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# CONTENTS

Introduction .....	5
Section 1 – Implementation of the Covenant in mainland China.....	6
1. Articles 6 and 7– Forced labour in administrative detention .....	6
2. Articles 2, 10, 11, 12 and 13 – Household registration ( <i>hukou</i> ) .....	8
3. Article 11.1 – Forced evictions.....	8
Barriers to accessing effective remedies.....	10
Land sales and forced evictions .....	10
Section 2 – China’s extraterritorial obligations.....	12
Section 3 – Implementation of the Covenant in Hong Kong SAR .....	13
1. Articles 2, 7 and 11.....	13
Discriminatory regulations on minimum wage .....	13
Payments below minimum wage.....	14
Compulsory live-in, accommodation and food arrangements .....	14
Failure to implement regulations on recruitment/agency fees .....	14
Failure to implement regulations on weekly rest days .....	15
Two-Week Rule .....	15
Endnotes .....	16



# INTRODUCTION

This briefing is submitted by Amnesty International in advance of the adoption by the Committee on Economic, Social and Cultural Rights (hereafter, the Committee) of a list of issues prior to the Committee's consideration of the People's Republic of China's second periodic report on its implementation of the International Covenant on Economic, Social and Cultural Rights (hereafter, the Covenant). The briefing presents some of Amnesty International's main concerns on China's failure to adequately implement Articles 2, 6, 7, 10, 11, 12 and 13 of the Covenant. In particular, Amnesty International is concerned about forced evictions in China, the continuing use of forced labour in administrative detention and of the household registration (in Chinese, *hukou*) system that ties individuals and families to particular urban or rural categories, regardless of where they reside and work.

This briefing also includes a section on China's extraterritorial obligations and a section on the implementation of the Covenant rights in Hong Kong Special Administrative Region (Hong Kong SAR) as they relate to migrant domestic workers.

# SECTION 1

## IMPLEMENTATION OF THE COVENANT IN MAINLAND CHINA

### 1. ARTICLES 6 AND 7— FORCED LABOUR IN ADMINISTRATIVE DETENTION

The possible abolition of Re-education Through Labour, a form of punitive administrative detention, that includes detention without trial and forced labour, is currently again the subject of legal debate in China. In January 2013, the Chinese Communist Party's National Conference on Political and Legal Work announced four areas that are a priority for reform this year; these included Re-education Through Labour and the household registration (*hukou*) system. Indeed, the head of the Chinese Communist Party's central Political Legal Committee Meng Jianzhu was quoted in the press saying that China will "stop" using Re-education Through Labour by the end of 2013 and once the Standing Committee of the National People's Congress approves it.<sup>1</sup> However, the authorities have not made public the details of their plan for the abolition or significant reform of Re-education Through Labour.

Under the current system, public security officials (police) can assign people up to four years in Re-education Through Labour without trial or judicial overview. People who are assigned to Re-education Through Labour are accused of minor offences which do not amount to "crime" and which therefore are not prosecuted under the Chinese criminal justice system. The system is also often used against perceived "troublemakers", activists and human rights defenders, as well as *falun gong* practitioners and others who practice their religion outside officially sanctioned channels.

People assigned to Re-education Through Labour are typically forced to work for many hours a day, often up to 16 hours or until they meet their "quota", frequently under extremely harsh and unsafe working conditions, and for little or no pay. The type of work they are required to undertake includes manufacturing small electronics and clothing and packaging goods. Despite often having to work with hazardous materials, inmates are given little or no safety equipment. In addition to systematic torture of political prisoners, inmates may be beaten by guards or other inmates for minor infractions or simply at random.<sup>2</sup>

Furthermore, Re-education Through Labour inmates report extremely poor living conditions. They are sometimes held in excessively overcrowded cells, often made to sleep on hard boards with inadequate bedding, and are sometimes not able to go to the toilets freely. They are being fed inadequately on a nutrient poor diet of rice or bread, with small quantities of vegetables and generally no meat. They are also typically not provided with basic necessities such as soap, toothpaste, and shampoo but have to purchase these at a "store" within the facility with money provided by relatives. However, items in these stores are reported to be extremely expensive and money provided to inmates by their families often "disappears" from their "accounts".<sup>3</sup>

