

CHINA

SUBMISSION TO
THE UN COMMITTEE
ON ECONOMIC,
SOCIAL AND
CULTURAL RIGHTS,
52ND SESSION, MAY
2014

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2014 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2014

Index: ASA 17/014/2014
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



CONTENTS

Introduction	4
1. Implementation of the Covenant in China	4
1.1. Lack of effective remedy and attacks on victims and human rights defenders (Art 2.1)	4
1.2. Continued use of forced labour in administrative detention (Arts 6 and 7).....	5
1.3. Discriminatory household registration (hukou) restricting internal migrant workers' enjoyment of a range of economic and social rights (Arts 2.2, 10, 12, 13).....	7
1.4. Forced evictions and gender discrimination in rural land distribution (Arts 11, 3)	8
Recommendations.....	11
2. Implementation of the Covenant in Hong Kong SAR	12
2.1. Two-Week Rule (art 2.2)	12
2.2. Conditions of work (Art. 7).....	13
Minimum allowable wage	13
Weekly rest day	14
Excessive agency fees	14
Recommendations.....	15
Endnotes	16

INTRODUCTION

This briefing is submitted by Amnesty International in advance of the consideration by the United Nations Committee on Economic, Social and Cultural Rights (the Committee) at its 52nd session of the second periodic report of the People's Republic of China's (China) on its implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant). It provides updates to Amnesty International's earlier submission¹ in advance of the adoption by the Committee of the List of Issues and should be read in conjunction with it.

In particular, this briefing provides updates in regards to barriers in accessing effective remedy, forced labour in administrative detention, the discriminatory household registration system, forced evictions and gender discrimination in rural land distribution, which cover obligations under articles 2, 3, 6, 7, 10, 11, 12, 13 of the Covenant.

This briefing also includes updates on the implementation of the Covenant in the Hong Kong Special Administrative Region (Hong Kong SAR) as they relate to migrant domestic workers.

1. IMPLEMENTATION OF THE COVENANT IN CHINA

1.1. LACK OF EFFECTIVE REMEDY AND ATTACKS ON VICTIMS AND HUMAN RIGHTS DEFENDERS (ART 2.1)

Victims of human rights violations, including but not limited to violations of economic, social and cultural rights, face many barriers in accessing effective remedy in China.

The judiciary in China is neither independent nor impartial. The Party dominance over the judicial system is maintained in multiple ways, including through government control over court appointments, budgets and other resources and the system of "political-legal commissions" which oversee the work of police, procuratorates and courts. Political-legal commissions are Party organs which coordinate the work within the legal system, often to ensure an outcome in line with the Party priorities such as economic growth and maintaining social stability.² In addition, lawyers who take up human rights cases risk harassment, being barred from practicing law, arbitrary detention, torture and imprisonment.³ Self-taught legal advisors who have stepped in to fill the void do so also at great personal risk. In this kind of environment, it is difficult for victims of alleged human rights violations to seek remedy through courts and many have lost their faith in the legal system's ability to deliver justice. As such, many victims of alleged human rights violations, especially victims of violations of economic, social and cultural rights, turn to petitioning.

Petitioning (*shanfang* or *xinfang*) is an extra-judicial process guaranteed by China's Constitution (Art 41), by the "Decision on the Work of Handling People's Letters and Receiving People's Visits" issued by the State Council in 1951 and also covered in the 2005 State Council Regulations on Letters and Visits.⁴ Millions of people file petitions with

authorities in China each year. In 2013, roughly 600,000 petitions were reportedly filed each month across the country⁵, most commonly over rural land grabs, with urban housing demolitions and labour and social security issues taking up the second and third places, respectively.⁶

There is ample evidence that petitioners and human rights defenders are often arbitrarily detained, also in breach of China's own laws, and/or experience violence and other ill-treatment at the hands of authorities⁷ – usually local or provincial authorities seeking to prevent them from presenting their case to the central government or media or doing their legitimate human rights work.

For example, individuals associated with the loose network of activists called the New Citizens' Movement have been campaigning for equal education rights for children of migrant workers, abolition of the *hukou* system, greater government transparency and against corruption.⁸ As of 26 February 2014, nearly 70 people allegedly connected with the movement have been criminally detained or subjected to enforced disappearance, 16 of whom are known to have been indicted or tried.⁹

In Henan province, the authorities have reportedly set up specific "discipline centres" (*xunjie zhongxin*) targeting "abnormal petitioners" (those who do not follow the above mentioned 2005 State Council Regulation on Letters and Visits). According to media reports, people are typically held in these centres for 24 hours for "education, discipline, warning and guidance".¹⁰ Some petitioners detained in these centres are reportedly forced to sign agreements pledging that they will not continue petitioning activities.

