



## **Introduction**

A political system heavily skewed to business interests remains a major hindrance to Hong Kong people's full enjoyment of labour rights as enshrined in international human rights instruments. There continue to be major gaps in the territory's labour law framework, among them defective anti-human trafficking legislation; no provisions for regulating working time and living wage; inadequate protections for workers on non-standard terms; insufficient civil remedies for anti-union discrimination; no statutory procedures for collective bargaining; and poor job protection for striking workers.

## **Factors impeding realization of labour rights**

Under the Basic Law, the right to vote in the elections of the Chief Executive are restricted to a tiny proportion of HKSAR citizens, a majority of whom come from big corporations and professional bodies. Functional Constituency seats in the legislature also give undue weight to the business elites, and render the non-privileged commoners less considered and safeguarded in the political process. The absence of universal suffrage is detrimental to the realization of economic and social rights, and a government dominated by business interests is the single most important factor for the underdevelopment of HKSAR's labour laws.

**Recommendation: the HKCTU urges the HKSAR Government to take all necessary steps to progress towards a truly democratic system of governance.**

## **Right to work (Article 6 of the ICESCR)**

The crime of forced labour is not adequately covered by HKSAR laws. Many migrant domestic workers (MDWs) have been charged about 7 months' salaries by agencies in their home countries<sup>1</sup>. They are often forced to work under debt-bondage contracts, making them vulnerable to various physical, sexual and other abuses. The "two-week rule" and "live-in policy", imposed specifically on MDWs by the Immigration Department, continue to make MDWs vulnerable to exploitation and forced labour, and contributing to a modern form of slavery and human trafficking.

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<sup>1</sup> Mission for Migrant Workers Service Report (April 2017), [http://www.migrants.net/wp-content/uploads/MFMW\\_Casework\\_Report2016\\_FINAL.pdf](http://www.migrants.net/wp-content/uploads/MFMW_Casework_Report2016_FINAL.pdf)



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**Recommendation: the HKCTU urges the HKSAR Government to enact a comprehensive anti-human trafficking legislation to criminalize human-trafficking activities.**

### **Right to just and favourable conditions of work (Article 7 of the ICESCR)**

*No regulations on working time, etc.*

Hong Kong has the longest working hours in the world; an average worker clocked in 2,600 hours in 2015, according to UBS, a bank. Worse still, more than 550,000, or nearly 20% of, private sector employees had to work overtime without pay, a Government-appointed committee reveals in 2017<sup>2</sup>. In addition, there are no laws governing rest breaks; some workers have to work continuously for more than 10 hours without a break. Regrettably, the HKSAR Government has persistently refused to legislate for working time, overtime pay and rest breaks, despite repeated calls by the CESCR<sup>3</sup>.

*No legislation on living wage*

A statutory minimum wage (SMW) was introduced in May 2011 but has so far failed to lift low-paid workers out of poverty. From the start, the HKSAR Government has never intended to ensure all workers with decent remunerations, and refuses to fix the SMW at a rate sufficient to meet employees and their families' basic needs. At present, the SMW rate is HKD 34.5 (USD 4.4), which is less than the first rate fixed in 2011 in real terms. Assuming an eight-hour working day, this translates into a monthly income of HKD 7,200 (USD 920), an amount not enough even to support a couple, let alone a typical family of 4.

*Insufficient protections for atypical workers*

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<sup>2</sup> Report of the Standard Working Hours Committee (January 2017) p. 172, [http://www.labour.gov.hk/eng/plan/pdf/whp/swhc\\_report.pdf](http://www.labour.gov.hk/eng/plan/pdf/whp/swhc_report.pdf)

<sup>3</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights (11 May 2001) para 15, <http://www.refworld.org/docid/3cc7fa6b4.html>



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Under the Employment Ordinance (EO), “continuous contract employees” are entitled to such benefits as rest days, paid holidays and annual leave, maternity leave and pay, sickness allowance, and severance payments<sup>4</sup>. As the statutory provisions now stand, it is open to unscrupulous employers to adopt odd patterns of working hours to evade their statutory responsibilities. Moreover, access to employment rights depends on an individual’s employee status; problems arise when the status of individuals is so unclear that they cannot be easily classified. This problem becomes more acute as the existing classifications fail to reflect recent growth of certain non-standard work arrangements, such as agency work, freelancing and “economically dependent self-employment”. Depriving atypical workers of certain rights is at odds with international labour standards, yet the HKSAR Government has never demonstrated any serious efforts to close these gaps.

#### **Recommendations:**

**The HKCTU calls on the HKSAR Government to legislate for:**

- 1. regulating working time, overtime pay and rest breaks;**
- 2. ensuring all workers with a decent remuneration; and**
- 3. extending statutory protections to cover all workers on non-standard terms.**

#### **Union rights (Article 8 of the ICESCR)**

*Weak protection against anti-union discrimination*

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<sup>4</sup> Review of continuous contract requirement under the Employment Ordinance (July 2013), <https://www.legco.gov.hk/yr12-13/english/panels/mp/papers/mp0731cb2-1654-1-e.pdf>



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Though anti-union discrimination is a criminal offence in HKSAR, successful prosecutions are rare (only two cases since its enactment in 1974) because it is extremely difficult to prove employer's covert intent in criminal proceedings. While an employee dismissed on grounds of union membership or activity may make a claim for compensation, there is no provisions for civil remedies in respect of other forms of victimization<sup>5</sup>. Moreover, the court is not allowed to make a reinstatement order without the employer's consent, and predictably, no reinstatement or re-engagement has been granted to victims of anti-union discrimination. The HKSAR Government promised in 2000 to repeal this absurd provision, but regrettably, to this date, the proposed amendment is yet to be enacted into law. Owing to the weak statutory protection, cases of anti-union discrimination are frequently reported .

#### *No statutory provisions for collective bargaining*

ILO Convention 98 is applicable without modifications to HKSAR, but the HKSAR Government has never demonstrated any serious efforts to encourage union participation and collective bargaining. Despite repeated calls by the ILO since 1998, the HKSAR Government has persistently refused to adopt legislative provisions laying down objective procedures for determining the representative status of trade unions for collective bargaining purposes. The HKSAR Government's active discouragement and refusal to provide legal frameworks for collective bargaining have resulted in the marginal representation of trade unions in HKSAR with less than 1% of workers covered by collective agreements. Employer's refusal to negotiate with unions in good faith inevitably hinders workers' enjoyment of right to promote and protect their interests through union activities.

#### *Lack of job protection for striking workers*

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<sup>5</sup> Part IVA and Part VIA of the Employment Ordinance, <https://www.elegislation.gov.hk/hk/cap57>



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Though the right to strike is stipulated in Article 27 of the Basic Law, local labour laws provide little if not none job protection for striking workers. A Court of Final Appeal ruling in 2012 confirms that taking part in a union-sponsored strike could rarely be a protected form of union activities under Part IVA of the EO<sup>6</sup>. The only statutory protection is that the EO prevents employer from summarily dismissing striking workers, but nothing in the laws prohibits employer from terminating the contract by notice.

**Recommendations: The HKCTU urges the HKSAR Government to legislate for:**

- 1. providing adequate civil remedies in respect of all forms of anti-union discrimination;**
- 2. laying down statutory procedures for collective bargaining; and strengthening job protection for striking workers.**

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<sup>6</sup> *Campbell Richard Blakeney Williams v Cathay Pacific Airways Ltd* [2012] HKEC 1311, para 44