Amnesty International notes with concern that following the abolition in 2003 of Custody and Repatriation, another form of administrative detention that targeted vagrants, migrants and others without fixed abode, the authorities resorted to the use of “black jails” – unofficial and often make-shift detention facilities – to arbitrarily detain and forcibly remove from Beijing petitioners (people who travel to Beijing from other localities in China to seek redress from the central authorities for perceived injustices). Amnesty International has already obtained some evidence that Chinese authorities are making use of the country’s compulsory drug rehabilitation centres – yet another form of administrative detention where inmates are required to undertake forced labour – in place of Re-education Through Labour facilities.<sup>4</sup>

The reform of Re-education Through Labour was on China’s legislative agenda between 2005-2010 but to date has not resulted in any concrete reforms. In 2005, the Legislative Committee of China’s National People’s Congress was reportedly drafting the Illegal Behaviour Correction Law to replace the legislation on Re-education Through Labour. The draft Illegal Behaviour Correction Law was never made public; however, public commentary at the time on its proposed contents suggested that it was unlikely to meet international human rights law and standards.<sup>5</sup> In the following years, the process to reform or abolish Re-education Through Labour stalled and Re-education Through Labour continues to be widely used as an administrative, punitive measure. During China’s first Universal Periodic Review (UPR) in 2009, a Chinese Ministry of Justice representative stated that at the end of 2008, approximately 190,000 individuals were being held in China’s 320 Re-education Through Labour facilities. More recently, Chinese authorities have been quoted in the media citing significantly lower numbers for Re-education Through Labour inmates.<sup>6</sup> The difference in numbers may be explained by differences between aggregated and disaggregated data. For example in Guangdong province where Re-education Through Labour facilities are operated as joint compulsory drug rehabilitation facilities, the majority (80 per cent) of people are in compulsory drug treatment and not considered to be serving Re-education Through Labour terms.<sup>7</sup> Previously, the number of Re-education Through Labour inmates included all people held in such facilities. However, it is clear that even on the lowest estimates provided by the government tens of thousands of individuals are still being subjected to forced labour under the Re-education Through Labour system and other forms of administrative detention.

Since November 2011, four cities in China have reportedly been running pilot projects related to the reform of Re-education Through Labour; however, little is known about these projects, including whether they involve forced labour practices or not.<sup>8</sup> According to Wang Gongyi, formerly from the Ministry of Justice policy research centre, the “correction centres [trialled in the pilot projects] do not have iron bars on the windows or doors and inmates are permitted to go home at the weekend.”<sup>9</sup>

China has not ratified ILO Convention No 29 on forced labour as recommended by the Committee in its 2005 Concluding Observations<sup>10</sup> (despite it being one of the fundamental conventions), nor have they implemented the recommendation of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, following his visit to China in 2005, to abolish Re-education Through Labour and similar forms of re-education in prisons, pre-trial detention centres and psychiatric hospitals.<sup>11</sup>

Amnesty International has systematically over the years called on the Chinese authorities to abolish Re-education Through Labour and other forms of punitive administrative detention.

## 2. ARTICLES 2, 10, 11, 12 AND 13 – HOUSEHOLD REGISTRATION (*HUKOU*)

Amnesty International is concerned that in its current state, China's household registration (*hukou*) system continues to enable and facilitate discrimination based on social origin – namely a person's birthplace and their "urban" or "rural" status. Individuals' access to education, health care and housing are tied to their permanent household registration status. People with "rural" status are afforded different welfare benefits and services than those on "urban" status. Moreover, the vast majority of China's hundreds of millions of internal migrant workers come from rural areas to work or look for work in a city. Even those internal migrant workers who obtain a temporary household registration in the location of their employment, or their children, are not able to access benefits and services in the city where they live and work in full, or have to pay for the services unlike people with permanent urban status who can access the same services for free.

