

Protection or exclusion: national and international social protection policy on migrant domestic workers

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Abstract

Through mapping the transnational movement and social rights entitlement of migrant domestic workers in Hong Kong and sending countries, the paper examines how the local policies and international mechanisms intertwined in jeopardizing migrant domestic workers' access to social protection. With the focus on citizenship rights entitlement in international social protection frameworks, the lack of binding international and regional mechanisms on migrant workers' social protection, and the embedded gender and racial discrimination, migrant domestic workers' access to social protection in both sending and receiving countries is largely hindered. The paper concludes with suggestions on how to strengthen migrant workers' social protection.

Introduction

Labour migration is never a new phenomenon under globalization; however the discussion on the social protection of migrant workers is relatively new. International rights discourse on migrant workers have been dominated by the protection of labour rights, it was not until the late 1990s that the social protection of migrant workers started to gain the attention of the international society.

Go beyond the 'worker' identity of the migrant workers which is uphold by the labour rights discourse; social protection for migrant workers aims to protection the well-being and dignity of the migrant worker as an individual in the society. As the basis to protection against economic risks and vulnerability, social protection for migrant workers seeks to restore the social agenda on national, regional and international level through covering everyone (Migrant Forum in Asia 2013). By recognizing the rights to social protection of migrant workers; national institutions should incorporate social security as protection provision for migrant workers to realize their rights, and migrant workers, similar to local workers, could claims these rights from the institutions. In order to do so, national laws should enforce international labour and social protection standards to ensure local and migrant workers enjoy the same rights protection; provide information to the migrant workers on their rights protection; and provide mechanisms for the involvement of migrant workers (ILO 2006).

However, in contrast, migrant receiving countries have often been reluctant in providing social protection for migrant workers. Protection given by the receiving countries to migrant workers is often stringent. Citizenship status in the receiving country and the transferability of welfare benefits between the sending and receiving countries are crucial determinants on migrants' social rights (Dwyer and Papadimitriou 2006; Ciobanu and Bolzman 2015). Migrant workers often have fewer protections when compared with national workers, especially in the receiving country, due to the restricting welfare provision by territoriality and nationality (Hirose, Nikac and Tamagno 2011). And low-skilled migrant workers are in general lack of social protection and MDWs are identified as the most vulnerable among all (Migrant Forum in Asia 2013; ILO 2016).

Since the late 1970s, Hong Kong has received migrant domestic workers (MDWs) from the Philippines and later from the Indonesia and other South and Southeast Asian Countries. Basic social and labour rights provisions have been stipulated in the social and legal systems. However, large discrepancies are found between the local workers and MDWs. Based on the transnational labour movement of MDWs in Hong Kong from the Philippines and the Indonesia, this paper aims to examine the applicability and feasibility of the international framework on the rights of social protection for MDWs.

Transnational labour movement in Hong Kong

With the Hong Kong government opening up its immigration policy in the 1970s to allow migrant domestic workers to work in Hong Kong, female migrant workers from the Philippines and later from Indonesia came to work in the territory. Starting from the 1970s, female MDWs mainly from South East Asian countries came to Hong Kong to work. In 2015, there are 340,380 MDWs in Hong Kong; with 181,861 Filipinos and 150,239 Indonesians, accounting to more than 4% of the whole population (HKSAR Census and Statistics Department 2015). The Filipinos arriving Hong Kong in the 1980s, followed by the Indonesians in the 1990s (Constable 2007). MDWs from other South and Southeast Asian countries, such as India and Nepal, are also increasing in number for the past 10 years.

Nationality	Sex	2008	2009	2010	2011	2012	2013	2014	2015
Philippines	F	122	126	133	140	152	160	168	
	M	720	513	761	766	007	589	706	177 619
Indonesia	F	3 223	3 362	3 552	3 787	3 962	4 039	4 073	4 242
	M	123	130	140	148	149	148	149	
Thailand	F	245	335	811	013	072	856	632	150 008
	M	96	113	130	140	164	178	205	231
Others	F	3 787	3 821	3 651	3 283	2 958	2 678	2 614	2 532
	M	33	37	44	40	32	32	36	28
Total	F	2 745	2 856	3 005	3 181	3 454	3 862	4 612	4 929
	M	748	741	727	751	746	754	772	791
Total	F	252	263	281	295	307	315	325	
	M	497	525	228	243	491	985	564	335 088

M	4 100	4 253	4 453	4 718	4 904	5 003	5 086	5 292
	256	267	285	299	312	320	330	340
Total	597	778	681	961	395	988	650	380

Table 1: MDW population according to nationality and sex by HKSAR Census and Statistics Department

Female MDWs dominate the MDW population, accounting to more than 98%. The marital status of both Indonesian and Filipino MDWs is similar; more than half of them are married but not living with their spouses and families. However the education background is very different between these two groups; more than 60% of the Filipino MDWs have obtained upper secondary or above education level, whereas, more than 60% of Indonesian MDWs are of lower secondary education level or below. Although more than 80% of MDWs aged between 20-40 years old, the number of older MDWs is increasing. With the earliest batch of MDWs in Hong Kong arriving in Hong Kong in the late 1970s, many of them if remained as MDWs would have reached the age of 60 or above. According to the census report, the number of MDWs aged 50 or above was around 5000 in 2001 and increased to around 12000 in 2011 (HKSAR Census and Statistics Department 2011).

