。⁹²

Rita，45 歲的菲律賓女士，在 2019 年 3 月為同一位僱主工作 1 年後，決定不再續約。她的僱主的反應，是叫她當晚離開，並給了她港幣 6,410 元（美金 814 元）作為一個月的待通知金，機票和膳食與交通津貼。⁹³在公民社會組織幫助下，Rita 在勞工處就年假欠薪提出索償港幣 4,000 元（美金 511 元）。她形容與僱主會面時的情況：

我的僱主與她的女婿一起來，我也帶了一個朋友來支持我。她對我很凶。我對她的行為感到吃驚，因為她否認和反駁我說的所有事情，然後拒絕再給我更高的賠款。她威脅我，說她會反過來向我索償，因為根據她的說法，她給我的錢已經多於我應該得到的。我感到害怕，然後因為受驚而決定不再追討賠償。我覺得繼續追討下去是不值得的，因為每次見到僱主都與她爭拗，很傷害我的感情，增加這件事對我的創傷。⁹⁴

其他受訪者也表示，她們相信，僱主威脅會反過來向她們索償，其實是一個策略來拖延程序和對她們施壓，威迫她們接受較低的賠款。香港大學的研究亦記錄了，他們在 2019 年觀察的 35 宗個案中，74% 的僱主有提出反索償。⁹⁵

Anisa，一位患有高血壓的 40 歲印尼女士，僱主發現她的健康狀況後，不但拒絕支付醫療費用，更終止了她的合約。在公民社會組織的幫助下，Anisa 在勞資審裁處就僱主拒絕讓她放病假和醫療開支，提出港幣 60,000 元（美金 7,662 元）的索償：

⁹¹ FADWU 與 Dewi 於 2019 年 5 月 10 日的訪問。

⁹² 與 Nur 在 2019 年 1 月 9 日的訪問。

⁹³ 一個月待通知金港幣 4,310 元，機票港幣 2,000 元，膳食與交通津貼港幣 1,000 元。

⁹⁴ FADWU 與 Rita 於 2019 年 4 月 28 日訪問。

⁹⁵ 香港大學於 2017 年 9 月到 11 月，以及 2019 年 2 月到 4 月，就香港勞資審裁處的研究，未出版。研究中，學生對勞資審裁處牽涉有移工的案件進行觀察（2017 年有 25 宗個案，2019 年有 25 宗個案）。每宗個案的資料是取於學生能在審裁處審訊中的寫下的記錄。

可是，實際上移工不一定能得到所需的傳譯服務。例如 38 歲來自菲律賓的 Baby Janes Alias，她不能流暢地使用英語或廣東話，並要求一位菲律賓語 (Tagalog) 的即時傳譯，可是她指出勞工處沒有在她與僱主的調停會議上提供傳譯服務。⁸⁶ 根據勞工處，他們有安排以電話傳譯，但後來認為什麼這是沒有必要，因為當時菲律賓大使館的員工亦有在場。⁸⁷

在另一個訪問中，與 Alias 一樣不能說流利廣東話或英語的 Dewi，在調停會議中亦得不到傳譯服務：

語言問題是我在調停會議中，維護我的權益的最大阻礙。我是新來香港的，我不懂廣東話，即使有人（公民社會組織的人員）陪我去和僱主見面的會議，我還是不明白。⁸⁸

在得到傳譯服務的個案中，亦有受訪者遇到困難。例如是 Dolores 的例子：

當我出席小額薪酬索償仲裁處的聆訊，我有一個菲律賓語 (Tagalog) 的傳譯。她的傳譯很清晰，我也明白在發生什麼事。可是在早前的調停會議中，我只能用電話得到傳譯，效果不好，我也不明白在會議中各人說了什麼。⁸⁹

曾經陪同多位移工到調停會議的香港職工盟組織幹事劉嘉美解釋：

沒有說一定會有傳譯服務。移工需要在勞工處登記個案時就要提出要求這個服務，但即使已經要求了，有時是因為當時沒

有傳譯員而不能得到服務。另外的問題是，調停主任往往會對僱主只說廣東話，大部分移工都不明白。在一個個案中，當局未能為移工安排菲律賓語的傳譯員，因為那個傳譯員不懂廣東話。這代表那位移工不會明白一個小時的會議中的討論內容，也連參與對話了⁹⁰。

程序上的公允與平等原則

3 位受訪者特別指出，在使用申索機制解決工作問題時最大的障礙，是對僱主的懼怕。

⁸⁶ FADWU 與 Baby Jane Alias 於 2019 年 3 月 3 日的訪問。

⁸⁷ Raquel Carvalho, “‘Unfair’, ‘problematic’ Labour Department hearing in Hong Kong for Filipino domestic worker fired after employer found out she has cervical cancer” (《菲律賓裔工發現她十個頸癌後被解僱，於勞工處的聆訊不公平，有問題》) <https://www.scmp.com/week-asia/society/article/3001752/unfair-problematic-labour-department-hearing-hong-kong-filipino-南華早報>，2019 年 8 月 30 日。

⁸⁸ FADWU 與 Dewi 於 2019 年 5 月 10 日的訪問。

⁸⁹ FADWU 與 Dolores 於 2019 年 5 月 1 日及 26 日的訪問。

⁹⁰ FADWU 與劉嘉美於 2019 年 5 月 10 日的訪問。

民社會組織、工會、庇護所、宗教組織，或是個別人士。

Hazel 解釋說：

當然不會，是不可能自己把個案提交至勞資審裁處，因為我不清楚整個提交的程序，只有我一個人的話，是很難與僱主對抗。我教會的領袖和中介有幫我，他們給了我信心去跟進我的個案。⁸²

39 歲的菲律賓女士 Reyna，進一步說：

我不知道如何提交一個申索，沒有組織的協助的話，我是不知道該怎麼做。我的中介沒有幫忙。我向他們提出投訴，他們沒有做任何事。他們只是告訴我，我的僱主是好人所以是沒有問題。⁸³

香港大學於 2017 年與 2019 年的研究亦指出，移工普遍依賴組織或個別人士幫助，才可以將個案提交至勞資審裁處。2017 年與 2019 年觀察的個案中，有近 50% 的個案中的移工，有得到支援，主要來自公民社會組織。⁸⁴

29 位受訪者同意，把個案提交至勞資審裁處的過程中，得到的支援不足，其中 8 位特別指出語言障礙和溝通困難，是她們嘗試利用申索機制解決工作問題的最大難處。

勞工處指出：

有必要時，少數族裔人士會得到傳譯服務，確保他們不會受到語言障礙的影響。傳譯服務包括由「融匯——少數族裔人士支援服務中心」提供的電話傳譯或現場傳譯。⁸⁵

⁸² FADWU 與 Hazel 於 2019 年 2 月 5 日的訪問。

⁸³ FADWU 與 Reyna 於 2019 年 5 月 5 日的訪問。

⁸⁴ 香港大學於 2017 年 9 月到 11 月，以及 2019 年 2 月到 4 月，就香港勞資審裁處的研究，未出版。研究中，學生對勞資審裁處牽涉有移工的案件進行觀察（2017 年有 25 宗個案，2019 年有 28 宗個案）。每宗個案的資料是取於學生能在審裁處審訊中的寫下的記錄。

⁸⁵ 香港勞工處於 2019 年 9 月 26 日提供的資料。

視像作供

2018年9月16日一宗具代表性的個案中，勞資審裁處首次容許從香港境外以視像形式作供。曾於香港受聘的菲律賓移工 Mallorca Domingo，通過即時視像鏈接，於菲律賓作供。勞資審裁處使用視像作供，的確是有助移工參與審裁處的程序，可是過程中仍然有不少其他問題，使申索者難於使用機制。

首先，移工需要向高等法院提出使用視像會議設施的要求，而設施的數量有限。另外，申索人作供時，需要一位獨立的觀察員，以及在一個有高速互聯網的地方進行，並需要提供大量的文件（例如是申索人的申索書、致勞資審裁處的信件、授權書、照片、進一步的證供等）。這些條件代表申索人或須自行到當地城市中的一間律師樓進行視像作供，其中需要的開支和時間不少。

如當局希望用視像作供能成為移工的真正選擇，則必須提供更多援助，確保過程是易於使用而有效的。

對申訴機制及援助認知不足

80位受訪者指出，資訊及支援不足是她們以申索機制解決工作問題時，最大的障礙。79所有受訪者，除了一位以外，都同意移工並不了解如何在香港正確使用現有程序以尋求司法公正⁸⁰。

FADWU 近年的研究清楚顯示，很多移工並不知道她們在香港的權益，而她們亦普遍沒有收到有關的資訊。例如，FADWU 在 2018 年的研究報告中，指出僱傭中心一般不會履行《職業介紹所守則》中列明的責任：54%受訪者（450位中的 241位）表示她們的中介中心沒有向她們解釋她們在香港法例下的權益、出現問題或需要投訴時如何得到支援，亦沒有向她們提供由勞工處發出有關移工權益的小冊子。⁸¹

本研究再次證實，移工如果沒有其他援助，獨自使用申索機制時會有很大困難。全部 180位把個案提至小額薪酬索償仲裁處及勞資審裁處的受訪者，都曾得到組織或個人士幫忙，並且指出如果沒有這些援助，她們是沒可能跟進個案。移工得到的支援，來自公