Following a public outcry that questioned their legality¹¹, the provincial authorities are reported to have pledged to close these centres. However, this and other examples suggest that China's provinces are experimenting with different forms of detention to target groups previously held in Re-education Through Labour (RTL) in the aftermath of its abolition (see section 1.2 below). In the absence of information from the central government authorities on what, if any, measures might replace the RTL, it remains a concern that local or provincial governments will come up with their own solutions which may in many ways be even more problematic than RTL, and continue to curtail petitioning and punish human rights defenders, thereby limiting the channels available to victims of alleged human rights violations to seek justice.

1.2. CONTINUED USE OF FORCED LABOUR IN ADMINISTRATIVE DETENTION (ARTS 6 AND 7)

Despite the abolition of the RTL system at the end of 2013, forced labour practices and other human rights violations continue in different forms of arbitrary detention in China.

On 15 November 2013, the Chinese Communist Party (the Party) issued during the Third Plenum of the 18th Party Congress the "Decision on Major Issues Concerning Comprehensively Deepening Reform" (the Decision). The Decision is the most authoritative reform blueprint by China's current generation of leadership. The Decision called for the abolition of the country's long-standing system of RTL among other things.¹² Subsequently, on 28 December 2013, the Standing Committee of the National People's Congress, China's legislature, adopted a resolution abolishing the RTL. The resolution was effective

immediately.¹³

For nearly 60 years, the RTL system had allowed the police to detain people for up to four years without judicial review, appeal, or any due process. RTL inmates were typically forced to work for many hours a day, under harsh and unsafe conditions, and for little or no pay. The living conditions in RTL were poor, and torture and other ill-treatment commonplace.¹⁴ The abolition of the RTL is a welcome and important step towards the protection of human rights in China. However, this has yet to be translated into the end of forced labour practices in detention.

In news reports announcing the Standing Committee's resolution that abolished the RTL, Chinese officials were quoted saying that with changes to China's Criminal Law, public security and drugs legislation, RTL had become redundant and was no longer necessary.¹⁵ Indeed, by early 2013 authorities had already signalled the end to the system, and in many locations across the country, stopped sending people to RTL and started closing down RTL camps before the end of 2013.

Initial evidence gathered by Amnesty International, as reports of the closure of RTL camps started to come in, suggests that the authorities are using alternative channels of arbitrary detention as well as criminal prosecutions of individuals who previously may have been sent to RTL.¹⁶ These include petty criminals, suspected drug users, sex workers, *falun gong* practitioners, activists and petitioners and human rights defenders (see section 1.1 above). Without more fundamental changes in the policies and practices that drive arbitrary detention, the abolition of the RTL is at risk of becoming nothing but a change in the name of the system. For example, Amnesty International has found that many of the closed RTL camps have simply been renamed as enforced drug RTL. In some cases, the enforced drug RTL camps continue to operate in the same facilities and with the same staff as before the name change.¹⁷

China's Anti-Drugs Law, which came into effect in 2008, calls for the rehabilitation of drug users, but suspected drug users can be incarcerated in 'Compulsory Isolation Centres for Drug Rehabilitation' (or "drug detention centres") for up to three years without due process. This can be followed by three years of undefined "community based treatment".¹⁸ In some cases, "community based treatment" has in practice meant further incarceration in drug detention centres. Furthermore, in drug detention centres suspected drug users may be forced to work in conditions similar to those in RTL, and without pay as part of their "rehabilitation" or "treatment". Forced labour practices in drug detention centres have been documented by other NGOs,¹⁹ and have been argued to be in violation of international human rights law by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.²⁰

Another still existing form of punitive administrative detention, 'Custody and Education', also involves forced labour. Custody and Education specifically targets sex workers and their clients who can be detained in these centres up to two years without judicial review or due process.²¹

There are currently no signs that the abolition of the RTL would lead to the abolition of these other forms of punitive administrative detention where forced labour is commonplace.

1.3. DISCRIMINATORY HOUSEHOLD REGISTRATION (HUKOU) RESTRICTING INTERNAL MIGRANT WORKERS' ENJOYMENT OF A RANGE OF ECONOMIC AND SOCIAL RIGHTS (ARTS 2.2, 10, 12, 13)

China's *hukou* system continues to facilitate discrimination based on social origin or a person's "urban" or "rural" status, namely a person's birthplace. Internal migrant workers, including their children, coming from rural areas often cannot access public services in the urban areas where they work and live.²² The *hukou* system negatively impacts internal migrant workers' families, forcing them to either leave children behind in their hometown with a single spouse or relative, vulnerable to stress, various forms of social exploitation and abuse or raise children in the cities, where health care is not covered and where their children may be forced to attend sub-standard, unlicensed schools and pay private school fees that are often in excess of wages.²³

In the above mentioned Chinese Communist Party Decision, the authorities pledged to carry out several reforms with regards to the *hukou* system. For example, the Party stated that it will "...help the eligible population to move away from agriculture and become urban residents".²⁴ This suggests that despite pending reforms, the authorities will maintain the fundamental distinction between people with "urban" and "rural" status. Currently it is the local government that determines who qualifies as an "eligible" candidate to become an urban resident. Since local governments bear most of the costs for public services, but do not have a responsibility to provide services to those without a relevant *hukou*, they have little incentive to make the eligibility requirements achievable for most internal migrant workers and their children.