As mentioned above, the reform of China's household registration system is one of the priority areas on the government's agenda for reform this year. Again, little is known about the details of planned reforms. According to unconfirmed media reports, the authorities plan to replace the household registration system with national residence permits as a way to encourage further urbanization and subsequently, economic development. The authorities have said that reform of the household registration system will take a long time but no detailed timeline for the reform has been made public.<sup>12</sup>

China's household registration system has been gradually relaxed in the past decades since the 1990s. In addition, the authorities have experimented with changes to the household registration system through local level schemes.<sup>13</sup> These reforms have focussed on allowing increased movement of rural residents to urban areas while still maintaining control over internal migration to cities. The reforms have not dealt with addressing discrimination that rural migrants face in urban areas or providing increased resources for health and education in rural areas.

Amnesty International has recommended to the Chinese government to reform the household registration system with a view to removing administrative categories based on social origin that can be used as a basis for discrimination, and to remove discriminatory eligibility barriers to accessing urban health schemes and compulsory education as well as discriminatory fees based on a person's – or in the case of a child, their parents' – permanent household registration status.<sup>14</sup>

## 3. ARTICLE 11.1 – FORCED EVICTIONS

Despite international scrutiny and censure of incidents of forced eviction of people from their homes and farmland amid preparations for the Beijing Olympics in 2008, the pace of forced evictions has not subsided. On the contrary, Chinese housing rights activists, lawyers and academics report that such abuses remain widespread and that the problem has intensified over the past four years amid a nationwide construction boom that has spurred as the local authorities attempt to cover debt incurred during the global financial crisis. Amnesty International is concerned that the forced eviction of people from their homes and farmland has become a routine occurrence in China.<sup>15</sup> The Chinese authorities have not made public official statistics or disaggregated data on evictions or homelessness across the country as was recommended by the Committee in its 2005 Concluding Observations; but Amnesty



International estimates that in the past four years, millions of people across the country have been forced from their homes without appropriate legal protection and safeguards.

Chinese authorities fail people at every stage of the eviction process. Numerous examples, documented in detail in Amnesty International's report *Standing Their Ground*,<sup>16</sup> suggest that Chinese citizens are rarely legitimately consulted prior to evictions and that there is little to no transparency over the proposed evictions in most cases. Local authorities routinely neglect to convene public hearings and according to residents and advocates interviewed by Amnesty International for the above-mentioned report, on the rare occasions that the authorities do convene public hearings the meetings are only for show during which 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 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.

Amnesty International has recommended to the government to immediately halt all forced evictions, and to develop and adopt guidelines for evictions based on the Basic Principles on Development-Based Evictions and Displacement of the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context<sup>17</sup> that comply with international standards.

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. Before enacting the regulations, the State Council published two drafts in January and December 2010 and sought broad public feedback on each version. The State Council received more than 100,000 comments, most of which raised concerns over forced evictions and unfair compensation.

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 residents.

In order to extend similar protections to rural residents, the Chinese authorities need to first revise the Land Administration Law. In November 2012, the State Council put forward to the Standing Committee of the National People's Congress proposed draft amendments to the Land Administration Law. The proposed revisions to the law have not been made public but they are expected to provide legal protections against forced eviction and increased compensation to rural residents.

Amnesty International has recommended that the Chinese government explicitly prohibit forced evictions in law and ensure that adequate safeguards and protections are put in place in line with international law and standards, and that they develop and adapt concrete and effective measures to guarantee a minimum degree of security of tenure to the entire population, sufficient at least to protect them from forced evictions and other threats and harassment.

#### **BARRIERS TO ACCESSING EFFECTIVE REMEDIES**

Under Chinese law, property owners have the right to challenge government-requested evictions on grounds that the compensation is unfair, the expropriation of land would be illegal or if the government has violated the law in the expropriation process. However, in practice only a few lawyers are willing to take up forced eviction cases for fear of losing their professional licences or other repercussions. Similarly, courts seldom accept forced eviction cases as China's "adjudication committees" create opportunities for both the local government and Chinese Communist Party to exert undue influence over the handling of individual cases by courts.

People may also petition the government at the same time or as an alternative to pursuing justice through courts. The extra-judicial process of petitioning – a right guaranteed in China's Constitution – is popular for all kinds of grievances in China. Millions of people file petitions with authorities each year. According to official figures, in 2011, almost three quarters of petitions filed by farmers related to land disputes, including evictions. Despite its popularity, petitioning is utterly ineffective – less than 0.2 per cent of petitioners achieve success. Furthermore, there is ample evidence that petitioners experience violence and other ill-treatment at the hands of the local authorities seeking to prevent the petitioners from exposing them to the central leadership or the media.