79 受訪者被問一條開放式問題：她們認為利用申索機制，對她們來說最大的阻礙是什麼？見附錄一第9條問題

80 就受訪者利用申索機制解決工作問題的個人經歷，訪問中她們會被問到9條問題，她們需要回答同意或不同意某陳述，或不知道。見附錄一的第8條問題。

81 FADWU《推動變革的中介：對香港僱傭中心依循〈職業介紹所實務守則〉之評估》2018，見於 http://en.hkctu.org.hk/sites/default/files/Agents%20of%20Change_report%202_FINAL_cn.pdf 截取自 2019年6月12日

受訪者	索償金額 (港幣\$)	得到金額 (港幣\$)
1. Althea	7,047	7,047
2. Angel	9,690	4,700
3. Anisa	60,000	27,000
4. Baby Jane Allas	84,000	30,000
5. Cristina	9,993	9,993
6. Dewi	11,185	5,700
7. Dolores	7,308	5,200
8. Edna	7,000	6,000
9. Eka	9,000	5,000
10. Flora	25,483	3,000
11. Hazel	33,180	25,000
12. Jasmine	7,484	7,484
13. Jessa	64,958	59,094
14. Lilibeth	51,098	20,000
15. Marisol	10,456	10,456
16. Mary	4,310	5,000
17. Nenita	9,708	4,310
18. Nicole	10,151	11,558
19. Nur	17,500	17,500
20. Ratna	87,045	55,000
21. Rita	4,000	0
22. Rosamie	12,671	6,281
23. Samantha	11,525	11,525
24. Sinta	10,591	4,700
25. Teresa	14,862	0
26. Veronica	34,370	34,370

得到金額為索償 金額的百分比	和解/ 申索得值於
100%	調停會議
49%	調停會議
45%	勞資審裁處
36%	勞資審裁處
100%	調停會議
51%	調停會議
71%	小額薪酬索償仲裁處
86%	調停會議
56%	勞資審裁處
12%	調停會議
75%	勞資審裁處
100%	調停會議
91%	調停會議
39%	勞資審裁處
48%	勞資審裁處
100%	調停會議
119%	勞資審裁處
100%	調停會議
100%	勞資審裁處
63%	調停會議
0%	調停會議
50%	勞資審裁處
100%	調停會議
44%	勞資審裁處
0%	勞資審裁處
100%	調停會議

圖表 1
受訪者使用申索機制的結果⁷⁸

⁷⁸ 19 位沒有在調停會議中接受和解的受訪者中，有一位停止他的索償。另外，6 個在勞資審裁處處理的個案，訪問期間仍然進行中。

項研究中，學生對牽涉移工的勞資審裁處訴訟程序進行觀察，結果顯示，如果案件未能得到解決，下次聆訊平均要排期至兩個月後。⁷⁵

在這個背景下，有28位受訪者表示法律程序過慢和過於昂貴，是不足為奇的。最少14位受訪者曾經住在庇護所（個別人士的房屋，得到免費或資助的食物和住宿。這樣她們才可以最低的開支繼續跟進索償，尤其是如果個案在調停會議已經得到和解。正是因為得到這些幫助，14位在調停階段得到和解的受訪者，能以平均港幣1,139元（美金145元）便完成申索程序；10位通過小額薪酬索償仲裁處及勞資審裁處完成索償的受訪者，則平均需要花費港幣3,239元（美金414元）⁷⁶，即三倍的費用——儘管她們其中有幾位已經是得到庇護所的資助。

這些時間與成本的壓力，可解釋為何很多移工選擇在調停會議或第一次聆訊就接受和解。2018年間，72%牽涉移工的索償個案在調停階段得到和解。同樣地，直至2019年8月底，74%牽涉移工的個案於調停階段得到和解。⁷⁷

如果申索人同意和解，她得到的金額將不會包括她於追索期間的開支（如簽證延期費用、往返聆訊的交通與膳食費、郵寄費用等），因為只是在審訊中得值的一方，才可以得到這些賠償。可是，和解的結果並不確保移工能得到雙方同意的賠償金額。而她們如果不接受和解而把案件提至審訊，就要花更多的錢；萬一敗訴，她們更要面對失去任何賠償之餘，還要負擔被告人的開支。

⁷⁵ 香港大學於2017年9月到11月，以及2019年2月到4月，就香港勞資審裁處的研究，未出版。研究中，學生對勞資審裁處牽涉有移工的案件進行觀察（2017年有25宗個案，2019年有25宗個案）。每宗個案的資料是取於學生能在審裁處審訊中的寫下的記錄。

⁷⁶ 其餘兩位受訪者的開支由第三方支付。

⁷⁷ 香港勞工處於2019年9月26日提供的資料。

多數投訴僱主的移工都需要申請簽證延期，這類簽證不容許她們工作，而目前費用為港幣230元（美金29.4元）。⁷⁰ 24位受訪者都表示這個價錢太昂貴。

23位申請了簽證續期的受訪者，平均繳付了港幣400元（美金51元），代表移工平均需要自費申請簽證續期兩次。其他沒有申請簽證續期的受訪者，或是能夠在簽證期內完成索償，或是剛開始申索程序而很大機會需要申請簽證續期，或是已經選擇回國。

沒有受訪者申請特別容許她們工作的簽證。入境事務處通常只是在案件進入起訴程序才簽發這類特別簽證。受訪者當中有24位並不相信入境事務處會發給她們這類容許工作的簽證，同時，她們亦不知道這個選擇的存在，正因如此，並沒有受訪者申請，而兩位曾經在跟進索償個案時工作的兩位移工，均是非法地受聘。

申索人如要向勞資審裁處提出申索，必須根據索償金額高低支付港幣20-50元（美金2.56-6.4元）的手續費。要把所需文件郵寄到被告的地址，費用是每位港幣10元（美金1.3元）。⁷¹ 除此以外，繼續跟進個案的洗費包括：郵寄費（影印及郵遞文件），翻譯及翻譯認證，索取勞資審裁處的文件副件，以及發出傳票。⁷²

可是，對大部分移工來說申索過程中最大筆的費用是生活費，尤其是膳食和住宿，直至她們的案件完結為止。對於很多移工來說，這些每星期每個月累積起來的洗費，加上不能工作，使整個過程變得非常昂貴。

申索需時長短，取決於數個因素（例如：僱主是否願意在調停會議中和解，勞資審裁處當時有多少個案在處理中，雙方提供所需文件的時間，有否延期的要求等）。本研究中的受訪者，由她們向小額薪酬索償仲裁處或勞資審裁處提出申索，直到案件終結，平均需要58天的時間（12位受訪者）。⁷³ 而香港司法機關的統計數字顯示，2018年，案件由第一個預約到正式提案，需時平均25天，然後由提案到勞資審裁處的第一次聆訊，亦需要25天。⁷⁴

如果移工決定在第一次聆訊後繼續追討索償（即案件進入審訊程序），在勞資審裁處排期通常需要最少兩個星期。香港大學的一

⁷⁰ 香港司法機構，《勞資審裁處：法庭服務簡介》，2019年2月，第5-5.1段。見 https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf 截取於2019年6月23日。

⁷¹ 香港入境事務處《收費表》見 <https://www.immd.gov.hk/hkt/services/fee-tables/index.html> 截取於2019年7月5日

⁷² 一般的收費為：翻譯認證每頁港幣15元，取得勞資審裁處的文件副本每頁港幣5元，向證人發出傳票每位港幣25元。參考文件 *Justice without Border: A Practitioner's Manual for Migrant Workers Pursuing Civil Claims in Hong Kong and from Abroad*。（《移工實用手冊：於香港及海外追討民事賠償》）2015年12月，第223頁。

⁷³ 未能計算另外6位受訪者於勞資審裁處的案件平均處理時間，因本報告編寫時這些案件仍未完結。

⁷⁴ 香港司法機構《各級法院案件量、結案數目以及法院輪候時間》，香港司法機構年報2018 https://www.judiciary.hk/en/publications/annu_rpt_2018/crl/caseload_lb.html 截取於2019年6月26日

成本與時間的問題

當受訪者被問到，使用申索程序調解工作問題時，遇到的最大困難是什麼？最多受訪者指出的難處是失去工作的機會（17位）。⁶⁴此外，所有33位受訪者都同意，在香港提出投訴的話，是很難不會失去工作和留港工作的權利。⁶⁵

投訴僱主並失去工作的移工，一般都會失去住所。這是因為香港的強制與僱主同住的規定，以致所有移工都會居住在僱主的住所。⁶⁶此外，在兩星期規定下（《新逗留條件》，1987），移工合約終止後，她們必須在兩星期內找到新工作及得到新的簽證。這是很難做到的，因為香港入境處一般需要4—6星期處理新的工作簽證申請。⁶⁷

因此，大部分移工即使遇到工作條件上的問題，都不會向僱主提出，更遑論向勞工處提出投訴，而面對失業、失去住所及居留權，以至不能供養家庭的危機。誠然，此研究中的案例可見，移工都是在合約終止後，才考慮使用勞工處的申索機制。