According to a comprehensive survey published in May 2013, carried out by the All-China Women's Federation in conjunction with Renmin University of China Center for Population and Development Studies under the support of the National Bureau of Statistics, China has an estimated 61 million "left-behind" children (*liushou ertong*) under the age of 17.²⁵ These are the children of internal migrant workers in urban areas who are "left behind" in the countryside to be raised by a single parent, grandparents or other relatives, or who live alone. The survey notes that 47% of the "left-behind" children live apart from both parents, and alarmingly, over 2 million live alone. The survey also found that there are an estimated 35 million children who have left their *hukou* place of origin and who are living in urban areas. Of these children, over 80% have a rural *hukou* and therefore limited access to a range of public services including health care, social welfare services and education in the urban areas.

Research reports have noted that "left-behind children" often suffer depression and emotional distress at being separated from their parents; children have higher rates of juvenile crime as they get older, and children – particularly girls – are more prone to sexual abuse. While numerous studies have documented the problematic aspects of the "left-behind children" issue, parents of "left-behind" children also suffer emotional distress.²⁶

According to another survey, conducted by the Beijing-based organization Center for Child Rights and Corporate Social Responsibility, 80% of the parents of "left-behind" children that were surveyed felt inadequate as parents, but had little choice given that services such as

education are tied to *hukou* registration.²⁷

1.4. FORCED EVICTIONS AND GENDER DISCRIMINATION IN RURAL LAND DISTRIBUTION (ARTS 11, 3)

Amnesty International is concerned that the forced eviction of people from their homes and farmland has become a routine occurrence in China. Chinese authorities fail people at every stage of the eviction process. Numerous examples, documented in detail in Amnesty International's report *Standing Their Ground*,²⁸ suggest that Chinese citizens are rarely legitimately consulted prior to evictions and that in most cases there is little to no transparency over the proposed evictions. Local authorities routinely neglect to convene public hearings and according to residents and advocates interviewed by Amnesty International, on the rare occasions that the authorities do convene public hearings, the meetings are not genuine and no objections or alternatives are considered. Most typically, residents learn that they are facing eviction only by word of mouth or by the sudden appearance of a poster on a neighbourhood wall just weeks or days before the demolition of their homes is scheduled.

After evictions are announced, local authorities and developers typically begin a concerted campaign to persuade residents to sign papers agreeing to surrender their property and accept a usually inadequate compensation or resettlement offer. Many residents quickly submit and move out. Those who resist are subjected to a range of high-pressure tactics aimed at forcing them to cooperate. Amnesty International has been told of many instances where the authorities have cut services such as water, heat and electricity in an attempt to drive residents out of their homes. Civil servants who resist face reprisals or dismissal from their jobs. Often, the authorities target family members in an attempt to put pressure on evictees.

In a number of cases, these campaigns to pressure residents into surrendering their property escalate into violence. People facing evictions have been beaten, abducted, murdered, and in at least one case, buried alive by an excavator. In many cases, violence is carried out by state actors such as police, *chengguan* ("urban management" para-police) or other government employees. In other cases, local authorities have colluded with developers to hire thugs to intimidate and rough up residents. In such cases, police often refuse to respond to calls for help. The incidents are rarely investigated and perpetrators brought to justice except when a case involves a particularly violent incident that receives a lot of public attention.²⁹

Housing rights activists have stressed to Amnesty International the need to adopt national guidelines for evictions with a view to standardize eviction practices across provinces and the country for the purposes of transparency and equal treatment. Currently, the authority responsible for carrying out evictions, method used for calculating compensation and how the resettlement process is carried out – especially in rural areas – varies greatly from one location to another. Some provinces have developed their own guidelines for evictions, but this is not a legal requirement.

Another source of tension that the housing rights activists have reported to Amnesty International is the lack of clarity over the interplay between the resettlement process and *hukou* system. For people who are resettled to another location it may take some time to get

their *hukou* status changed, and as their and their children's access to services such as health and education is tied to their *hukou* status, they may not be able to access these in the period following resettlement.³⁰

In January 2011, China's central government issued regulations outlawing the use of violence in urban evictions and granting urban home-owners facing evictions new protections, including the right to air grievances in public hearings, file legal appeals and receive adequate compensation based on market value. The 2011 Regulations on the Expropriation of Houses on State-owned Land and Compensation were a step towards protecting China's urban residents from forced evictions and included several positive provisions. However, the implementation of these regulations has been poor. Furthermore, the regulations do not provide protection to tenants or rural and suburban residents.