Amnesty International has recommended the government to ensure that all victims of forced evictions have access to independent and impartial adjudication of their complaints and to an effective remedy.

#### **LAND SALES AND FORCED EVICTIONS**

The pace of forced evictions in China has accelerated in part because local officials have a fiscal incentive to clear land for development, both in urban and rural parts of the country. Because revenue from selling land leases falls outside the formal State budgetary system, all the proceeds from such transactions go towards local government budgets. Currently, land

sales provide the main source of revenue for local governments in China. In addition, many local government agencies operate their own property development companies.

Local governments derive land revenue in two ways. As regulator, local governments can collect taxes and surcharges on land appreciation and from development projects. As proprietor, they can rent out government-built structures and collect revenue from direct land-lease sales.

Amnesty International has recommended to the Chinese government to prioritize and encourage alternative funding streams for local authorities to ensure that they are not dependent on development-based land sales and construction that are resulting in mass forced evictions.

## SECTION 2

# CHINA'S EXTRATERRITORIAL OBLIGATIONS

Under international human rights law the Chinese government has a duty to protect against human rights abuses by third parties, including corporate actors. The Committee has clarified that under this duty states should “take steps to prevent human rights contraventions abroad by corporations which have their main seat under their jurisdiction”.<sup>18</sup> Given the increased role of Chinese foreign investment in a number of countries, it is vital that the Chinese authorities outline what measures they are taking to prevent Chinese corporate actors from having negative impacts on economic, social and cultural rights in other countries.

For more than a decade, Chinese government’s “Going Outward” policy has led to a dramatic increase in the amount of capital the Chinese state and non-state companies are investing abroad. Such investment can lead to significant benefits for the host country; however, it also has important implications for human rights, which China must adequately address in order to fulfil its obligations under international law.

Amnesty International’s research into the extractives sector in the Katanga province of the Democratic Republic of the Congo (DRC)<sup>19</sup> has found evidence of abuses of economic, social and cultural rights linked with Chinese mining companies’ operations in the region. In particular, the investigation found cases of serious abuses of rights of artisanal miners in which Chinese companies were directly involved. The investigation also found that Chinese companies benefitted from violations of the economic, social and cultural rights of artisanal miners in contexts where they knew – or ought reasonably to have known – the abuses were being carried out. These cases constitute abuses of rights under the Covenant, including the right to work and the right to just and favourable conditions of work, and the right to an adequate standard of living.

Amnesty International recommends that China require all Chinese companies to exercise due diligence in their operations, including operations outside of China and including operations carried out within the context of commercial partnerships with other companies. Due diligence involves companies carrying out assessments of the risks their operations pose to human rights and taking appropriate measures to prevent or mitigate such risks. Due diligence is particularly important in business sectors that are known to pose significant risks to human rights, such as extractive industries and commercial operations that involve the appropriation of land.

## SECTION 3

# IMPLEMENTATION OF THE COVENANT IN HONG KONG SAR

### 1. ARTICLES 2, 7 AND 11

Amnesty International is concerned about the failure of the authorities in Hong Kong Special Administrative Region (SAR) to respect, protect and fulfil the economic, social and cultural rights of migrant workers.

Between May and October 2012, Amnesty International interviewed 50 Indonesian migrant domestic workers in Hong Kong.<sup>20</sup> The issues raised in the research are not limited to Indonesians but reflect the problems faced by the wider community of migrant domestic workers irrespective of nationality.

#### DISCRIMINATORY REGULATIONS ON MINIMUM WAGE

Amnesty International is concerned that the authorities in Hong Kong SAR have not followed up on the Committee's 2005 recommendation "to improv[e] the legal protection and benefits for migrant domestic workers so that they are in line with those afforded to local workers, particularly with regard to wages and retirement benefits".

Hong Kong SAR adopted a Minimum Wage Ordinance in 2011. At the time of writing the Minimum Wage is set at HK\$28 (approximately US\$3.60) per hour. Section 7.2 of the Ordinance, however, excludes "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".