國際組織在過去五年間已多次指出，兩星期規定與強制性留宿要求使移工容易受剝削，並令她們更難於尋求司法公正。⁶⁸最近期的是聯合國消除歧視委員會於2018年9月的報告：

「……留宿要求造成工人易於受到虐待，而要求工人在合同終止後兩星期內離境的規定，損害了他們對違反勞工法的行為獲得補救的能力。」

委員會建議「採取有效措施，確保外籍家庭傭工不受歧視，並再次要求廢除『兩星期規則』和留宿要求」。⁶⁹

即使移工願意提出投訴，她們也面對多重困難，尤其是有關跟進個案所需的費用。受訪者指出在申索期間第二大難處是財政問題（提出申索的使費（14位）。除了一位受訪者，其餘的都同意跟進申索期間很難維持自己的生活。

64 受訪者被問一條開放式問題：她們認為利用申索機制，對她們來說最大的阻礙是什麼？見附錄一第六條問題。

65 就受訪者利用申索機制解決工作問題的個人經歷，訪問中她們會被問到6條問題，她們需要回答同意或不同意某陳述，或不知道。見附錄一的第8條問題。

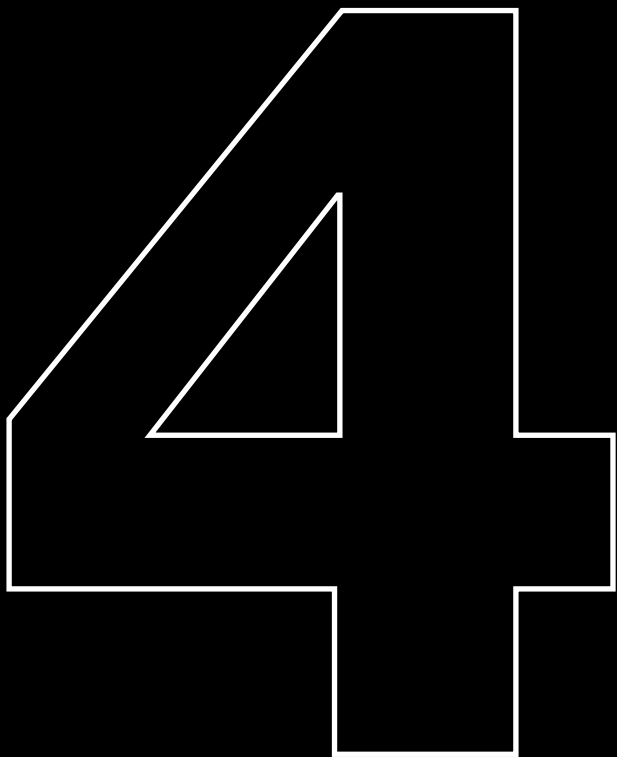
66 適用於移工的標準僱傭合約，第三條，見附錄二。

67 香港入境處於2018年5月28日提供的資料。

68 見國際勞工組織實施公約與標準委員會（CEACR），於2014年通過，第104次國際法委員會（2015年）：移民就業公約（1949年修訂），中國—香港特別行政區（1997年簽訂）：消除對婦女一切形式歧視公約關於中國第七和第八次合併定期報告的結論性意見 CEDAW/C/CHN/CO/7-8-2014年11月14日第64-65段，以及聯合國經濟及社會理事會，關於中國（包括中國香港和中國澳門）第二次定期報告的結論性意見聯合國文件 E/C.12/CHN/CO/2 2014年6月13日，第43段。

69 消除種族歧視委員會，《關於中國（包括中國香港和中國澳門）第十四至第十七次合併定期報告的結論性意見》 UN Doc. CERD/C/CHN/CO/14-17-2018年9月19日，第30-31段。

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雖然 Lilibeth 對結果感到失望，但因為菲律賓家中有急事需要處理，她還是接受了這個金額。⁵⁸

另一個類似的個案中，Nur，一位 45 歲的印尼女士，為同一個僱主工作超過五年。2018 年二月，她向僱主請求放年假，以出席女兒 8 月的大學畢業禮。僱主先是同意，後來卻在五月反口，繼而要求 Nur 寫一封辭職信。Nur 拒絕了這樣做。她的僱主為此生氣，然後要求她收拾行李離開住所，同時沒有給她任何賠償。Nur 致電一位朋友後，得到附近一個庇護所的幫助。

Nur 索償港幣 26,583 元（美金 3,395 元），包括了欠薪、代通知金、長期服務金、機票、膳食及交通津貼。⁵⁹ 調停會議後的兩個星期，她拒絕僱主提出的港幣 10,000 元（美金 1,916 元）和解金額，並在勞資審裁處提出申索：

在七月的聆訊前，我的僱主聯絡了勞資審裁處，並願意賠償港幣 15,000 元（美金 1,916 元），可是我拒絕了。我開始擔心，法律程序會不會很久，而我不想浪費太多時間和金錢。然後就是，很快就是我女兒的畢業禮了。所以我把索償金額降低至港幣 17,500 元（美金 2,235 元），我的僱主同意了。然後我就回到印尼⁶⁰。

另外一個個案中，Hazel，一位 40 歲的菲律賓女士，在 2018 年六月開始產假，但她八月回來準備繼續工作時，她的僱主非法地終止了與她的合約。⁶¹ Hazel 向僱主申索港幣 33,180 元（美金 4,237 元），包括欠薪、代通知金、長期服務金、年假、產假、機票、

膳食與交通津貼。⁶² Hazel 解釋在調停會議發生了什麼事：

我的僱主願意賠償港幣 7,600 元（美金 970 元）但我不接受，因為那不是她欠我的金額。那時候我想——無論贏或輸——至少我應該爭取我的權益。但是 2018 年在勞資審裁處，我的僱主把賠償金額提高至港幣 25,000 元（美金 3,193 元）。我必須接受，因為新工作的簽證一定要在這個案件結束了才可以批出。我不滿意這個結果——我失去了索償金額的 25%——對一個移工來說是很多的，因為每一分錢都是很辛苦掙回來。可是至少我得到高於僱主原先在調停會議願意賠償的金額。⁶³

⁵⁸ FADWU 與 Lilibeth 在 2019 年 3 月 10 日的訪談。

⁵⁹ 薪金（一個月）港幣 4310 元；代通知金港幣 4310 元；長期服務金港幣 15,583 元；機票港幣 2300 元；膳食與交通津貼港幣 100 元

⁶⁰ FADWU 與 Nur 在 2019 年 1 月 9 日的訪談。

⁶¹ 性別歧視條例（香港法例第 480 章）寫明，僱主歧視懷孕女性是犯法的（包括終止與她們對合約，強迫她們離職或在她們返回崗位後解僱她）見 https://www.elegislation.gov.hk/hk/cap480zh-Hant-HK@2016-05-27T00:00:00?pid=ID_1438408244408_001&INDEX_CS=N，截取於 2019 年 7 月 9 日。

⁶² 薪金（25 日）港幣 3475 元；代通知金港幣 4310 元；長期服務金（五年以上）港幣 14,375 元；年假（12 日）港幣 1688 元；待產假（65 日）港幣 7452 元；機票港幣 1800 元；膳食與交通津貼港幣 100 元

⁶³ FADWU 與 Hazel 在 2019 年 2 月 5 日的訪談

償失。對於很多移工來說，如果索償金額是較低的話，於調停會議後接受一個低於索償的金額，比將個案提到小額薪酬索償仲裁處有利。

唯一將個案提交至小額薪酬索償仲裁處的受訪者是 Dolores，一位 33 歲的菲律賓女性，合約被僱主於 2019 年 4 月終止。她提出索償港幣 7,308 元（美金 933 元），包括欠薪、代通知金、機票，膳食與交通津貼，以及於五個休息日工作的工資。⁵⁴ Dolores 指出她在休息日被要求「在早上 6:30 起床為僱主家庭準備早餐，然後在晚上 8:30 回來，做更多的工作——清潔廚房、拖地、換過濾器、為小朋友洗衣服等。」⁵⁵

調停會議期間，她的僱主不願意支付任何賠償，因此 Dolores 決定將個案提交至小額薪酬索償仲裁處：

我的案件於 2019 年聆訊。裁判官沒有判給我全部索償——只有港幣 5,200 元（美金 664 元）。這是因為我的僱主反駁說，我索償工資的幾個日子沒有工作，裁判官說我沒有足夠證據證明我真正的在五個休息日工作。

勞資審裁處

受訪者當中有 17 位將申索個案提交至勞資審裁處，索償金額由港幣 8,500 元到 122,520 元不等（美金 1,085 至 15,646 元），平均是港幣 34,300 元（美金 4,380 元）。11 位案件已經完結的受訪移工，平均得到的賠償是港幣 13,822 元（美金 1,765 元）。⁵⁶ 平均來說，賠償金額只是移工索償的 40%。

Lilibeth，一名 52 歲的菲律賓女士，在 2018 年十一月被僱主在年假前終止合約。她已經為同一僱主工作 14 年。她的僱主給她港幣 10,000 元（美金 1,277 元），在調停會議期間拒絕再付更多。十二月，Lilibeth 把案件提交至勞資審裁處，索償港幣 51,089 元（美金 6,525 元），包括長期服務金、休息日、假期、年假、機票，及膳食及交通津貼。⁵⁷ 她對審裁結果感到沮喪：

