

The HKSAR government's treatment towards migrant domestic workers is unsatisfactory. The submission below is largely based off of the government's reply to the UN Committee on the Elimination of Racial Discrimination which I find equally unsatisfactory. Given that these societal deficiencies have not been rectified, I find it appropriate to submit to this information The Panel on Constitutional Affairs.

- The “two week rule”, which requires migrant domestic workers (MDWs) to leave Hong Kong upon contractual termination remains in place. This is despite the committee’s recommendation to abolish the rule¹.
- The HKSAR justification for maintaining the two week rule is unsatisfactory. The government asserts that the policy is aimed at preventing MDWs from overstaying their visas and taking up unauthorised work². However, given that high agency fees are paid by MDWs themselves, “the likelihood of job-hopping is remote”³.
- The government’s response to the live in requirement needs clarification. The government asserts that the live in requirement serves two purposes. 1) to address the lack of live in domestic helpers within the labour market and 2) in order to ensure employer’s are able to afford MDWs by lowering supplementary costs (e.g. accommodation). While the government cites costs incurred by employers, it fails to address the costs incurred by MDWs in longer working hours created by the live in rule. Thus, the government’s response does not pay enough attention to the burden imposed upon MDWs. Moreover, the government has not clarified how the requirement serves as the least onerous policy for achieving the aims stated.
- if a MDW files a legal claim against his/her employer, HKSAR policy states that he/she may be granted a visa in order to pursue the claim. However, he/she is prohibited from seeking employment while holding this visa. This lack of income serves as a significant disincentive towards the pursuit of his/her legal claim⁴. This policy limits MDWs access to justice in contravention of art 1 ICERD⁵ as elucidated through general comment 30⁶
- s8(3) and s14(1)(b) of the Race Discrimination Ordinance have the effect of excluding national origin discrimination from protection⁷. This poses special concern for MDWs who are mainly from Indonesia and the philippines⁸, respectively.

¹ UN Committee on the Elimination of Racial Discrimination “Concluding observations of the Committee on the Elimination of Racial Discrimination CHINA (including Hong Kong and Macau Special Administrative Regions)” (3 – 28 August 2009) para 30

² UN Committee on the Elimination of Racial Discrimination “Fourteenth to seventeenth periodic reports of States parties due in 2015 Hong Kong, China” (24 January 2017) CERD/C/CHN-HKG/14-17 [5.33]

³ Phil C. W. Chan (2009) National Origin Discrimination and Race Anti-Discrimination Legislation in Hong Kong, *The International Journal of Human Rights*, 848

⁴ Carol Tan (2014) How Dewi Became a Litigant: Migrant Domestic Workers as Litigants in Hong Kong 7

⁵ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965 entered into force 4 January 1969) 660 UNTS 195 (ICERD)

⁶ UN Committee on the Elimination of Racial Discrimination “General Recommendation 30 Discrimination against non-citizens” (23 February - 12 March 2004) CERD/C/64/Misc.11/rev.3 para 18

⁷ Chan, (n 2) 848

⁸ Census and Statistics Department The Government of The Hong Kong Special Administrative Region, ‘Foreign domestic helpers by nationality and sex’ (27 July 2017) <http://www.censtatd.gov.hk/hkstat/sub/gender/labour_force/>

- S54 of the Race Discrimination Ordinance excludes policies relating to citizenship, naturalisation and residency from being subject to the provisions in the ordinance. Thus, the law authorises the enactment of discriminatory policies relating to naturalisation. Currently, there is no path to naturalisation for MDWs which may represent a form of indirect discrimination by virtue of the MDW population demographics in Hong Kong. Moreover, the committee has affirmed the need for states to avoid discrimination regarding access to naturalisation⁹
- The governance rationale for exempting MDWs is deeply dissatisfactory¹⁰. MDWs are excluded due to 1) the difficulty in recording work hours as a result of the live in rule. Firstly, as mentioned before, the live in rule is not desirable and therefore the governments admission of the aforementioned problem created by the rule should serve to illustrate its inadequacy. Secondly, as MDWs earn a monthly wage of \$4410 and the statutory minimum wage is set at \$34.5, we can calculate that MDWs would earn their monthly wages within approximately 128 hours. Spread over a month, this comes out to 5.3 hours a day. Therefore, the monthly wages demonstrably fall far short of what would have been earned on a statutory minimum wage if work hours could be accurately calculated. Therefore, if the government is unwilling to subject MDWs to the statutory minimum wage, it should raise the MDW minimum wage so as to reflect their actual working conditions as an alternative.

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⁹ Ibid, [13], [15]

¹⁰ UN Committee on the Elimination of Racial Discrimination (n 6) [5.35]