Nearly 100 per cent of live-in domestic workers are migrants.<sup>21</sup> Moreover, migrant domestic workers are required under the New Condition of Stay (NCS) of 1987, to reside in the employing household; unlike nationals or other types of workers like on-site care workers, they do not have a choice but to live-in. Therefore, migrant domestic workers are excluded from the Minimum Wage Ordinance. Instead, they fall under a separate and less favourable Minimum Allowable Wage (MAW), which is at the time of writing set at HK\$3,920 (approximately US\$505) per month.

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.

#### PAYMENTS BELOW MINIMUM WAGE

According to Amnesty International's research, payment below the Minimum Allowable Wage is a significant problem among Indonesian migrant domestic workers in Hong Kong.

Underpaying migrant domestic workers is against the law, which carries a maximum fine of HK\$350,000 (approximately US\$45,000) and three years' imprisonment.<sup>22</sup> In reality, however, providing evidence of underpayment by employers is very difficult, as the money is diverted to third parties (e.g. recruitment or placement agencies) or the receipt is falsified making it appear as if the migrant worker is receiving their full salary. As a result, it is extremely difficult for a migrant worker to obtain remedy and back payments.

#### COMPULSORY LIVE-IN, ACCOMMODATION AND FOOD ARRANGEMENTS

Under Hong Kong's immigration regulations, migrant domestic workers must "work and reside in the employer's residence".<sup>23</sup>

Amnesty International is concerned that this measure increases workers' isolation and risk of exploitation and abuse. It can also negatively impact on their freedom of movement, access to information, right to privacy and ability to negotiate for better conditions of work. Mandatory live-in requirements have been highlighted as a key risk factor leading to abuse and are not accepted by the ILO Convention No 189 concerning Decent Work for Domestic Workers (Article 9(a)).

According to a Hong Kong SAR government guidebook, employers are required to provide migrant domestic workers with "suitable accommodation and with reasonable privacy". Sleeping on "make-do beds in the corridor with little privacy or sharing a room with an adult or teenager of the opposite sex" does not meet this criteria.<sup>24</sup> However, Amnesty International's research found that many Indonesian migrant domestic workers had little or no privacy sleeping in the living room, corridor, bathroom, kitchen or utility room.

Employers are also required to provide migrant domestic workers with food or a food allowance of not less than HK\$875 (approximately US\$110) per month.<sup>25</sup> However, interviews with Indonesian migrant domestic workers found that many were not given enough to eat nor were they provided with a food allowance. This meant that they had little choice but to supplement by purchasing food with their own money.

#### FAILURE TO IMPLEMENT REGULATIONS ON RECRUITMENT/AGENCY FEES

Serious indebtedness due to excessive agency fees is common among Indonesian migrant domestic workers. Excessive recruitment or agency fees impact heavily on migrant domestic workers' ability to secure fair working conditions in Hong Kong.

Regulation 10(2) (Part II of Schedule 2, Cap 57A Employment Agency Regulation) of Hong Kong's Employment Ordinance sets a maximum of 10 per cent of a worker's first month salary that a placement (employment) agency can charge for their services.<sup>26</sup> This means that, at the current Minimum Allowable Wage of HK\$3,920 (approximately US\$505), the

maximum fee agencies in Hong Kong can charge is HK\$392 (approximately US\$50).

However, Amnesty International's research has shown that in reality, Indonesian migrant domestic workers normally pay agency fees, through a combination of Indonesian and Hong Kong based agencies, of HK\$21,000 (approximately US\$2,710) over a seven-month deduction period, which is well in excess of Hong Kong statutory limits.<sup>27</sup> These debts often force workers to accept exploitation and abuse in the workplace.

#### FAILURE TO IMPLEMENT REGULATIONS ON WEEKLY REST DAYS

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".<sup>28</sup> A rest day is defined as "a continuous period of not less than 24 hours during which an employee is entitled under Part IV to abstain from working for his employer".<sup>29</sup>

However, Amnesty International's research demonstrates that denial of rest days is a common problem among Indonesian migrant domestic workers. Even for those who are given a rest day, the period is never a full 24 hours. The organization's research also indicates that migrants who are on their first contract are more affected by the denial of rest days. Some migrant interviewees have also stated that this is to ensure that workers do not run away or shirk from their responsibility to repay their agency fees.