我真的想得到我的長期服務金，和其他所有於休息日和假日工作，沒有外出的工資。在考慮這一切之後，勞資審裁處只是給我港幣 20,000 元（美金 2,554 元），這連我索償的金額一半也不到——與我這十四年的付出也真的相差太遠。

⁵⁴ 薪金（三日）：港幣 445 元；待代通知金港幣 4520 元；機票港幣 1,500 元；膳食與交通津貼港幣 100 元；法定休息日薪酬港幣 743 元

⁵⁵ FADWU 與 Dolores 於 2019 年 5 月 1 日與 26 日的訪談。

⁵⁶ 餘下六個申索個案在訪問時仍在進行中。

⁵⁷ 長期服務金港幣 40,247 元；休息日薪酬港幣 5,459 元；假期薪酬（17 日）：港幣 2,442 元；年假薪酬（27 日）：港幣 2,730 元；機票港幣 120 元（各項差額）；膳食與交通津貼港幣 100 元

我的索償金額是港幣 87,045 元（美金 11,116 元），這些包括了欠薪、休息日、代通知金、年假、機票，和膳食與交通津貼。⁴⁷ 調停會議期間，我的僱主只願意給我港幣 55,000 元賠償（美金 7,024 元）。我對這個金額不滿意，因為這不能賠償僱主欠我的。可是我接受了，因為我想把問題儘快解決，然後再次開始工作。⁴⁸

Angela，一名 43 歲菲律賓女士，在 2018 年 2 月告訴僱主她懷孕了。雖然在法例下僱主並不可以因為懷孕而解僱僱員，包括移工⁴⁹，可是 Angela 的僱主強迫她自己寫辭職信並簽署。Angela 後來找到一個公民社會組織，幫她提交了一個港幣 16,000 元（美金 2,043 元）的申索，包括欠薪、代通知金，以及懷孕歧視。她的僱主沒有出席調停會議，而編寫此報告之時，她的案件仍然在勞資審裁處處理中。⁵⁰

Pathfinders 是一個在香港為母親和兒童提供福利服務和醫療，並幫助她們尋求司法公正的公民社會組織，他們指出，因移工懷孕而解僱她或強迫她辭職，是有嚴重後果的問題：

當懷孕女性的合約完結後，她會面對不能想象的挑戰和困境，包括失去住所。兩星期內她會失去所有公共服務的支援，以及重要的產前健康檢查。不能回家的，孩子通常會成為無證、無國籍人士，並會失去基本的服務包括醫療和防疫，住所及教育。⁵¹

小額薪酬索償仲裁處

2018 年，小額薪酬索償仲裁處共收到 607 宗申索個案，其中 53 位申索人是移工。⁵² 2019 年 8 月為止，380 位申索人之中，33 位是移工。⁵³

18 位沒有接受調停結果而進一步索償的受訪者當中，只有一位提交申索至小額薪酬索償仲裁處。這是意料之內的，因為小額薪酬索償仲裁處只負責處理低於港幣 8,000 元（美金 1,022 元）的申索，而留港跟進個案的費用是那麼昂貴，追討得到的賠償往往得不

47 薪金連未放休息日港幣 79,028 元，待代通知金港幣 4,410 元，未放年假港幣 506 元；機票港幣 3,000 元；膳食與交通津貼港幣 100 元。

48 FADWU 與 Raina 於 2019 年 6 月 7 日的訪問。

49 性別歧視條例（香港法例第 480 章）寫明，僱主歧視懷孕女性是犯法的（包括終止與她們對合約，強迫她們離職或在她們返回崗位後解僱她）見 https://www.elegislation.gov.hk/hk/cap480zh-Hant-HK@2016-05-27T00:00:00?xpid=ID_1438403244408_001&INDEX_CS=N，截取於 2019 年 7 月 9 日。也可參閱《僱傭外用外籍家庭傭工實用指南》<https://www.fdi.labour.gov.hk/res/pdf/FDIHguideChinese.pdf>，截取於 2019 年 6 月 28 日。

50 FADWU 與 Angela 在 2019 年 5 月 9 日的訪問。

51 FADWU 與 Catherine Gurtin (Pathfinder 行政總裁) 於 2019 年 7 月 24 日的訪問。

52 申索個案包括移工向僱主提出的以及僱主向移工提出的。

53 香港入境處於 2019 年 9 月 26 日提供的資料。

受訪者索償的金額由港幣 4,000 元至 122,520 元不等（美金 511 至 15,646 元），平均金額為港幣 27,391 元（美金 3,498 元）。⁴³ 24 宗僱主有出席調停會議的個案中，僱主提出賠償的金額平均為港幣 12,459 元（美金 1,591 元），包括 4 位並不願意賠償的僱主。僱主平均只願意賠償移工索償金額的 51%。

14 位接受僱主提出的賠償金額的受訪者之中，7 位接受了低於她們索償的金額。她們接受的最普遍原因是：她們急需要錢；她們不確定最後得到的賠償，能否支付繼續留港的費用；以及她們需要開始工作，供養家庭（見第四部分）。

Flora 的個案中可見這些難處。Flora 是一位 46 歲的菲律賓女士，她向僱主索償港幣 25,483 元（美金 3,254 元）。她索償的項目包括欠薪、代通知金、膳食津貼、機票，以及膳食與交通津貼。⁴⁴ 調停會議期間，她的僱主提出願意賠償港幣 3,000 元（美金 383 元），只是她索償金額的 12% 而已。雖然 Flora 對申索過程與結果不滿，她仍然接受了僱主提出的這個金額：

如果我拒絕接受，我就要留在香港。那將會是個漫長的過程，而我不認為我會從僱主那裏拿到錢。我不想在這裏再久留，因為我需要工作，以支持家庭開支，尤其是我的孩子的教育。⁴⁵

Dewi，一名 40 歲來自印尼的女士，有類似的經驗。她的僱主在 2019 年 4 月終止了她的合約，沒有給她任何賠償就把她趕出街頭。

她的朋友介紹她至一個宗教團體，那裏有人幫她列出僱主欠她的各個款項。她的索償包括欠薪、代通知金、年假、機票，以及膳食與交通津貼。Dewi 解釋她的情況：

我的索償金額是港幣 11,185 元（美金 1,428 元）。開始的時候，我的僱主指我說謊，並拒絕賠償。在談判後，她願意賠償我港幣 5,700 元（美金 728 元）。我接受了，因為我不想再在香港浪費時間，這段時間內我沒有收入不能供養家庭。⁴⁶

另一位受訪者 Ratna，一位 22 歲的印尼女士，為同一位僱主工作半年間有五個月沒有收到全資薪金，而且被要求每天在花園做高度體力勞動的工作，而這些工作並沒有在合約內寫明。她每周只有半天休息，而在下雨的日子僱主會叫她不用工作，但會扣去工資。2019 年 5 月，Ratna 尋求一個公民社會組織的幫忙，他們協助她就違反合約及欠薪，向勞工處舉報僱主：

43 本報告中的匯率是港幣 1 元 = 美金 0.1277 元，準確至個位。

44 薪金港幣 8996 元，待通知金港幣 4410 元，膳食津貼（9 個月）港幣 9477 元，機票港幣 2500 元，膳食與交通津貼港幣 100 元。

45 FADWU 與 Flora 在 2019 年 4 月 28 日的訪問。

46 FADWU 與 Dewi 在 2019 年 5 月 10 日的訪問。

全部 33 位受訪移工均曾於勞工處提出申索，並有出席調停會議，其中八個個案中，僱主並沒有出席。

受訪移工提出的申索當中，最多的三類個案是有關於薪金（33 位受訪者中的 30 位），膳食和交通津貼（33 位中的 26 位），以及機票（33 位中的 26 位）。其他常見的申索原因包括：拒絕發放疾病津貼、產假，或提供醫療（33 位中的 8 位），法定休息日與假期——不許休假或沒有發薪。

移工享有的這些權利，都於香港法例與標準僱傭合約中列明（見附件二）。例如，法例規定僱主必須與移工簽署的標準僱傭合約中，寫明了僱主若未能在終止合約前一個月前發出通知，則須向僱員繳付一個月薪金代替（第十段）。此外，法例亦規定，合約終止時移工返回原居地的旅費，以及每天港幣 100 元（美金 31 元）的膳食和交通津貼，須由僱主支付（第七段）⁴²。

因此，若移工是清楚知道她們在法律上的權利，並（或）能得到工會、公民社會團體以及大使館的幫忙，她們應該可以列出僱主欠她們的薪金及各個款項。表一列出了是次研究中受訪的移工，索償的主要項目類別，以及每項在香港的法定金額。

⁴² 移工在法例下的應得的其他款項（如代替年假、待產假、每周工作日或假日、長期服務金等），可見《僱傭外用外籍家庭傭工實用指南》<https://www.fdnlabour.gov.hk/res/pdf/FDHguideChinese.pdf>，截取於 2019 年 6 月 26 日。

