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ELIMINATION OF
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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.

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INTRODUCTION

Amnesty International submits the following information to the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee), in advance of its consideration of Hong Kong Special Administrative Region's (Hong Kong, Hong Kong SAR) combined seventh and eighth periodic reports, submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention).

This briefing focuses on the situation of migrant domestic workers in Hong Kong, raising concerns under articles 2, 6, 11 and 15 of the Convention. 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. All of the interviewees were women. The findings are published in full in the Amnesty International report *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*.¹ The issues raised are not limited to Indonesians, but reflect the problems faced by the wider community of migrant domestic workers irrespective of nationality.

At the end of September 2013, there were 319,325 migrant domestic workers in Hong Kong, often referred to as 'foreign domestic helpers' about half were Indonesian and nearly all women.²

Amnesty International has found that:

- Placement agencies in Hong Kong are routinely involved in trafficking of migrant domestic workers and their exploitation in conditions of forced labour, through the use of deception and coercion to recruit migrants and to compel them to work in situations which violate their human and labour rights.
- Employers in Hong Kong frequently subject migrant domestic workers to human rights abuses, including restricting their freedom of movement; not paying them the minimum wage; not giving them adequate rest periods; and arbitrarily terminating their contracts, often in collusion with placement agencies.
- The Hong Kong government has failed to properly monitor, investigate and sanction individuals and organizations which are violating domestic legislation protecting the human rights of migrant domestic workers. In addition, the Hong Kong government has in place regulations which increase migrant domestic workers' risk of being subjected to human rights abuses, including discrimination. This includes the imposition of the Two-Week Rule which stipulates that migrant domestic workers must find new employment and get an approved work permit within two weeks of their contract ending or being terminated, or leave Hong Kong, and the requirement to live with one's employer as a condition for a work permit (live-in requirement).

DISCRIMINATION AGAINST MIGRANT DOMESTIC WORKERS – ARTICLES 11 AND 15

A number of laws and regulations introduced by the Hong Kong SAR government impede migrant domestic workers from attaining equal treatment, namely in relation to their remuneration package, live-in requirement and “right of abode”. These laws and regulations include for example, the Minimum Wage Ordinance, the Immigration Ordinance, and provisions under the Hong Kong SAR Standard Employment Contract (for a domestic helper recruited from abroad).

Domestic work in Hong Kong is most often carried out by women and involves tasks associated with stereotypical female gender roles such as child care, cooking, care of the elderly, and cleaning. In addition, the overwhelming majority of domestic workers in Hong Kong are migrant women. As a result, exclusions or distinctions that seem neutral (e.g. they apply to all domestic workers) are likely to constitute discrimination because they have a disparate impact on a specific population defined by its national origin and gender (migrant women).

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 gender, national origin, or any other status. The authorities must show that there are legitimate reasons for the distinctions made.

REMUNERATION

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, i.e. on the grounds of immigration controls and established practice.³

However, 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.⁴ Additionally, there is no measurement and calculation of costs of accommodation and food to be provided by the employers. Finally, 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 in which they are given no option.

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.

LIVE-IN REQUIREMENT

Under Hong Kong's immigration regulations and stated in clause 3 of the Standard Employment Contract, migrant domestic workers must "work and reside in the employer's residence".⁵ The same requirement is not applied to Hong Kong nationals performing similar jobs.

The live-in requirement for migrant domestic workers increases their isolation and the consequent risk of being subject to exploitation and abuse, and contributes to an environment in which they are unlikely to file complaints.⁶

Because nearly all migrant domestic workers in Hong Kong are women, the live-in requirement has a disparate impact on a specific population defined by its national origin and gender (migrant women), and is therefore discriminatory.

An option to live outside of the employing household would provide migrant domestic workers with a way out of situations where their rights are being abused (e.g. where their privacy is not being respected and/or they are at risk of abuse from someone in the employer's household or where they are being made to work excessive hours – see below). It is also likely that migrant domestic workers would gain leverage in negotiations for better conditions of work if they had the option of leaving the employer's house.

RIGHT TO ABODE

Under section 2.4(a)(vi) of the Immigration Ordinance, "a domestic helper who is from outside Hong Kong" "shall not be treated as ordinarily resident in Hong Kong".⁷ The same restriction applies to migrant workers employed as contract workers under a government importation of labour scheme.⁸ As a result of this restriction, these two categories of migrant workers are not eligible to become Hong Kong permanent residents after having resided in Hong Kong for a continuous period of at least seven years (Immigration Ordinance, Schedule 1) as is ordinarily the case for other migrant workers. Hong Kong permanent residents have the "right of abode" which means they are not subject to any restriction in respect of employment, place of residence and duration of stay in Hong Kong.⁹

States are entitled to regulate the entry and residence of non-citizens. However, immigration policies must respect, protect and fulfil the human rights of migrant workers. As nearly all of the migrant domestic workers in Hong Kong are women, their exclusion from eligibility for permanent residence has the effect of disproportionately impairing their access to permanent residence in Hong Kong on an equal basis with men.