In order to extend similar protections to rural and suburban residents, the Chinese authorities need to first revise the Land Administration Law.³¹ In China, all land is owned either by the State (urban areas) or by a collective (rural and suburban areas) as specified in the Constitution (Art 10) although the term "collective" itself is not defined. The Land Administration Law specifies the purpose of all collectively owned land to either agricultural use, use for rural enterprises, farmers' housing, or facilities in public interest (Art 43). Agricultural land can only be converted to other uses with the approval of the government at county level or higher.

Rural Chinese including farmers only have land use rights that are based on their membership of a rural collective. The current Land Administration Law stipulates that farmers cannot sell their right to land use. The law allows for expropriation of collectively-owned land in the public interest but does not define the meaning or scope of "public interest". Essentially expropriation in rural China is often the state taking land from the collective and the use rights from private parties.³² The local governments then promptly transfer the land use rights to, for example, private developers at huge profit. However, the rural collective and the farmers will only be compensated based on a valuation of the land's designated use prior to expropriation – typically agricultural use, which can be just a fraction of the land's market value, contrary to what international standards require in terms of fair and just compensation.

The Party, in its Third Plenum Decision, pledged to "narrow the scope of land expropriation, regulate the procedures for land appropriation, and improve the rational, regular and multiple security mechanisms for farmers whose land is requisitioned". They also pledged to "allow rural collectively owned profit-oriented construction land to be sold... and ensure that it can enter the market with the same rights and at the same prices as state-owned land."³³ Despite this, the reform of the Land Administration Law appears to have stalled. In November 2012, the State Council put forward to the Standing Committee of the National People's Congress proposed draft amendments, but according to the news reports, the Standing Committee did not discuss them in 2012.³⁴ Housing rights activists have however told Amnesty International that those developers and others who benefit from the expropriation of collective land have done their best to hold up the amendments or at least weaken them.

Although the Constitution protects women's equal rights and interests,³⁵ and the Law of the

People's Republic of China on the Protection of the Rights and Interests of Women specifically protects women's equal land rights³⁶, in practice women are sometimes discriminated against in rural land allocation, which negatively impacts their security of tenure.

The Land Administration Law (art 14) stipulates the length of land use right contracts as 30 years, and limits the readjustments – that is, reallocation of land shares based on increase or decrease in family size – by requiring the support of at least two-thirds of the members of the villagers' assembly or the representatives of villagers. The Organic Law of the People's Republic of China on the Organization of the Villagers' Committees³⁷(Art 20) states that "villagers' assembly may formulate and revise the villagers' charter of self-government, rules and regulations for the village". According to women's rights activists and rural women advocates³⁸ this leads to situations where village committees often represent only the interest of male villagers on the basis of village rules set according to traditional customs (*cun gui min yue*).

In Chinese traditional culture, a woman is seen to have "married out" to join her husband's family, thus leaving her original family and village. In the case of divorce or the death of her husband, she can be completely excluded from the decision-making processes as her father, husband or father-in-law typically serves as the head and representative of the household. Upon divorce or widowhood, she may lose her entitlement to land use rights as her right to the land allocated to her husband prior to their marriage may not be recognized, and to compensation or alternative housing if the land in her husband's village is expropriated. As, on the basis of social realities, she would typically also have lost her land use rights in her parent's village at the point of marriage, she may lose her tenure completely.³⁹

The Organic Law of the People's Republic of China on the Organization of the Villagers' Committees also stipulates that the village charter of self-government (village rules) should not contravene the Constitution and state laws and regulations – for example, the equal rights of men and women. However, women's rights activists and rural women advocates have told Amnesty International that the equal rights provisions are not fully replicated at village level regulations or implemented in practice and that courts simply will not process their lawsuits challenging village committee's decisions that favour men over women in disputes over allocation of land use rights, compensation or alternative housing.

RECOMMENDATIONS

Amnesty International recommends that the Chinese authorities:

- Remove all obstacles to effective remedy for victims of economic, social and cultural rights violations, including by ensuring an independent judiciary and preventing all forms of reprisals against human rights defenders;
- Stop the use of forced labour in all forms of punitive administrative detention;
- Reform the *hukou* system and remove administrative categories based on social origin that can be used as a basis for discrimination in the enjoyment of economic and social rights;
- Introduce a legal prohibition on forced evictions, and guarantee a minimum degree of security of tenure for all;
- Develop and adopt national guidelines for evictions based on the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, in compliance with international human rights law and standards;
- Introduce a moratorium on mass evictions until the necessary safeguards are put into place;
- Ensure that residents of rural or suburban areas and those who do not own their home enjoy the same level of protection against forced evictions and other threats and harassment as property owners in urban areas.
- Address gender discrimination in rural land distribution and protect rural women's rights to security of tenure at marriage, divorce and widowhood.

2. IMPLEMENTATION OF THE COVENANT IN HONG KONG SAR

Between May and October 2012, Amnesty International interviewed 50 Indonesian migrant domestic workers in Hong Kong SAR (Hong Kong). In March 2013, further interviews were conducted with 47 returnees in Indonesia who had worked in Hong Kong as domestic workers.⁴⁰ All of the interviewees were women. The issues raised are not limited to Indonesians, but reflect the problems faced by the wider community of migrant domestic workers irrespective of nationality.