索償項目	金額
每月工資	港幣4,520元
一個月的代通知金	港幣4,520元
膳食津貼	每月港幣1,075元
疾病津貼	平均每日薪金的五分之四
每周工作日（連續不少於24小時）	每七天有一天
假期	每年12天法定有薪假期
年假	每年7天有薪假期
產假	十周有薪假期
醫療	根據療程所需
長期服務金	最後一個月薪金的三分之二 x 服務年期
回程機票	港幣1,500-3,000元
返回原居地途中的膳食與交通津貼	每天港幣100元

表格1 受訪者索償的項目與金額

由僱員（包括移工），在勞資審裁處提出的個案中，最普遍的申索原因包括：欠薪；終止合約代一個月通知金（代通知金）；法定假期、年假以及休息日的薪金；以及長期服務金。³⁶

如要在勞資審裁處提出申索，當事人應先與審裁處職員在電話或網上預約時間。於預約當日，調查主任會與當事人會面以擬定申索，收集支持申索的文件及其他資料，並會協助當事人填寫申索書的表格（必須以中文或英文填寫）。根據申索額的高低，填寫表格的費用為港幣 20,500 元不等（美金 2,566.4 元）。

調查主任會就申索進行調查，包括與被告人會面及要求提交支持文件。當調查完成，調查主任會擬備一份事實摘要，列出雙方各自的指稱，並直接在第一次聆訊前呈交裁審官。³⁷

僱傭雙方均須親身出席首次聆訊（亦稱「過堂聆訊」），以及往後的聆訊。首次聆訊期間，審裁官會查証雙方已提供足夠的文件證據，亦可能與雙方探討和解的可能性。此審裁官可能把案件押後另一天作提訊（較短的聆訊，以確定雙方已準備好審訊，或就案件提出進一步指示），或審訊。³⁸

審訊期間，審裁官一般會

「解釋審訊所採用的程序，【……】聽取與訟雙方的安慶；讓申索人及被告人盤問對方及其證人；下令與訟雙方提供進一步證據或傳召額外證人，以及押後聆訊至另一天，在聆訊結束時宣告裁決，或另定日期宣告裁決。」³⁹

調停服務

2018 年勞工處的勞資關係科處理了共 13,691 宗申索個案，其中 1,062 宗有關於移民家務工⁴⁰。在這些申索個案中，764 宗通過調停服務達至和解。同樣地，截至 2019 年 8 月，共有 9,183 宗索償，其中 719 宗有關於移工，而其中 542 宗個案是通過調停服務達至和解⁴¹。

³⁶ 長期服務金適用於為同一僱主連續服務五年或以上的員工，包括移工。可見於香港司法機構《勞資審裁處：法庭服務簡介》2019 年 2 月，第 2.3 段。可見於 https://www.judiciary.hk/doc/en/court_services_facilities/abour_201902.pdf，截取於 2019 年 6 月 23 日。

³⁷ 香港司法機構《勞資審裁處：法庭服務簡介》2019 年 2 月，第 6.3-6.4 段。可見於 https://www.judiciary.hk/doc/en/court_services_facilities/abour_201902.pdf，截取於 2019 年 6 月 23 日。

³⁸ 香港司法機構《勞資審裁處：法庭服務簡介》2019 年 2 月，第 9.2.1 - 9.2.3 段。可見於 https://www.judiciary.hk/doc/en/court_services_facilities/abour_201902.pdf，截取於 2019 年 6 月 23 日。

³⁹ 香港司法機構《勞資審裁處：法庭服務簡介》2019 年 2 月，第 9.3.1 - 9.3.3 段。可見於 https://www.judiciary.hk/doc/en/court_services_facilities/abour_201902.pdf，截取於 2019 年 6 月 23 日。

⁴⁰ 包括移工向僱主提出的以及僱主向移工提出的申索。

⁴¹ 香港勞工處於 2019 年 9 月 26 日提供的資料。

勞工處是負責香港勞工事務行政的主要政府機構，職責包括確保在職人士的安全與健康得到保障、和保障僱員的權益，以及協助解決勞資糾紛²⁹。勞工處勞資關係科是作為勞工處處理移工工作糾紛和索償的主要部門，負責為僱主與僱員提供免費調停服務。

調停服務中，一位來自勞工處的調停主任會擔任「中立中介人」的角色，來協助雙方明白問題的癥結，有關的法例要求以及協助達至一個雙方接受的和解結果。調停主任不能鼓勵任何一方參與亦沒有裁判權。可是如果任何一方不出席會議，或是不能達至和解，調停主任可以在與會者的要求下，向能夠作出仲裁的小額薪酬索償仲裁處或勞資審裁處提出聲請。³⁰ 如果雙方同意，制度中並沒有限制任何一方由律師代表出席調停會議。³¹

小額薪酬索償仲裁處與勞資審裁處，均負責處理法定或合約勞工權益紛爭中的申索，但只限於已經透過調停服務而不能達成和解的個案。雙方都不得委派律師代表出席小額薪酬索償仲裁處或勞資審裁處的聆訊，但當事人在聆訊前如獲得仲裁處准許，可以授權作其代表的已登記職工會或僱主協會中擔任職位的人出席。³²

勞資關係科、小額薪酬索償仲裁處和勞資審裁處，均不負責處理移工與中介中心的糾紛。負責這方面的法定機構為勞工處的職業介紹所事務科，職責包括執行香港法例第五十七章《僱傭條例》第Ⅸ部有關職業介紹所的規例，以及第五十七章甲《職業介紹所

規例》。³³

小額薪酬索償仲裁處與勞資審裁處，提供的服務相近，唯一的分別在於小額薪酬仲裁處不處理高於港幣8,000元（美金1,022元）的索償申索，或是牽涉超過十名申索人的個案³⁴；勞資審裁處處理的聲請則一定要超過港幣8,000元（美金1,022元），或是超過十名申索人的案件。³⁵

²⁹ 香港勞工處《抱負和使命》，可見於<https://www.labour.gov.hk/tc/vm/content.htm>，截取於2019年6月18日。

³⁰ 香港勞工處《勞資關係科調停服務》，第一頁，可見於<https://www.labour.gov.hk/tc/public/pdf/wcp/ConciliationServiceLRD.pdf>，截取於2019年6月18日。

³¹ 香港勞工處於2019年9月26日提供的資料。

³² 勞工處《小額薪酬仲裁處理簡介》第一到第三頁，2016年12月，可見於<https://www.labour.gov.hk/tc/public/pdf/mecab/SGMECAB.pdf>；勞工處《勞資審裁處法庭服務簡介》2019年2月，第9.1.1-9.1.5段，可見於https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf，截取於2019年6月23日。

³³ 見<https://www.eaa.labour.gov.hk/tc/home.html>，截取於2019年9月1日。

³⁴ 勞工處《小額薪酬仲裁處理簡介》第一頁，2016年12月，可見於<https://www.labour.gov.hk/tc/public/pdf/mecab/SGMECAB.pdf>，截取於2019年6月23日。

³⁵ 香港司法機構《勞資審裁處：法庭服務簡介》，2019年2月，第2.1段，可見於https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf，截取於2019年6月23日。

3

受訪者使用勞工事務
申訴機制的經驗

FADWU 以往的研究報告中，訪問了在工作上出現問題的移工，不論她們有沒有使用申索機制去解決這些問題。是次研究中，FADWU 則針對在 2018 到 2019 年間，有使用過勞工處的申索機制來嘗試調解工作上問題的移工，與她們進行了質性半結構式的訪問，以找出她們在使用機制的過程中有沒有遇到困難。研究中一共有 33 位移工受訪——其中 27 位來自菲律賓，6 位來自印尼。是次研究聚焦於這兩個國籍，是因為她們代表了香港絕大多數共 38% 的移工。這些受訪者年齡介乎 22 到 56 歲不等，其中只有一位不是女性。

所有質性訪均於 2019 年 2 月到 7 月進行，訪問地點包括香港島、九龍半島、新界各地，而已經回國的受訪者，訪問即以傳送訊息方法進行。訪問在公民社會組織和宗教團體、菲律賓大使館和香港大學的協助下進行，亦有通過社交媒體、個人聯絡和引薦。

訪問的問題，是針對移工使用香港勞工申索機制索償時的經歷，包括：她們經歷過的工作問題；她們如何解決這些問題；期間遇過的難處；以及她們如何評價申索的過程（見附件一：訪問問題的完整清單）。為保密受訪者的身份，她們的名字已被更改，只能以年齡、國籍與性別辨認；唯一的例外是名字和個案已經在公共領域的受訪者。

研究報告中，就每條問題都會列出受訪者的人數，而這些數目或會不同，這是因為受訪者可能不記得某些細節，或是問題與她的處境無關，所以不是所有受訪者都能回答所有問題。

研究方法

2

在 347 位受訪者中，只有 4 位（13%）曾經就工作問題作出投訴，其中更只有 14 位（32%）指出她們的中介有嘗試協助解決這些問題。²⁶

FADWU 連同數個曾就此議題作深入研究的其他組織²⁷，成功引起社會關注，雖然多項調查中可見移工普遍受到剝削，但她們極少會嘗試尋求司法公正。例如，於 2018 年間只有少於 0.3% 的移工曾經向勞工處提出申索。²⁸