TRAFFICKING FOR EXPLOITATION AND FORCED LABOUR— ARTICLE 6

Local placement agencies in Hong Kong, in collusion with recruitment agencies in Indonesia, are routinely involved in trafficking of migrant domestic workers. Together they use deception and coercion to recruit Indonesian migrants to travel to Hong Kong and subsequently compel them to work in forced labour conditions in violation of their human rights. The methods of deception and coercion used by the agencies at recruitment and placement stages are

similar, including confiscation of identity documents, restrictions on freedom of movement and the manipulation of debt incurred through fees. These are detailed further below.

While the Hong Kong placement agencies work in close partnership with Indonesian recruitment agencies; however, the placement agencies 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.

CONTRACTUAL DECEPTION

Typically, migrant domestic workers who were deceived regarding their terms and conditions of work at the recruitment stage, were also given false or misleading information relating to their wages, work hours, holidays and workload.

- Underpayment – as explained above, migrant domestic workers are subject to Hong Kong’s Minimum Allowable Wage, which is currently set at HK\$4,010 (US\$517) per month, rather than the higher rates required under the Minimum Wage Ordinance. The most common problem that migrant interviewees in Hong Kong face were being paid less than the amount promised to them by the recruitment agency (in their country of origin) and/or a salary that was significantly below the Minimum Allowable Wage.
- Excessive and exploitative working hours – interviews conducted by Amnesty International indicate that migrant domestic workers on average work 17 hours a day with respondents frequently noting that they were “on call 24 hours”. Under Hong Kong law, there is no general statutory provision limiting maximum daily working hours, overtime hours or stipulating overtime pay.
- No weekly rest day or statutory holidays – more than half of the migrants interviewed by Amnesty International did not receive a weekly rest day. Furthermore, interviews indicate that even when migrant domestic workers are given a rest day, it often does not constitute 24 hours as required by Hong Kong law. Hong Kong Employment Ordinance also entitles all migrant domestic workers to 12 statutory holidays each year.¹⁰ Despite this, 26 interviewees told Amnesty International that their employer did not allow them leave during these days.

COERCION

The principal mechanisms of coercion of migrant domestic workers are the confiscation of identity documents, restrictions on freedom of movement and the manipulation of debt incurred through agency fees.

- Confiscation of identity documents – the great majority of migrant domestic workers interviewed by Amnesty International revealed that their employer or placement agency in Hong Kong kept their passport, ID card, and/or their employment contract. Several interviewees stated that they were “too afraid” to ask for their documents because it may anger their employment or agency, and lead to penalties such as the premature termination of their contract.

The confiscation of passports, identity papers and contracts by employers or placement agencies is an effective way of maintaining control over migrant domestic workers, as without

these documents they cannot work legally in another job or even prove they have a right to be in Hong Kong if they leave the employer's house. This in turn makes it extremely difficult for them to leave jobs where they are subject to abuse.

- Manipulation of debt – most migrant domestic workers interviewed by Amnesty International had to hand over the vast majority of their salary to the placement agency as repayment for agency fees in Hong Kong, normally HK\$3,000 a month (US\$387) for the initial seven months of their contract (in total HK\$21,000 or US\$2,709 – exceeding the legal maximum agency fee of 10 per cent of the worker's first month's salary (as well as the statutory limits for agency fees in Indonesia). Consequently, serious indebtedness due to excessive agency fees is common among migrant domestic workers. 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.
- Restrictions on freedom of movement – more than a third of the migrant domestic workers interviewed by Amnesty International stated that they had not been free to leave their employer's home. According to several interviewees, placement agencies in Hong Kong specifically advised employers to prevent the migrant domestic workers from leaving the house, particularly during the initial months when they are paying off their agency fees. Several interviewees also told Amnesty International that their employer and/or placement agency stopped them from calling home or speaking to other people, including to other migrant domestic workers.

Amnesty International research indicates that restrictions on freedom of movement are applied in order to ensure that domestic workers do not have access to information or assistance which might lead to them challenging their terms and conditions of work, seeking alternative employment or not paying back the fees owed to their agency.

INADEQUACY OF MEASURES TAKEN BY THE HONG KONG SAR GOVERNMENT – ARTICLE 2

ACCESS TO INFORMATION

Upon arrival at Hong Kong International Airport, before immigration control, the International Social Service, an NGO, distributes guidebooks to migrant domestic workers containing relevant information about their rights, redress mechanisms and contact details of organizations that can help them. However, according to migrant domestic workers the placement agencies in Hong Kong confiscated these guidebooks immediately after they were through immigration control at the airport.