2.1. TWO-WEEK RULE (ART 2.2)

Under the New Condition of Stay, 1987, or the Two-Week Rule, migrant domestic workers in Hong Kong must find new employment and obtain an approved work visa within two weeks of the expiration or premature termination of their employment contract. Failing that, they must leave Hong Kong.

Even after completing their two-year contract, migrant domestic workers face difficulty in finding new employment due to the Two-Week Rule, which further exacerbates their vulnerability to exploitation by both their employer and placement agency.

The time frame is not sufficient, as even the Immigration Department accepts that it normally takes “about 4-6 weeks” to process an application for change of employer by a migrant domestic worker once “all necessary documents” are received.⁴¹ Several interviewees told Amnesty International that they had to leave Hong Kong because they were unable to find new employment within two weeks of termination. In some cases, the workers had to go to Macau and/or mainland China to wait for their Hong Kong visas to be processed.

The inability to find new employment in the two-week time limit leaves migrant domestic workers with little choice but to remain in abusive and/or exploitative conditions or accept jobs with unfavourable work conditions in order to maintain their immigration status.

The Two-Week Rule also significantly impedes migrant domestic workers’ ability to access redress mechanisms in Hong Kong. A key obstacle is the fact that migrant domestic workers who lodge a complaint against their employer are likely to have their contract terminated. Under the current immigration policy, migrant domestic workers cannot normally change employers within their two-year contract except under “exceptional circumstances”, including the transfer, migration, death or financial reasons of the former employer, or if the worker was abused or exploited.⁴² This prevents many from raising issues of abuse, as doing so would most likely result in loss of employment and income, and leave them with just two weeks to find new employment.

Taking a case to the Labour Tribunal takes on average two months.⁴³ Unless the migrant

can find another job in two weeks, which would be difficult given the average 4-6 week processing time by the Immigration authorities, they will have to apply for an extension of stay at a cost of HK\$160 (US\$20), which does not allow them to work and is typically valid for one month or less. During the time necessary for the Labour Tribunal to consider their case, they will have to renew their visa and pay for their own accommodation, food and other expenses without any income. Most migrant domestic workers are unable to afford these costs.

In this respect, the Two-Week Rule provides a disincentive for migrant domestic workers to denounce exploitative or abusive practices and pursue criminal charges and/or compensation through the appropriate channels. This in turn makes the effective investigation and prosecution of those responsible for human and labour rights violations extremely difficult.

2.2.CONDITIONS OF WORK (ART. 7)

MINIMUM ALLOWABLE WAGE

Hong Kong's Minimum Wage Ordinance does not apply to "a person who is employed as a domestic worker in, or in connection with, a household and who dwells in the household free of charge". As a result, migrant domestic workers fall under a separate, less favourable Minimum Allowable Wage. The Hong Kong SAR government justified this exclusion due to:

- a. the distinctive working pattern, i.e. round-the-clock presence and provision of service-on-demand expected of live-in domestic workers;
- b. enjoyment of in-kind benefits [...] not usually available to non-live-in workers;
- c. possible significant and far-reaching socio-economic ramifications; and
- d. fundamental erosion of Foreign Domestic Helpers policy.⁴⁴

However, migrant domestic workers, unlike nationals, are required to reside in the employing household; they do not have a choice but to live-in. Therefore, migrant domestic workers are excluded from the Minimum Wage Ordinance due to an immigration requirement. Furthermore, other types of workers such as on-site carers who also work "round-the-clock" and have benefits in kind are not excluded from the Minimum Wage Ordinance.⁴⁵

This exclusion of live-in domestic workers from the scope of the Minimum Wage Ordinance has a disproportionate effect on female migrant workers, who make up nearly 100 per cent of domestic workers.

Where Hong Kong laws and regulations on labour standards either exclude domestic workers completely or provide a lower level of protection to domestic workers than to other workers, the authorities must demonstrate that this distinction does not result in discrimination on the basis of sex, national origin, or any other status. The overwhelming majority of domestic workers in Hong Kong are migrant women. In addition, domestic work generally is a form of work that is most often carried out by women. It involves tasks

associated with stereotypical female gender roles, for example cooking, family care, and cleaning. As a result, even exclusions or distinctions that seem neutral (e.g. they apply to all domestic workers) may constitute discrimination because they have a disparate impact on a specific population defined by its sex and national origin (migrant women). The authorities must show that there are legitimate reasons for the distinctions made.

WEEKLY REST DAY

Hong Kong's Employment Ordinance stipulates that "every employee who has been employed by the same employer under a continuous contract shall be granted not less than one rest day in every period of seven days".⁴⁶ However, the denial of a rest day is a common problem among Indonesian migrant domestic workers in Hong Kong. More than half of the migrants interviewed by Amnesty International did not receive a weekly rest day.