因此，FADWU 進行是次研究的目的，是要更深入理解在港移工面對工作的問題時，為何不使用申索機制。本研究主要審視現有的調停服務、小額薪酬索償仲裁處和勞資審裁處，移工使用這些機制時有哪些障礙，以及這些機制對於調解紛爭、保障移工法定和合約權利的效能。

- 26 FADWU《推動變革的中介：對香港傭傭中心依循〈職業介紹所實務守則〉之評估》2018。可於 http://en.hkciu.org.hk/sites/default/files/Agents%20of%20Change_report%20v2_FINAL_cn.pdf 截取於 2019 年 6 月 12 日
- 27 國際特赦組織，《Exploited for Profit, Failed by Governments》（榨取利潤導致剝削，政府失職而被放棄）：2013 年 11 月。可於 <https://www.amnesty.org/download/Documents/12000/asa170292013en.pdf> 截取於 2019 年 12 月 2 日。進士勞工聯盟香港分會，進士勞工會，《License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong, 2013》（持牌剝削：菲律賓移民家務工於香港被聘過程中所經歷的招聘手法與問題，2013）。可於 <http://www.idwfd.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong> 截取於 2019 年 6 月 12 日。Justice Centre “Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong” (Coming Clean: 香港外籍家庭傭工遭強迫勞動以及強迫勞動被招募及入口販運的普遍程度) 2016 年 3 月。可於 <http://www.justicecentre.org.hk/framework/uploads/2016/03/Coming-Clean-The-prevalence-of-forced-labour-and-human-trafficking-for-the-purpose-of-forced-labour-amongst-migrant-domestic-workers-in-Hong-Kong.pdf> 截取於 2019 年 6 月 12 日

28 香港勞工處於 2019 年 9 月 28 日提供的資料。

直至2018年底，香港一共有386,075位移民家務工受聘。²²她們在香港本地通常被稱為「外籍家庭傭工」（外傭），並為香港家庭提供家居服務，2018年為香港經濟帶來美金126億元的收入，或是本地國民生產總值的3.6%。²³大部分移工來自菲律賓和印尼，人數分別是210,897人和165,907人。

過去六年間，FADWU搜集了不少移工在香港普遍受到剝削情況的證據。²⁴本研究的目的在於更深入地了解，為何在港的家務移工甚少使用現有的法律程序，保障她們法定及合約賦予的權利。

過去六年間，FADWU進行了深入研究，記錄了移民家務工在招聘過程與工作場所面對的一系列問題。

FADWU 2016年的報告《左右為難，進退兩難：菲律賓移民家務工於香港與菲律賓被收取非法中介費之情況》，指出絕大部分的菲律賓傭移工，都被菲律賓和香港的中介收取遠高於兩地法定上限的費用。

報告亦記錄了大部分受訪者的工作條件如何被剝削：她們沒有得到每周一整天的休息日（65位中有80位）、她們不能在休息時段離開僱主的住所（66位中有35位）、面對差劣或是極差劣的工作環境（67位中有38位），以及他們曾經被僱主家中成員威脅或懲罰（67位中有37位）。從相當數目的個案中發現，香港的職業介紹所曾直接或間接地導致剝削的發生。雖然出現了以上種種的工

作問題，但當中只有兩位受訪者曾經向香港的政府部門作出投訴。²⁵

在FADWU最新的調查報告《推動變革的中介》（2018）中，指出96%受訪者（452位中的434位）的職業介紹所沒有遵守《職業介紹所實務守則》裏的主要規定，而大多數的受訪者（56%、或450位中有253位）仍然在繳付違法超收的中介費。研究證實了這些違反《守則》的情況並不只是個別無良中介的行為，當中有148間已登記的香港職業介紹所沒有完全跟隨守則的規定。同樣地，

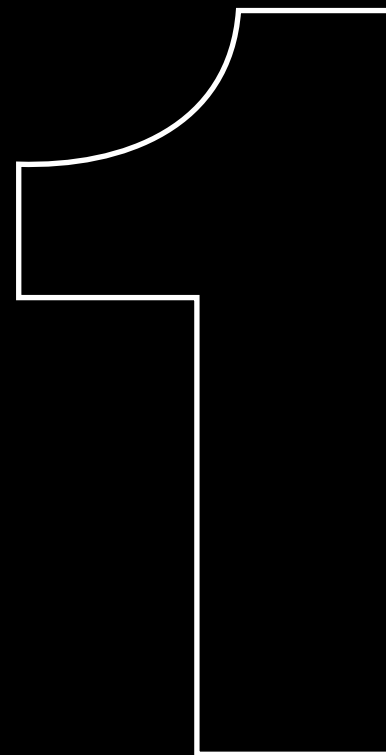
22 香港統計處《按國籍及性別劃分的外籍家庭傭工數目》，可見於 https://www.censtatd.gov.hk/nkstat/sub/genre/labour_force/index_tc.jsp，截取於2019年8月30日

23 Experian and Enrich, *The Value of Care: Key contributions of migrant domestic workers to economic growth and family well-being in Asia*，（照顧的價值：移民家務工對亞洲的經濟增長與家庭福祉的貢獻）2019，第六頁。[見於：http://www.enrichk.org/wp-content/uploads/2019/02/Final_The-Value-of-Care_Full-Report.pdf]，截取於2019年6月12日

24 見：FADWU《推動變革的中介？對香港傭工中心依循〈職業介紹所實務守則〉之評估》2018；FADWU《左右為難，進退兩難：菲律賓移民家務工於香港與菲律賓被收取非法中介費之情況》2016年10月；Justice Centre《Coming Clean: 香港外籍家庭傭工遭受強迫勞動以及強迫勞動為目的的人口販運的普遍程度》2016年3月；國際特赦組織，《Exploited for Profit, Failed by Governments》（榨取利潤導致剝削，政府失職而被放棄），2013年11月；進步勞工聯盟香港分會，進步勞工工會，《Licenses to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong, 2013》（持牌剝削：菲律賓移民家務工於香港受聘過程中所經歷的招聘手法與問題）2013

25 FADWU《左右為難，進退兩難：菲律賓移民家務工於香港與菲律賓被收取非法中介費之情況》2016年10月，可見於 <https://www.publitas.com/rights-exposure/between-a-rock-and-hard-a-place-cn/page/1>，截取於2019年6月12日

引言



……幫助我們，當我們得不到薪金和福利，而這些都是在僱傭合約中寫明的，並且是香港勞工法例的一部分，但我們的僱主沒有遵守。²¹

根據是次研究結果，FADWU 向香港特區政府提出以下建議：

- 廢除兩星期規定，確保家務移工在合約終止後，有足夠時間找新工作，讓她們能使用申索機制追討應得的賠償。
- 廢除強制性同住規定，容許家務移工與僱主或准僱主，就是否在僱主家中住宿的安排達成協議，並確保在外居住的家務移工得到足夠的住宿津貼。
- 對於正在小額薪酬索償仲裁處、勞資審裁處或刑事法庭程序中的家務移工，提供簽證續期，並容許她們在個案審理期間能繼續工作，簽證費用等應到豁免。
- 確保如果移工的人權或勞工權益受到剝削，她們能有效地使用申索機制索償，並為她們提供足夠的支援措施，包括有關申索機制流程和如何使用機制的充足資料；提供免費的專業傳譯；對案件正在處理而沒有其他方法為生的移工提供庇護所。
- 對於所有正在調停服務、小額薪酬索償仲裁處及勞資審裁處處理案件的家務移工，容許她們以「符合資格人士」的價格使用公共醫療服務。
- 在所有情況下，容許第三方，包括工會、非政府組織或個別人士，代表家務移工在調停服務、小額薪酬索償仲裁處或勞資審裁處進行申索。
- 減低移工舉證的要求，並要求僱主證明他們有遵從各項法定要求。
- 加強小額薪金薪酬索償仲裁處和勞資審裁處的辦事能力，減低處理申索的時間。
- 家務移工若是在調停服務、小額薪酬索償仲裁處或勞資審裁處案件審理完成前返國，為她們提供視像鏈接，協助她們繼續申索。

除此以外，還有其他原因導致移工與僱主角力時處於不利的位置，包括：兩者在談判中的權力不衡；移工對程序與司法制度的不熟悉；在追討過程中支援不足；以及她們提供證據的難度。

如此多重的挑戰，可見於 Lilbeth 以下的一段話。Lilbeth，一位 52 歲的菲律賓女性，在同一個僱主家中工作 14 年後，被終止合約：

我沒有足夠的資料去申請索償。我也沒有勞工處或勞資審裁處的支持，他們是偏幫僱主的。更大的問題是，個案處理期間，我不能工作。因為我沒有錢，這樣給了我很大的壓力去接受調解結果。²⁰

這種問題並不代表申索制度對移工完全沒有用。12 位受訪者表示她們滿意申索的過程與結果，包括是調停服務的（9 位），或是小額薪酬索償仲裁處／勞資審裁處的（3 位）。這主要是因為她們得到申索的全數金額（9 位），或是接近全數的金額（平均是她們申索的 83%）。