The Government of Hong Kong produces publications in different languages to “promote better understanding of labour rights” among migrant domestic workers and disseminates them without charge. It also holds seminars and information kiosks at popular gathering places, and screens television and radio commercials to raise awareness among workers, employers and placement agencies of their rights and obligations. Although these are positive initiatives, they do not effectively target migrant domestic workers who are regularly denied a rest day or have restrictions placed on their freedom of movement and as such are unable to access these information sites.

ACCESS TO JUSTICE

According to data provided by the Hong Kong authorities to the ILO in 2012, out of a total population then of 307,151 migrant domestic workers, just 342 cases of underpayment were lodged between 1 June 2010 and 31 May 2012. During the same period, only two per cent of all migrant domestic workers lodged claims for alleged breaches of the Employment Ordinance or the terms of the Standard Employment Contract (6,726 claims) and only just over one quarter of these (1,792) went on to the Labour Tribunal or the Minor Employment Claims Adjudication Board for resolution.¹¹

The number of complaints is very low compared to the number of migrant domestic workers and the prevalence of human rights abuses documented against them. For example, more than a third of the migrant domestic workers interviewed by Amnesty International received a salary below the Minimum Allowable Wage. The Indonesian Migrant Workers Union (IMWU) survey identified 258 individuals (out of 930) who stated that they were underpaid.¹² If the percentage of people claiming underpayment in the IMWU survey (28 per cent) is representative of the situation for all Indonesian migrant domestic workers in Hong Kong, this would mean that more than 40,000 Indonesian women are not receiving the minimum salary they are entitled to by law. The low number of reports of abuses therefore suggests that Hong Kong authorities have not adequately ensured that those migrant domestic workers who are abused can lodge complaints and are protected from reprisals.

INSPECTIONS AND SANCTIONS

The Employment Agencies Administration (EAA) under the HKSAR Labour Department is responsible for ensuring that placement agencies comply with the law.¹³ This is done through licensing, inspection and investigating complaints lodged against placement agencies. The Hong Kong SAR government asserts that it makes regular and unannounced inspections to placement agencies, investigates complaints regarding overcharging or malpractice and where there is sufficient evidence, pursue prosecution.

In 2012, the office of the Commissioner for Labour, which has the authority to refuse to issue or renew a licence or revoke a placement agency's licence, did so on two occasions only. These rare examples of administrative sanctions issued by the Commissioner of Labour do not reflect the widespread exploitation and abuse experienced by many migrant workers. Moreover, there is no government monitoring or inspection system in place to ensure that migrant domestic workers are not subject to abuse or exploitation by their employers, as confirmed by the Labour Department in October 2013. The Department stated that it would be difficult to do so due to the number of workers and the place of work being a private residence. However, it stated that an inspection can take place in regard to a specific complaint.

This indicates that the authorities are failing to identify and prosecute violations of its labour laws (e.g. paying under the Minimum Allowable Wage and charging recruitment fees above the legally permitted maximum).

It must also be stressed that some government regulations, such as the live-in requirement and Two-Week Rule are increasing migrant domestic workers' risk of exploitation and forced labour.

TWO-WEEK RULE

Under the New Condition of Stay, 1987, also known as 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.

The time frame is not sufficient for finding new employment and obtaining necessary work permit, 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. 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 changing financial circumstances of the former employer, or if the worker was abused or exploited which they would need to be able to prove. This is often difficult to do as in many cases it is the employers or the placement agency’s word against that of the migrant domestic worker. As such, the Two Week Rule 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. Unless the migrant domestic worker 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 rights abuses extremely difficult.

FAILURE TO ADOPT TRAFFICKING LEGISLATION

Hong Kong does not have a comprehensive trafficking law and there have not been any prosecutions for the trafficking of migrant domestic workers for forced labour¹⁴ between 2008-2012.¹⁵

This is partly due to the narrow definition of trafficking within Hong Kong domestic legislation, which does not include trafficking for labour exploitation. In correspondence with Amnesty International, the Labour Department stated that:

“Under section 129 of the Crimes Ordinance (Cap.200), “trafficking in persons” [TIP] means taking part in bringing another person into, or taking another person out of, Hong Kong for the purpose of prostitution. According to the Hong Kong Police Force’s information, 14 TIP cases were effected between 2008 and 2012. 28 victims were involved, but none of them involved foreign domestic helpers.”¹⁶

Hong Kong’s trafficking law is narrower than the definition provided in international law under article 3(a) of the Trafficking Protocol¹⁷, which defines “exploitation” to include at a minimum “the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery”. While prohibiting certain forms of trafficking, the Hong Kong government has not addressed the more general problem of trafficking for labour exploitation that affects migrant domestic workers.