#### TWO-WEEK RULE

Under the New Condition of Stay (NCS), 1987, or the Two-Week Rule, migrant domestic workers in Hong Kong must find new employment within two weeks of the expiration or premature termination of their employment contract. Failing that, they must leave Hong Kong.<sup>30</sup>

As research by Amnesty International and other organizations indicate,<sup>31</sup> the inability to find new employment in the two-week time limit leaves migrant domestic workers vulnerable to abuses. Many migrant domestic workers are left with little choice but to remain in abusive and/or exploitative conditions or accept jobs with unfavourable work conditions just to maintain their immigration status. The Two-Week Rule also poses an impediment to migrants' access to redress mechanisms in Hong Kong and explains in part why they readily agree to pay fees to placement agencies for seven months – to ensure that they have another job that they can go to.

Hong Kong authorities maintain that the "two-week rule" is necessary for maintaining effective immigration control and have not reviewed it with a view to eliminating discriminatory practices and abuse arising from it, as recommended by the Committee in its 2005 Concluding Observations.

## ENDNOTES

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<sup>1</sup> See for example “*Ending re-education through labour would be a major advance for rule of law*,” South China Morning Post, 9 January 2013, available at <http://www.scmp.com/comment/insight-opinion/article/1123292/ending-re-education-through-labour-would-be-major-advance>, accessed on 7 March 2013, and “*Re-education to be reformed*,” Global Times, 8 January 2013, available at <http://www.globaltimes.cn/content/754403.shtml>, accessed on 7 March 2013.

<sup>2</sup> Amnesty International interviews in 2010-2012. See also “*刘硕祥老人被关押在河北第一劳教所强迫劳动*,” Chinese Human Rights Defenders, 17 November 2009, available at <http://wq.equalit.ie/?p=18362>, accessed on 20 March 2013, and “*大连访民刘玉玲劳教所怀孕6个月劳教所仍关押劳动*,” Tianwang Human Rights Center, 21 January 2013, available at <http://www.64tianwang.com/bencandy.php?fid-8-id-12226-page-1.htm>, accessed on 20 March 2013.

<sup>3</sup> Amnesty International interviews in 2010-2012. See also “*刘硕祥老人被关押在河北第一劳教所强迫劳动*,” Chinese Human Rights Defenders, 17 November 2009, available at <http://wq.equalit.ie/?p=18362>, accessed on 20 March 2013, and “*大连访民刘玉玲劳教所怀孕6个月劳教所仍关押劳动*,” Tianwang Human Rights Center, 21 January 2013, available at <http://www.64tianwang.com/bencandy.php?fid-8-id-12226-page-1.htm>, accessed on 20 March 2013.

<sup>4</sup> “*Submission for the UN Universal Periodic Review, 17<sup>th</sup> session of the UPR Working Group, October/November 2013*,” Amnesty International, March 2013. See also “*Where Darkness Knows No Limits: Incarceration, ill-Treatment and forced labor as drug rehabilitation in China*,” Human Rights Watch, January 2010, available at <http://www.hrw.org/reports/2010/01/07/where-darkness-knows-no-limits-0>, accessed on 20 March 2013.

<sup>5</sup> See “*Abolishing Re-education Through Labour and other forms of punitive administrative detention: An opportunity to bring the law in line with the International Covenant on Civil and Political Rights*,” Amnesty International, Index: ASA 17/016/2006, May 2006, for Amnesty International’s analysis on the 2006 debate on the reform or abolition of Re-education Through Labour, available at <http://www.amnesty.org/en/library/info/ASA17/016/2006>.

<sup>6</sup> Wang Gongyi, former director of a research institute under the Ministry of Justice, has for example been quoted by the Financial Times to have said that there were just about 50,000 people in Re-education Through Labour at the end of 2012 and that the figure was expected to be down to just around 20,000 by the end of 2013, see “*Chinese leadership to reform gulags*,” Financial Times, 18 February 2013, available at <http://www.ft.com/cms/s/0/c490a674-733d-11e2-9e92-00144feabdc0.html#axzz2MxiwcVJb>, accessed on 8 March 2013. Elsewhere, Wang Gongyi has been quoted as putting the current figure of Re-education Through Labour inmates at 60,000, see for example “*Re-education to be reformed*,” Global Times, 8 January 2013, available at <http://www.globaltimes.cn/content/754403.shtml>, accessed on 7 March 2013.