By denying migrant domestic workers their statutory rest day, the employer not only forces them to work more, but also prevents them from having contact with other migrants and accessing information about their rights and entitlements in Hong Kong.

Furthermore, Hong Kong law defines a rest day as "a continuous period of not less than 24 hours during which an employee is entitled [...] to abstain from working for his employer".⁴⁷ Interviews indicate that even when migrant domestic workers are given a rest day by their employer, it is often not a full 24 hours. This was the case for the majority of the interviewees.

EXCESSIVE AGENCY FEES

Under the HKSAR Employment Agency Regulation of the Employment Ordinance, placement agencies can charge migrant domestic workers for their services a maximum of ten per cent of the first month's wages.⁴⁸ This means that, at the current Minimum Allowable Wage of HK\$4,010 (US\$517), the maximum fee placement agencies in Hong Kong can charge is HK\$401 (US\$52).

However, Amnesty International's research demonstrates that most Indonesian interviewees had to hand over the vast majority of their salary to their Hong Kong placement agency, normally a monthly repayment of HK\$3,000 (US\$387) for the initial seven months of their contract. This corresponds to a total of HK\$21,000 (US\$2,709), which exceeds the statutory limits established by legislation in Hong Kong (as well as in Indonesia).

While the Hong Kong placement agencies work in close partnership with Indonesian recruitment agencies, they are separate organizations and come under the jurisdiction of the Hong Kong authorities, which have a responsibility to monitor and regulate them, and ensure that they are operating in full compliance with the laws in the Hong Kong SAR.

Serious indebtedness due to excessive recruitment fees is common among Indonesian migrant domestic workers. Many interviewees expressed how heavily they were burdened by their debt and their fear of acquiring more debt through new employment due to the common practice by placement agencies of charging new fees. These debts often force workers to accept exploitation and abuse in the workplace. Several migrant domestic workers told Amnesty International that they were reluctant to change employers because doing so would incur further fees to their agencies.

RECOMMENDATIONS

Amnesty International recommends that the Hong Kong authorities:

- Repeal or amend the Two-Week rule to allow migrant domestic workers a reasonable period to find new employment, including incorporating the average time of 4-6 weeks it takes to issue a new visa;
- Waive the costs of extensions of stay for migrant domestic workers who are seeking compensation for human rights abuses;
- Ensure that migrant domestic workers who are seeking compensation for human rights abuses have effective access to appropriate support measures, such as shelters and interpretation, at all stages of redress, including the conciliation process, at the Labour Department;
- Amend current legislation, which forces migrant domestic workers to live with their employers and excludes them from the Minimum Wage Ordinance;
- Prevent and address human rights abuses and violations of Hong Kong's labour legislation by employers (e.g. weekly rest days), including through the application of criminal sanctions when appropriate;
- Thoroughly regulate and monitor placement agencies and sanction placement agencies which are operating in violation of Hong Kong's laws in respect to illegal excessive fees, including the application of criminal sanctions when appropriate;
- Pursue with the Central Government in Beijing the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and ILO Convention No.189 concerning Decent Work for Domestic Workers, incorporate their provisions into Hong Kong law and implement them in policy and practice.

ENDNOTES

¹ Amnesty International, *China: Submission to the UN Committee on Economic, Social and Cultural Rights* (Index: ASA 17/009/2013), April 2013, available at <http://www.amnesty.org/en/library/info/ASA17/009/2013/en>.

² Amnesty International, *Establishing the rule of law and respect for human rights: The need for institutional and legal reforms. Memorandum to the State Council and National People's Congress of the People's Republic of China* (Index: ASA 17/052/2002), available at <http://www.amnesty.org/en/library/info/ASA17/052/2002>.

³ Amnesty International, *Against the Law: Crackdown on China's human rights lawyers deepens* (Index: ASA 17/018/2011), available at <http://www.amnesty.org/en/library/info/ASA17/018/2011/en>.

⁴ Not everyone agrees that Article 41 of the Constitution covers petitioning per se but the language does seem to support it. It states, "Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited. In case of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them. Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law."

⁵ 国家信访局数据：71%上访有理60%却要重访, Nanfang Zhoumo, 13 December 2013, <http://news.takungpao.com/mainland/focus/2013-12/2104197.html> (accessed on 13 March 2014).

⁶ 国家信访局：土地征用、拆迁和社会保障是信访突出问题, Xinhua, 28 November 2013, available at http://news.xinhuanet.com/2013-11/28/c_118331668.htm (accessed on 13 March 2014).

⁷ Amnesty International, *"Changing the soup but not the medicine?": Abolishing Re-education Through Labour in China* (Index: ASA 17/042/2013), available at <http://www.amnesty.org/en/library/info/ASA17/042/2013/en>.