RECOMMENDATIONS TO HONG KONG SAR GOVERNMENT

- 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;
- Ensure that migrant domestic workers have access to information about their rights;
- Establish a robust, proactive body that monitors, investigates and punishes, including through the application of criminal sanctions when appropriate, placement agencies that charge excessive and illegal fees, confiscate passports and encourage underpayment of wages;
- Establish a body where relevant government agencies, workers and employers agree on recruitment and placement agency fees, and work towards the international standard of no fee to the employee.
- 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.

ENDNOTES

- ¹ Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, Index: ASA 17/0292013, November 2013, available at <http://www.amnesty.org/en/library/info/ASA17/029/2013/en>
- ² Figures as of 30 September 2013 provided by the HK SAR Labour and Immigration Departments on 15 October 2013.
- ³ Hong Kong SAR Labour and Welfare Bureau, *Legislative Council Briefing: Minimum Wage Bill*, File Red.: LD SMW 1-55/1/4(C), June 2009, para 15, available at http://www.legco.gov.hk/yr08-09/english/bills/brief/b24_br.pdf, accessed 17 September 2014.
- ⁴ HKCTU and FADWU, *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.
- ⁵ The only exception is “employers who have obtained the Director of Immigration's approval before 1 April 2003 to let their Helpers live out can continue to do so, so long as they continue to employ Helpers without a break of more than 6 months”. See HKSAR Government, *Guidebook for the Employment of Domestic Helpers from Abroad (ID 969)*, available at: <http://www.immd.gov.hk/en/forms/forms/id-e-969.html>, accessed 17 September 2014.
- ⁶ See Chapter 9 in Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian migrant domestic workers trafficked to Hong Kong*, Index: ASA 17/0292013, November 2013, available at <http://www.amnesty.org/en/library/info/ASA17/029/2013/en>
- ⁷ Hong Kong Immigration Ordinance, available at http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/ED717360D64A043E482575EE003DBF1A?OpenDocument&bt=0, accessed 17 September 2014.
- ⁸ “Supplementary Labour Scheme” (SLS); for more information see for example: <http://www.labour.gov.hk/eng/form/eform/sld/note/EF0601/Pamph.pdf>, accessed 24 September 2014.
- ⁹ However, under section 7, Cap 115 Schedule 1 of the Immigration Ordinance, “Permanent” resident status can be lost in certain scenarios. For example, for those who are not Chinese citizens, permanent resident status will be lost following an absence from Hong Kong for a continuous period of 36 months or more.
- ¹⁰ See also HK SAR Constitutional and Mainland Affairs Bureau, “Response to the List of Issues presented by the Human Rights Committee on 16 November 2012”, March 2013, paras4(3) and15.2, available at: http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/response_to_list_of_issues_mar_2013.pdf, accessed 24 September 2014.
- ¹¹ ILO Committee of Experts on the Application of Conventions and Standards, *Observation on Convention No.97 on Migration for Employment (Revised) for China – Hong Kong SAR*, 2013, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084699, accessed 24 September 2014.
- ¹² ITUC, IMWU and HKCTU, *Final Report on Malpractices of Recruitment Agencies toward Indonesian Domestic Workers in Hong Kong* (unpublished, supplementary survey findings), in collaboration with the Institute for National and Democratic Studies (INDIES), 2013. Participants who answered a detailed

questionnaire were approached in parks and other public places in Hong Kong where domestic workers meet on their rest day.

¹³ See Legislative Council Fact Sheet “Employment agencies placing foreign domestic helpers,” available at <http://www.legco.gov.hk/yr12-13/english/sec/library/1213fs30-e.pdf>, accessed 17 September 2014.

¹⁴ Article 25 of the Forced Labour Convention states that the “illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”.

¹⁵ Amnesty International meeting with the HKSAR Labour and Immigration Departments in Hong Kong on 11 October 2013 and correspondence from the two Departments on 15 October 2013.

¹⁶ Amnesty International meeting with the HKSAR Labour and Immigration Departments in Hong Kong on 11 October 2013 and correspondence from the two Departments on 15 October 2013. The Labour Department provided that “Any person, including an employer, who aids, abets, counsels or procures someone to contravene a condition of stay shall be guilty of an offence under Section 41 of the Immigration Ordinance and by virtue of Regulation 2(4) of the Immigration Regulations, and Section 89 of the Criminal Procedure Ordinance (Cap.221), and shall be liable on conviction to a fine of HK\$ 50,000 [US\$6,500] and to imprisonment for 2 years”.

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime and other relevant conventions and treaties, available at https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18&lang=en, accessed 24 September 2014.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW

www.amnesty.org

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