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<sup>7</sup> “广东今年或适时停止劳教,”Nanfang Daily, 29 January 2013, available at [http://epaper.nfdaily.cn/html/2013-01/29/content\\_7163481.htm](http://epaper.nfdaily.cn/html/2013-01/29/content_7163481.htm), accessed on 8 March 2013.

<sup>8</sup> “劳教改革:法律层面改革“正在研究”试点具体内容一直未公布,”Xiaoxiang Morning News, 22 November 2012, available at [http://epaper.xxcb.cn/xxcba/html/2012-11/22/content\\_2664947.htm](http://epaper.xxcb.cn/xxcba/html/2012-11/22/content_2664947.htm), accessed 7 March 2013. The article has been translated into English as “Legal Reform “Being Studied,” Pilot Details Still Not Released” by Dui Hua. The translation is available at <http://www.duihuahjournal.org/2012/12/rtl-reporters-shed-some-light-on-reform.html>, accessed on 7 March 2013.

<sup>9</sup> “China promises ‘to stop sending people to labour camp’,” The Telegraph, 7 January 2013, available at <http://www.telegraph.co.uk/news/worldnews/asia/china/9784844/China-promises-to-stop-sending-people-to-labour-camp.html>, accessed on 4 March 2013.

<sup>10</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights - People’s Republic of China (including Hong Kong and Macao), E/C.12/1/Add.107, 13 May 2005, para 51, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/C.12/1/Add.107](http://www.un.org/ga/search/view_doc.asp?symbol=E/C.12/1/Add.107).

<sup>11</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to China, May 2006, E/CN.4/2006/6/Add.6, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/CN.4/2006/6/Add.6](http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/2006/6/Add.6). See also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E.Méndez: Follow-up to the recommendations made by the Special Rapporteur visits to China, Denmark, Equatorial Guinea, Georgia, Greece, Indonesia, Jamaica, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, Papua New Guinea, the Republic of Moldova, Spain, Sri Lanka, Togo, Uruguay and Uzbekistan, March 2012, A/HRC/19/61/Add.3, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/19/61/Add.3](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/19/61/Add.3).

<sup>12</sup> See for example “China eyes residence permits to replace divisive hukou system,” Reuters, 7 March 2013, available at <http://www.reuters.com/article/2013/03/06/us-china-parliament-urbanisation-idUSBRE92509020130306>, accessed 7 March 2013.

<sup>13</sup> For example in Shanghai, each year people who meet that year’s criteria can apply for permanent Shanghai household registration status. The criteria can be for example a certain academic qualification or specific technical skill. In addition, the applicants must meet certain set criteria such as no criminal record.

<sup>14</sup> See “Internal Migrants: Discrimination and abuse – The human cost of an economic ‘miracle’,” Amnesty International, Index: ASA 17/008/2007, March 2007, available at <http://www.amnesty.org/en/library/info/ASA17/008/2007/en>.

<sup>15</sup> See “Standing Their Ground – Thousands face violent eviction in China,” Amnesty International, Index: ASA 17/001/2012, October 2012, available at <http://www.amnesty.org/en/library/info/ASA17/001/2012/en>. Amnesty International’s research into forced evictions in China does not cover Tibet Autonomous Region and Xinjiang Uighur Autonomous Region. Forced evictions have been reported in both these regions, and they may be characterized by discrimination against ethnic minorities, but the Chinese government controls access to these areas even more tightly than it does to other parts of the country,

making independent research and verifying information extremely difficult.

<sup>16</sup> “*Standing Their Ground – Thousands face violent eviction in China*,” Amnesty International, Index: ASA 17/001/2012, October 2012, available at <http://www.amnesty.org/en/library/info/ASA17/001/2012/en>.

<sup>17</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18, 5 February 2007, Annex 1 – Basic principles and guidelines on development-based evictions and displacement, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/4/18](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/4/18).