7 位受訪者能受惠於調停服務，是因為她們的僱主願意賠償他們欠移工的金額。她們然後只需要花港幣 300 元（美金 38 元）來完成申索過程，以及僅一次的簽證續期。可是，必須指出的是，這些移工仍然依賴其他的人士或機構提供住宿、食物和申索過程中的支援。

另外須要關注的是，全部 33 位受訪者，包括對申索過程及結果滿意的，都指出：要作出投訴而不失去工作，在香港是很難做到。全部受訪者，除了一位以外，都相信在申索過程中要負擔自己的生活很難；移工不清楚如何使用申索機制，也難於就索償事項舉證。

雖然某些移工能通過現有機制，得到她們應得的賠償，但她們的個案只是例外，不是普遍的情況。大多數被僱主剝奪法定權利的移工，都會因為擔心失去工作、住所（香港的強制性同住規定下移工必須與僱主同住），以及她們留港的權利，而完全不會考慮使用申索機制。

是次研究的受訪者中，都使用了申索機制來嘗試保障她們應得的權利，而三分之二對申索過程與結果感到不滿，包括調停服務的（31 位中的 22 位），和小額薪酬索償仲裁處／勞資審裁處的（31 位中的 8 位）。她們一般都相信機制是不公平的，而她們得到的賠償也是低於她們被欠和應得的。對於政府應該做什麼，Angela 道出了很多受訪者的心聲：

個案審裁期間，Alias 的僱主將賠款提高至港幣 30,000 元（美金 3,831 元），金額低於她索償的 40%，可是僱主律師與審裁處都對 Alias 說她「應該接受」僱主提出的賠償。雖然 Alias 感到審裁處「未能使僱主賠償欠我的金額」¹⁸，但是在疾病纏身下，她也再無力繼續追討，最後她在不情願下接受了這個和解。於是，Alias 在有書面證明她是因為癌症而被解僱的情況下，得到少於香港法例下應得薪金的一半作為賠償。

這個案例反映了多個受訪者指出申索機制中的問題，包括：必須依賴其他人才使用程序；來自多方的壓力，迫使她們接受和解方案；以及制度未能保障個人的法定權利。

結論和建議

勞資審裁處聲稱能「為市民解決勞資雙方的金錢糾紛，程序簡單快捷，所需費用不多」並會「鼓勵雙方嘗試尋求和解以解決彼此間的爭議」¹⁹。可是，實際上，移工經常被迫接受低於她們應得的賠償，這正是因為申索的制度，使她們由於財政上的考慮——或是成本太高，或是最後得不償失——而放棄在調停會議後繼續追討。

兩星期規定，以及禁止追討過程中工作的規定，使移工在追討過程中立時站於極度不利的位置。個案需時越長，移工的生活費越高，她們不能工作亦代表失去了本來可以賺取的薪金，使她們最後往往得不償失。幾位受訪者表示，在調停會議和勞資審裁處，職員曾經向他們指出這一點。

¹⁸ FADWU 與 Baby Jane Alias 於 2019 年 3 月 3 日的訪問。

¹⁹ 香港司法機構，勞資審裁處：法庭服務簡介，第 1.1 及 3.1 段，可見於 https://www.judiciary.hk/doc/en/court_services_facilities/labour_201902.pdf，截取於 2019 年 6 月 23 日。

全部 18 位分別在小額薪酬索償仲裁處或勞資審裁處申索的受訪者，均告訴 FADWJ 她們是在一個機構（如志願組織、工會、宗教團體等）或是個別人士的協助下，提出申索，如果沒有得到協助，她們是沒有能力自己提出索償。Hazel，一位 40 歲來自菲律賓的受訪者，解釋得到幫助為何重要：

當然不會，我是不可能自己把個案提交勞資審裁處，因為我不清楚整個提交的程序，只有我一個的話，是很難與僱主作對。我教會的領袖和中介有幫我，他們給了我信心去跟進我的個案。¹⁶

即使移工得到協助以使用申索機制，她們在尋求司法公正的過程中仍然面對重重困難。其中一個普遍的難處，是提供足夠證據支持她們的申索。例如，移工很難能證明被迫在法定假期（休息日）工作，而不能舉證之餘，證人通常都是僱主家的人，他們偏於同意僱主一方的說辭。

另一個問題是，移工通常認為現有制度偏幫僱主一方。職員固然應該在紛爭中保持中立，可是數位受訪者並不認為在調解會議或是勞資審裁處的職員是中立的，另外 2 位受訪者亦表示她們相信申索程序是偏幫僱主的。

以上提到的多個問題，都能反映於 Baby Jane Alias 的個案中。在被確診患上子宮頸癌二期後，她隨即於 2019 年一月終止了合約。

她的合約終止信件中特別寫明「確診第三期子宮頸癌」為終止合約原因，可是，當 Alias 的合約終止了，她便失去了在香港享有的醫療服務。¹⁷

Alias 在她的姐姐和姐姐僱主的協助下，向勞工處提交港幣 84 061 元（美金 10 736 元）的欠薪，及其他法定權利如病假等的索償。Alias 如此形容調解會議的情況：

我的僱主並沒有出席，因為她病了。她派了兩位律師替她出席。我覺得勞工處一方面容許她派代表出席，另一方面跟我說我要親身出席，很不公平。那天我原本是要進行化療的，結果我犧牲了健康來參與這個會議。

Alias 的英語不好，但勞工處並沒有為她提供菲律賓語（Tagalog）的即時傳譯。她的僱主先提出賠償港幣 10 492 元（美金 1 340 元），Alias 不接受，於是個案於四月於勞資審裁處進行聆訊。

16 FADWJ 與 Hazel 於 2019 年 2 月 5 日的訪談。

17 Elaine Yu, "I feel lost: Fred cancer patient exposes plight of Hong Kong's domestic workers" (我感到迷失：患癌病人被解僱揭示香港家務工的苦況) AFP 2019 年 3 月 8 日，<https://www.hongkongfp.com/2019/03/08/i-feel-lost-fred-cancer-patient-exposes-plight-hong-kongs-domestic-workers/>，截取於 2019 年 6 月 29 日。

這些時間和金錢上的壓力，正是為什麼很多受訪者即使不滿意僱主提出的賠償金額，也願意接受和解結果。同樣地，勞工處有記錄於2018年處理了1,062宗有關移工的索償個案。在這些索償個案中，764宗或72%是經過調停服務得到和解。¹⁴

當受訪者被問到通過申索機制解決糾紛，最大的挑戰是什麼？最多受訪者的答案是她們擔心失去工作（21位受訪者）；第二大挑戰是財務問題（提出索償的成本）（24位受訪者）。

程序上的公允和平等原則

調查結果亦證實，移工在沒有協助下使用申索機制有很大難度。原因包括她們並不熟悉香港法律和規例，有關程序資訊及支援措施的不足，以及不能以流利廣東話或英語對話。雖然有免費提供的即時傳譯服務，但部分受訪者並未能得到此服務，或是服務水平未如理想。

另外，很多受訪者表示對僱主感到害怕，在調停會議中或法庭上不敢挑戰僱主。20位解釋她在調解會議中為何覺得難於與僱主商討，以致決定放棄追討共港幣4,000元（美金511元）被欠的薪年假賠償：

她對我很凶。我對她的行為感到吃驚，因為她否認和反駁我說的所有事情，然後拒絕再給我更高的賠款。她威脅我，說她會反過來向我索償，因為根據她的說法，她給我的錢已經多於我應該得到的。我感到害怕，然後因為受驚而決定不再追討賠償。¹⁵

¹⁴ 香港入境處於2019年9月26日提供的資料

¹⁵ FADWU 與 Rita 於2019年4月28日的訪問。

移工受到財政壓力而接受較低的和解金額

對移工來說，香港的申索機制是昂貴而需時很長的。2018年的官方數字指出，個案由受理至在勞資審裁處的第一次聆訊，勞工處平均需要50天。¹⁰一位移工，如果希望跟進個案至審訊，可能需時雙倍。由提交申索，到小額薪酬索償仲裁處、勞資審裁處完成調解，受訪者平均需要等待58天（12位受訪者）。

把申索個案提至勞工處的移工，幾乎一定會失去工作以及在香港工作的權利。這是因為在現時的兩星期規定下，移工須於工作合約終止後的十四天內處理簽證和找到新工作，否則必須離港。可是，順利連接新工作幾乎是不可能的，因為香港入境處平均需要四至六星期來處理新工作的申請。¹¹

正在申索機制中處理索償的移工，能申請特別簽證，但簽證的申請費用為港幣230元（美金293元），而更重要的是，這個簽證不容許移工工作。23位受訪者平均支付共港幣400元（美金51元）來跟進申索個案，每人平均需要兩次簽證續期。

把申索個案提交於勞資審裁處的申索人，需因應索償金額的高低，繳付港幣20到50元的行政費（美金256.64元），以及港幣10元（美金13元）向被索償一方提供所需文件¹²。其他使費包括：影印及郵寄文件、翻譯／翻譯認證、向審裁處索取文件副本，或是發出法庭傳召。¹³

然而，最大的支出是移工留港等候案件處理期間，數周或數月的生活費（住宿、食物、交通等）。對於移工來說，正是這筆費用，以及不能工作的規定，使申索的過程變得十分昂貴，讓她們無法負擔。