See also for example, *Guangzhou vows new detention centres won't be like labour camps*, *South China Morning Post*, 24 January 2014, available at <http://www.scmp.com/news/china/article/1412432/guangzhou-vows-new-detention-centres-wont-be-labour-camps>, accessed 5 March 2014; 河南多地建“非正常上访训诫中心”, *Beijing News*, 13 February 2014, available at <http://www.bjnews.com.cn/news/2014/02/13/304785.html> (accessed on 5 March 2014).

⁸ Xu Zhiyong, legal scholar and activist wrote an article in May 2012 titled "China Needs a New Citizens' Movement" and is often credited with spurring a loose network of activists to form the movement. The article is available at <http://seeingredinchina.com/2012/>. Suggested activities for "New Citizens" include: practicing "New Citizen Responsibility" by rejecting corruption and by doing good for society; participating in civic life by holding meetings to discuss the political situation; helping the weak; and uniting to share and coordinate work. Xu Zhiyong was detained in July 2013, and sentenced to four years' imprisonment for "gathering a crowd to disrupt order in a public place". For more information

please see Amnesty International, *China: Further information: Prominent activist jailed in China: Xu Zhiyong* (Index: ASA 17/006/2014), available at <http://www.amnesty.org/en/library/info/ASA17/006/2014/en>

⁹*Individuals Detained in Crackdown on Peaceful Assembly, Association & Expression*, Chinese Human Rights Defenders, available at <http://www.chrdnet.com/2013/07/individuals-detained-in-crackdown-on-assembly-and-association/> (accessed 3 March 2014).

¹⁰*Lawyers demand discipline center info*, Global Times, 23 February 2014, available at <http://www.globaltimes.cn/content/844294.shtml#.Uw6oePoTfD> (accessed on 18 March 2014); 河南多地建“非正常上访训诫中心”, Beijing News, 13 February 2014, available at <http://www.bjnews.com.cn/news/2014/02/13/304785.html> (accessed on 5 March 2014).

¹¹*Henan officials must be held to account for their 'reprimand centres'*, South China Morning Post, 4 March 2014.

¹²Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform (Chinese Communist Party Decision), para. 34, China Daily, 16 January 2013, available at http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm. (accessed 3 March 2014).

¹³全国人大常委会关于废止有关劳动教养法律规定的决定, Xinhuanet, 28 December 2013, available at http://news.xinhuanet.com/legal/2013-12/28/c_118749199.htm (accessed on 5 March 2014).

¹⁴ Amnesty International, *'Changing the soup but not the medicine?': Abolishing Re-education Through Labour in China*, (Index: ASA 17/042/2013).

¹⁵China abolishes reeducation through labor, Xinhua, 28 December 2013, available at http://news.xinhuanet.com/english/china/2013-12/28/c_133003042.htm, accessed 5 March 2014.

¹⁶Amnesty International, *'Changing the soup but not the medicine?': Abolishing Re-education Through Labour in China*, (Index: ASA 17/042/2013).

¹⁷粤劳教人员9月解教广深试点轻刑监狱, Nanfang Daily, 6 December 2013, available at: http://www.nfdaily.cn/special/2013zt/grzx/ghzc/xwrd/content/2013-12/06/content_86521351.htm, (accessed 17 March 2014).

¹⁸ Article 33, Anti-Drug Law of the People's Republic of China, adopted on 29 December 2007, in effect from 1 June 2008. Available at http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21899159.htm. (accessed 13 March 2014).

¹⁹ Human Rights Watch, *"Where darkness knows no limits": Incarceration, ill-treatment, and forced labour as drug rehabilitation in China*, January 2010, available at <http://www.hrw.org/reports/2010/01/07/where-darkness-knows-no-limits-0> (accessed on 3 March 2014).

²⁰Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53), February 2013, para. 31.

²¹Asia Catalyst, *"Custody and Education": Arbitrary detention for female sex workers in China*, December 2013, available at http://asiacatalyst.org/blog/AsiaCatalyst_CustodyEducation2013-12-EN.pdf (accessed on 3 March 2014).

²²For more information see Amnesty International, *Internal Migrants: Discrimination and abuse – The*

human cost of an economic 'miracle' (Index: ASA 17/008/2007), available at <http://www.amnesty.org/en/library/info/ASA17/008/2007/en>

²³ Li, Raymond, "Migrant Workers in Beijing forced to educate their children at unlicensed schools", South China Morning Post, 6 March 2013, available at: <http://www.scmp.com/news/china/article/1180667/migrant-families-beijing-forced-educate-their-children-unlicensed-schools> (accessed 14 March 2014).

²⁴ Chinese Communist Party Decision, para. 23.

²⁵ 城乡流动儿童状况研究报告、我国农村留守儿童, All-China Women's Federation, 14 May 2013, available at <http://www.women.org.cn/allnews/02/3906.html> (accessed on 27 February 2014).