<sup>18</sup> Committee on Economic, Social and Cultural Rights: *Statement on the obligations of State Parties regarding the corporate sector and economic, social and cultural rights*, May 2011, E/C.12/2011/1, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/C.12/2011/1](http://www.un.org/ga/search/view_doc.asp?symbol=E/C.12/2011/1).

<sup>19</sup> “*Profits and Loss: Mining and human rights in Katanga, Democratic Republic of the Congo*,” Amnesty International, to be published in June 2013.

<sup>20</sup> Indonesians make up almost half of the approximately 300,000 migrant domestic workforce in Hong Kong.

<sup>21</sup> Legislative Council Brief: Minimum Wage Brief, File Ref.: LD SMW 1-55/1/4(C), June 2009.

<sup>22</sup> In addition, “The employer would also be committing serious offences of making false representation to an Immigration Officer and conspiracy to defraud. Any person convicted of making false representation is liable to a maximum fine of \$150,000 and imprisonment for 14 years. Any person convicted of the offence of conspiracy to defraud is liable to imprisonment for 14 years.” See: Labour Department, *Practical Guide for Employment of Foreign Domestic Helpers: What foreign domestic helpers and their employers should know*, September 2012, available at: <http://www.labour.gov.hk/eng/public/wcp/FDHguide.pdf>, accessed 25 February 2013.

<sup>23</sup> New Condition of Stay (NCS), 1987. 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: Hong Kong SAR 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 9 February 2013.

<sup>24</sup> Hong Kong SAR 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 9 February 2013.

<sup>25</sup> As this was introduced in September 2012, the food allowance entitlement of all the migrant domestic workers interviewed for this report was less. Previously, the food allowance was HK\$775 (US\$100, since June 2011) and HK\$750 (US\$97, since July 2008). See also: Hong Kong SAR Government, “Minimum Allowable Wage and food allowance for foreign domestic helpers to increase”, 19 September 2012, available at: <http://www.info.gov.hk/gia/general/201209/19/P201209190326.htm>, accessed 10 February 2013.

- <sup>26</sup> “The maximum commission which may be received by an employment agency shall be-
- (a) from each person applying to the employment agency for employment, work or contract or hire of his services, an amount not exceeding a sum equal to ten per cent of the first month's wages received by such person after he has been placed in employment by the employment agency.” See: Regulation 10(2) (Part II of Schedule 2), Cap 57A Employment Agency Regulation, Employment Ordinance of Hong Kong SAR, available at: [http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/38DB2DF314A22BB482575EE0034A5D2/\\$FILE/CAP\\_57A\\_e\\_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/38DB2DF314A22BB482575EE0034A5D2/$FILE/CAP_57A_e_b5.pdf), accessed 25 February 2013.
- <sup>27</sup> Under Indonesia's Manpower and Transmigration Ministerial Decree No.98/2012, the fees are also higher than the legal maximum of HK\$13,436 set by the Indonesian government for domestic workers employed in Hong Kong.
- <sup>28</sup> Section 17 Grant of rest day, Cap 57A Employment Agency Regulation, Employment Ordinance of Hong Kong SAR, available at: [http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/277C0DAA6FCB2973482575EE00348F4E/\\$FILE/CAP\\_57\\_e\\_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/277C0DAA6FCB2973482575EE00348F4E/$FILE/CAP_57_e_b5.pdf), accessed 9 February 2013.
- <sup>29</sup> Section 2 Interpretation, Cap 57A Employment Agency Regulation, Employment Ordinance of Hong Kong SAR, available at: [http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/277C0DAA6FCB2973482575EE00348F4E/\\$FILE/CAP\\_57\\_e\\_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/277C0DAA6FCB2973482575EE00348F4E/$FILE/CAP_57_e_b5.pdf), accessed 9 February 2013.
- <sup>30</sup> Many go to nearby Macau Special Administrative Region to wait for new employment but this trip, although less expensive than returning to their country of origin, is still costly, forcing migrant domestic workers into greater debt.
- <sup>31</sup> AMCB-HK and MRMW, “Submission to the Committee for the Elimination of All Forms of Racial Discrimination (CERD)”, 2009, p1 and 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, para35.

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