最少有14位是在次研究中的受訪者，她們能作出申索，是因為得到免費或大部分資助的住宿及糧食。只有如此她們才能以最低的成本跟進申索個案，尤其是在調停中接受賠償的受訪者，她們平均只付出共港幣1,139元（美金145元）。於勞資審裁處、小額薪酬索償仲裁處作出申索的受訪者，即使她們得到庇護中心的資助，亦須付出平均港幣3,239元（美金414元），相當於其他受訪者付出的三倍。

¹⁰ 香港司法機構，《各級法院案件量、結案數目以及法院輪候時間》，香港司法機構年報，可見於 https://www.judiciary.hk/en/publications/annu_rpt_2018/civil/caseload_1b.html，截取於2019年6月26日

¹¹ 香港入境處於2018年5月28日提供的資料。

¹² 香港入境事務處，《收費表》，可見於 <https://www.immd.gov.hk/hkt/services/fee-tables/index.html>，截取於2019年7月5日

¹³ 這些文件的大概費用分別為：翻譯證明：港幣15元一張；取得審裁處文件副本：港幣5元一張；發出傳召文件：每位證人港幣25元。見於 Justice Without Borders, A Practitioner's Manual for Migrant Workers: Pursuing Civil Claims in Hong Kong and from Abroad (在香港與海外追討民事索償) 2015年12月，第223頁。

申索個案的關鍵內容

全部 33 位受訪家務移工均曾經於勞工處提出申索，並有參與調停會議，嘗試與僱主達成和解。

受訪者中最多的申索是有關於：**薪金（30 位）**；**食物與交通津貼（26 位）**；**回程機票（26 位）**；**被拒絕請病假、產假或醫療保障（8 位）**；**與及法定每周休息日與假期（8 位）**。

受訪者申索的賠償金額平均為港幣 27391 元（美金 3498 元）⁸。24 個僱主有出席調停會議的個案中，僱主提出願意賠償的金額平均為港幣 12459 元（美金 1591 元）。平均來說，僱主一般只願意賠償家務移工申索金額的 51%。

14 位接受了僱主提出賠償金額的受訪者中，七位最後同意收取少於他們原來的索償金額。受訪者願意接受和解金額的最常見原因是：**急需要錢**；**負擔不起繼續追索**，**不肯定以後能收取的金額能否支付延長留港的生活費**；**必須再次工作，供養家庭**。

只有一位受訪者於處理不高於港幣 8000 元（美金 1,022 元）個案的小額薪酬索償仲裁處作出申索。這是因為小額的申索往往不能抵償留港所需的費用，亦因為如此，很多移工會寧願接受低於她們索取的賠償金額，也不會把個案交予小額薪酬索償仲裁處。

有 17 位受訪者則把個案提交至處理申索高於港幣 8,000 元（美金 1,022 元）的勞資審裁處⁹。她們的索償金額為平均港幣 34,300（美金 4,380 元），可是她們只得到平均港幣 13822 元的賠償（美金 1,765 元），這相當於索取金額的四成而已。

⁸ 以兌換率港幣 1 元 = 美金 0.1277 元計算，本研究將會使用此匯率。

⁹ 香港司法機構《各級法院案件量、結案數目以及法院輪候時間》、香港司法機構年報，可見於 [https://www.judiciary.hk/en/publications/annu_rept_2018_chi/caselead_b.html](https://www.judiciary.hk/en/publications/annu_rept_2018_chi/caseload_b.html)，截取於 2019 年 6 月 26 日。

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直至 2018 年底，香港一共有 386,075 位移民家務工受聘。⁴ 她們在香港本地通常被稱為「外籍家庭傭工」（「外傭」），並為香港家庭提供家居服務，2018 年為香港經濟帶來美金 126 億元的收入，或本地國民生產總值的 3.6%。⁵ 大部分移工來自菲律賓和印尼，人數分別是 210,897 人和 165,907 人。⁶

過去六年間，FADWU 與數個其他組織搜集了移工在香港普遍受到剝削情況的證據。⁷ 本研究的目的在於更深入地了解，為何在港移工甚少使用現有法律中的申索機制以保障她們的法定與合約權利。

研究的其中一個部分，是由 FADWU 進行的質性研究，以半結構性訪問，專訪了 33 位於 2018 至 2019 年間嘗試利用勞工處申索機制，就工作有關問題尋求調解的移工（其中 27 為來自菲律賓，六位來自印尼）。

4 香港統計處，《按國籍及性別劃分的外籍家庭傭工數目》，可見於 https://www.censtatd.gov.hk/hkstat/sub/genre/labour_force/index_tc.jsp，截取於 2019 年 8 月 30 日

5 Exoetan and Enrich, The Value of Care: Key contributions of migrant domestic workers to economic growth and family well-being in Asia, (照顧的價值：移民家務工對亞洲的經濟增長與家庭福祉的貢獻) 2019，第 16 頁。[可見於：http://www.enrichk.org/wp-content/uploads/2019/02/Final_The-Value-of-Care_Full-Report.pdf，截取於 2019 年 6 月 12 日]

6 香港統計處，《按國籍及性別劃分的外籍家庭傭工數目》，可見於 https://www.censtatd.gov.hk/hkstat/sub/genre/labour_force/index_tc.jsp，取截於 2019 年 8 月 30 日

7 見：FADWU《推動變革的中介：對香港傭傭中心依循〈職業介紹所實務守則〉之評估》2018；FADWU《左右為難：進退兩難：菲律賓移民家務工於香港與菲律賓被收取非法中介費之情況》2016 年 10 月；Justice Centre《Coming Clean: 香港外籍家庭傭工遭受強迫勞動以及強迫勞動為目的的人口販運的普遍程度》2016 年 3 月；國際特赦組織，《Exploited for Profit, Failed by Governments》(榨取利潤導致剝削，政府失職而被放棄) 2013 年 11 月；進步勞工聯盟香港分會，進步勞工工會，《License to Exploit: A Report on Recruitment Practices and Problems Experienced by Filipino Migrant Domestic Workers in Hong Kong, 2013》(持牌剝削：菲律賓移民家務工於香港境內聘過程中所經歷的招聘手法與問題) 2013

組織介紹

香港亞洲家務工工會聯會 (FADWU)

FADWU 是香港唯一一個同時組織本地與外籍家務工的工會聯會，是香港職工會聯盟（職工盟）及國際家務工聯會的屬會。現時 FADWU 的屬會包括香港家務助理總工會（HKDWGU）、香港泰國移工工會（TMWU）、香港尼泊爾家務工工會（UNDW）、海外家務工工會（ODWU）、及進步家務工工會（PLU）。FADWU 的屬會現有 853 位付費會員。

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進步家務工工會香港分會 (PLU)

PLU 是一個在香港的移民家務工工會，於 2012 年 4 月 27 日成立，並登記於香港的職工會名冊中（TU/1247）。PLU 是菲律賓實進步團結工人聯盟（SENTRO）、香港亞洲家務工工會聯會（FADWU）、移工權益聯盟（CMR）的屬會，亦是香港職工會聯盟（職工盟）以及國際家務工聯會（IDWF）的非直接屬會。

PLU 致力提倡及保障香港所有家務工的權益和福利，活動主要包括組織工人、教育、能力建設、政策倡議與公眾教育運動、動員，及提供法律援助及服務。

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香港大學法學院 / 國際勞工組織 (ILO) 國際公平招聘項目 / 香港樂施會 / Rights Exposure

本研究項目由香港亞洲家務工工會聯合會 (Hong Kong Federation of Asian Domestic Workers Unions，下稱 FADWU) 執行委員會發起及設計，並於 2019 年二月至七月間，由 FADWU 的屬會——進步家務工工會 (PLU) 之會員，和由印尼移民家務工組成之義務小隊執行。

香港職工會聯盟 (職工盟)¹、國際勞工組織 (ILO)² 的國際項目「公平招聘」以及 Rights Exposure³ 為本研究提供技術及後勤支援。香港大學法律系亦與 FADWU 合作，提供其觀察勞資審裁處項目中所得的數據。同時，此項目亦得到香港樂施會的支持。

本研究採用參與式研究方法，以肯定移民家務工在辨認其人權與勞工權益被剝削的情況，及找尋解決辦法的能动性。本研究的目的旨在提升家務移工及組織，透過第一手證據、資訊及經驗，為自身權益發聲的能力。

¹ 香港職工會聯盟於 1980 年 7 月成立，有超過 90 個屬會，代表超過 170 000 名會員，並獨立於任何政權、政黨或財團。(http://www.hkctu.org.hk/cms/index.jsp)

² 國際勞工組織是聯合國旗下的三方組織，旨於協助 188 個成員國的政府、僱主機僱員合作，訂立勞工標準，發展政策及項目以提倡男女性的體面工作 (http://www.ilo.org)。

³ Rights Exposure 是跨國人權顧問組織，就社會問題提供解決方案，以帶來正面改變；於 2014 年由人權與傳播界專業人士創辦，為非政府機構、政府、工會、社群及社會企業提供一系列的顧問服務 (https://www.rightsexposure.org)

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的解在公
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驗勞移的
資民代
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