

## Migrant Domestic Workers

There were no recommendations made on the Hong Kong Special Administrative Region, China (HKSAR) in the Second UPR Cycle.

### Framework in HKSAR

*The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention of the Elimination of All Forms of Racial Discrimination (ICERD) apply to HKSAR. Article 39 of the Basic Law provides that ICCPR and ICESCR shall be incorporated through HKSAR laws.*

*As of March 2018, there were 370,000 migrant domestic workers (MDWs) in HKSAR. 98% of them come from the Philippines and Indonesia. The rest come from countries including India, Thailand, Sri Lanka, Bangladesh, Nepal, Myanmar, Pakistan, Malaysia, Singapore and Cambodia. All of them come through a highly regulated labour importation scheme, in which each 'foreign domestic helper' visa is tied to a two-year contract with a specific employer.*

### Challenges

### Cases, facts and comments

<ul style="list-style-type: none"> <li>A proportion of MDWs are exploited and trafficked, in a manner inconsistent with Articles 7 to 9 of ICCPR and Article 2 of CAT.</li> </ul>	<ul style="list-style-type: none"> <li>Research found that 17% of MDWs in HKSAR were in forced labour and 14% of those are trafficked for that purpose (about 8,000 individuals).</li> <li>It has been reported that MDWs were forced or deceived into illegal work in other jurisdictions.</li> </ul>
<ul style="list-style-type: none"> <li>Unlike other workers, migrant domestic workers have no access to the right of abode, minimum wage or retirement protection, breaching Articles 8 and 9 of ICESCR.</li> </ul>	<ul style="list-style-type: none"> <li>MDWs are not considered ordinarily resident in HKSAR unlike other workers and therefore have no access to the right of abode under Article 24 of the Basic Law.</li> <li>MDWs are entitled to a 'minimum allowable wage', which would be less than the statutory minimum wage.</li> </ul>
<ul style="list-style-type: none"> <li>Many MDWs are overcharged by employment agencies, leading to concern about abuse or forced labour, in a manner inconsistent with Articles 7 to 9 of ICCPR and Article 2 of CAT.</li> </ul>	<ul style="list-style-type: none"> <li>Research conducted by the Hong Kong Federation of Asian Domestic Workers and Progressive Labour Union of Domestic Workers in Hong Kong found the average placement fee Filipino migrant domestic workers paid was 25 times the legally permitted maximum charge, which is 10% of the first month's salary.</li> <li>Research conducted by Justice Centre Hong Kong found that migrant domestic workers with excessive debt were six times more likely to be in forced labour.</li> </ul>
<ul style="list-style-type: none"> <li>MDWs are required to live at their employers' residence, causing concern over the protection of the right to privacy under Article 17 of ICCPR as well as concern over abuse, in a manner inconsistent with Articles 7 and 8 of ICCPR and Article 2 of CAT.</li> </ul>	<ul style="list-style-type: none"> <li>45% of MDWs surveyed by Mission for Migrant Workers reported the live-in rule contributed to abuse. The Human Rights Committee has shown regret at HKSAR's refusal to repeal the live-in rule.</li> <li>MDWs are excluded in population and household projections by the government.</li> </ul>



<ul style="list-style-type: none"><li>• Living conditions of many MDWs are poor, in a manner inconsistent with Article 11 of ICESCR.</li></ul>	<ul style="list-style-type: none"><li>• 43% of MDWs surveyed by Mission for Migrant Workers had no private room; 2% slept in a kitchen, toilet or warehouse.</li></ul>
<ul style="list-style-type: none"><li>• MDWs have limited access to justice and opportunity to change employers, violating Article 26 of ICCPR and Articles 7 and 8 of ICESCR.</li></ul>	<ul style="list-style-type: none"><li>• There is immunity from prosecution for workers forced by employers to breach the conditions of stay only if the workers are identified as victims of human trafficking. Even so, there is no information about the factors the Department of Justice considers in granting immunity.</li><li>• MDWs have to leave HKSAR in two weeks after their contracts end. They are prohibited from changing employers and from working when staying in HKSAR to seek legal redress unless the Director of Immigration exercises his/her discretion.</li></ul>

### Recommendations

- **Consistent with concluding observations of HRC, CESCR, CERD, CEDAW and CAT, HKSAR should**
  - **(i) repeal the ‘two-week rule’ and the live-in requirement,**
  - **(ii) adopt a comprehensive law to ensure MDWs enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection,**
  - **(iii) increase resources for the Labour Department to establish an inspection mechanism for monitoring the implementation of the Standard Employment Contract and ensure, inter alia, a decent standard of living for MDWs; and**
  - **(iv) strengthen protection from abuse by recruitment agencies immediately.**
- **HKSAR should allow migrant domestic workers to change employers freely.**
- **HKSAR should amend legislation to provide equal rights to access permanent residency for all migrant workers, consistent with other migrants under Article 24 of the Basic Law, within one year.**

### Questions to ask in advance

- *Has HKSAR set a target date for implementing treaty body recommendations relating to the rights of MDWs, including (i) repealing the two-week rule and the live-in requirement and (ii) adopting a comprehensive law to ensure that MDWs enjoy the same conditions as other workers? If so, what are those target dates?*
- *Noting Article 2 of ICCPR and Article 2 of ICESCR on the equal protection of rights for all, why does HKSAR afford less access to rights to MDWs than to other migrant workers? What measures will HKSAR take in the next two years to ensure equal realisation of rights enshrined in ICCPR and ICESCR for all migrants?*

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