²⁶ Chan, Aris, "Paying the Price for Economic Development; the Children of Migrant Workers in China", China Labour Bulletin, November 2009, http://www.clb.org.hk/en/files/share/File/research_reports/Children_of_Migrant_Workers.pdf (accessed on 27 February 2014)

Liu Sha, "Sexual abuse of children "left behind" by migrant workers is on the rise", Global Times, 19 June 2012, <http://www.globaltimes.cn/NEWS/tabid/99/ID/715754/Sexual-abuse-of-children-left-behind-by-migrant-worker-parents-on-rise.aspx> (accessed on 27 February 2014).

²⁷ Center for Child Rights and Corporate Social Responsibility, "They are also parents. A Study on Migrant Workers with Left-behind Children in China", available at <http://www.cccsr.com/sites/default/files/They%20Are%20Also%20Parents%20-%20A%20Study%20on%20Migrant%20Workers%20in%20China%2C%20CCR%20CSR%20ENGLISH.pdf> (accessed on 27 February 2014).

²⁸ Amnesty International, *Standing Their Ground: Thousands face violent eviction in China* (Index: ASA 17/ 001/2012), available at <http://www.amnesty.org/en/library/info/ASA17/001/2012/en>.

²⁹ Amnesty International, *Standing Their Ground: Thousands face violent eviction in China* (Index: ASA 17/ 001/2012).

³⁰ Amnesty International interviews, September 2013.

³¹ See Land Administration Law of the People's Republic of China, available at http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/14/content_21917380.htm, accessed on 19 March 2014.

³² Washburn, Valerie, "Regular takings or regulatory takings? Land expropriation in rural China," *Pacific Rim Law & Policy Journal*, 1 January 2011, <http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/485/20pacrimlpoly071.pdf?sequence=1>, p. 75, accessed on 5 March 2014).

³³ Chinese Communist Party Decision, para. 11.

³⁴ 《土地管理法》修订再起步：征地制度改革仍是重点, 21 Century Business Herald, 13 November 2013, available at <http://fangchan.21cbh.com/2013/11-13/zONTcxXzkyNTMzOA.html>, accessed 5 March 2014. See also 国土部决意征地改革试点首倡合理提高个人收益, Zhongguo Jingying Bao, 22 February 2014, <http://news.suzhou.soufun.com/2014-02-22/12153154.htm>, accessed 5 March 2014.

³⁵ See Constitution of the People's Republic of China, Article 48, available at

http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm, accessed on 19 March 2014; Law of the People's Republic of China on Land Contract in Rural Areas, Article 6.

³⁶ See Law of the People's Republic of China on the Protection of Rights and Interests of Women, Article 32, available at <http://www.china.org.cn/english/government/207405.htm>, accessed on 19 March 2014.

³⁷ See Organic Law of the People's Republic of China on the Organization of the Villagers' Committees, available at <http://www.china.org.cn/english/government/207279.htm>, accessed on 19 March 2014.

³⁸ Amnesty International interviews, February 2014.

³⁹ For more information see Liaw, H. Ray "Women's land rights in rural China: Transforming the existing laws into a course of property rights" in *Pacific Rim Law & Policy Journal*, vol. 17, no.1, January 2008.

⁴⁰ Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong* (AI Index: ASA 17/029/2013), available at: <http://www.amnesty.org/en/library/info/ASA17/029/2013/en>

⁴¹ Correspondence from the HKSAR Labour Department (incorporating information provided by the HKSAR Immigration Department) on 15 August 2013.

⁴² HKSAR Immigration Department, "Immigration Department implements measure to deter abuse of arrangements for premature termination of contract by foreign domestic helpers", Press Release, 30 August 2013, available at: <http://www.immd.gov.hk/en/press/press-releases/20130830.html>.

⁴³ In 2012, the average waiting time for cases in the Labour Tribunal, from appointment to first hearing, was 50 days. See: http://www.judiciary.gov.hk/en/publications/annu_rept_2012/eng/caseload06.html, (accessed 1 February 2014).

⁴⁴ HKSAR Labour and Welfare Bureau, "Legislative Council Brief: Minimum Wage Bill", File Ref.: LD SMW 1-55/1/4(C), June 2009, para15, available at: http://www.legco.gov.hk/yr08-09/english/bills/brief/b24_brf.pdf (accessed 1 February 2014).

⁴⁵ Hong Kong Confederation of Trade Unions and Hong Kong Federation of Asian Domestic Workers Unions, *Joint report on Hong Kong SAR of the People's Republic of China on the government's application of Migration for Employment Convention (Revised)*, 1949 (No. 97) (Ratification 1997), submitted to the ILO on 31 August 2012, para18.

⁴⁶ Section 17 Grant of rest day, Cap 57A Employment Agency Regulation, HKSAR Employment Ordinance.

⁴⁷ Section 2 Interpretation, Cap 57A Employment Agency Regulation, HKSAR Employment Ordinance.

⁴⁸ Regulation 10(2) (Part II of Schedule 2), Cap 57A Employment Agency Regulation, HKSAR Employment Ordinance.

**AMNESTY
INTERNATIONAL**



www.amnesty.org