Condition of stay

The rights and obligations of MDWs are set up by the HKSAR government in the Standard Employment Contract (ID 407), the Employment Ordinance and the Immigration Ordinance. According to the Section 2(4) of the Immigration Ordinance, MDWs are excluded from the entitlement of permanent residency even after 7 years of stay in Hong Kong. Besides the eligibility for permanent residency, the compulsory “live-in policy” and the “2-week rule” are specific requirements applicable solely to MDWs, but not other migrant workers. These conditions of stay have been controversy and have been criticized for subjecting MDWs to be highly vulnerable.

Under Clause 3 of the Standard Employment Contract, MDWs are required to live together with the employer in the same premise. Such requirement cause MDWs to be highly regulated by the employer due to the proximity, including the space of living, working hours and even subjected to different forms of abuses by the employer. Study conducted on 1000 MDWs found that the average working hours for MDWs in Hong Kong is 11.9 hours per day, and two third of the respondents reported that they have been working more than 12 hours per day (Justice Centre Hong Kong 2016). Another study conducted by the Equal Opportunities Commission on sexual harassment and discrimination in employment on MDWs found that at least 6.5% of the interviewed MDWs have experienced different forms of sexual abuses by their employer in the premise (Equal Opportunities Commission 2014). This echoed another study did in 2013 which further found that 58% of MDWs have experienced verbal abuses and 18% experienced physical abuses (Mission for Migrant Workers 2013). The “two-week rule” is the alternative name for the New Conditions of Stay policy due to the two weeks restriction of stay after contract termination. As implied in their visa condition, under the New Condition of Stay policy, an MDW would only be allowed to stay in Hong Kong for at most two weeks after the contract completion or termination (HKSAR Immigration Department, 2015).

Arbitrary social protection

The conditions of stay of MDWs largely affect MDWs' rights and obligations, and account to the differences in the rights protection between MDWs and local workers. The largest differences between local workers and MDWs would be the level of minimum wage. The minimum wage level for MDWs is stipulated in the Standard Employment Contract. According to the adjustment made in September 2016, the current rate of minimum wage is HK\$4310 per month. The employer also need to provide suitable accommodation and with reasonable privacy, free food (or food allowance in lieu, which is HK\$1,037 per month at present) and free passage from the helper's home country to Hong Kong and return to the home country on termination or expiry of the contract. For the local workers, the statutory minimum wage is set at HK\$32.5 per hour effective from 1 May 2015. Due to the long working hours of MDWs with an average on 11.9 hours per day, the minimum wage for MDWs is much lower than local workers'.

Beside the level of minimum wage, different forms of social protection for MDWs are comparatively more depending on the employers than the protection local workers receive, such as the level and quality of medical treatments. And the protection offer by the employer are not only on work-related provisions, but also intrude the private sphere of the MDWs' lives, such as food consumption and living conditions, have to be relied on the employer due to the live-in policy.

International mechanisms on social protection for migrant domestic workers and local relevance

International framework on the protection of migrant workers has been documented as early as in the Declaration of Philadelphia in 1944 (ILO 2009); however it has long been ignored until the 1990s. With vivid human rights violations and labour exploitations being uncovered under contemporary and diversified labour migration, more international organizations, including the United Nations and the International labour Organization, started to put the rights of migrant workers under the spotlight of labour and social protections discussions.

Specific frameworks have been established to address the rights of migrant workers with a strong focus on social protection. The ILO 2011 Social Security for Social Justice and a Fair Globalization report defines social security as to cover the protection for the lack of work-related income (or insufficient income) caused sickness, disability, maternity, employment injury, unemployment, old age, or death of family member; access to health care; insufficient family support; and against poverty and social exclusion (ILO 2011a). Social security as a major provision of social protection has been addressed in various instruments, including the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted in 1990, ILO Migration for Employment Convention (1949), ILO Migrant Workers (Supplementary Provisions) Convention (1975), the ILO Multilateral Framework on Labour Migration (2006) and the ILO Domestic Workers Convention (2011).

Furthermore, in order to expand state's obligation and the scope of protection to go beyond social security, the UN and ILO have further clarified or reinterpreted other existing frameworks on social protection and labour rights to include the protection for migrant workers. Stated in the

Clause 6 of the Social Protection Floors Recommendation 2012, “[s]ubject to their existing international obligations, Members should provide the basic social security guarantees referred to in this Recommendation to at least all residents and children, as defined in national legal framework”; not only concentrates on financial access to health and social security, the Recommendation includes social services, health care, education, water and sanitation, housing and food should be guaranteed to migrants and their children (ILO 2011b).

Not only listing out the protection provisions, the rights-based and participatory approach of the international frameworks stressed on the importance of stakeholders’ involvement in the formulation of the national social protection legislations and policies. The Social Protection Floors Recommendation 2012 stated that the formulation and implementation of the national social security strategies should be “based on national consultations through effective social dialogue and social participation”. Participation of migrant workers in the policy process is exceptionally important. Due to their migration status, migrant workers have always been excluded in any policymaking process, which subsequently the policies could not cater their specific needs. Thus migrant workers should fully participate in the development, negotiations, implementation and monitoring of social protection and social security agreements (Migrant Forum in Asia 2013).

Apart from migrant workers’ involvement in the policymaking process, international frameworks specifically on the social protection of migrant workers differ from general social protection frameworks with the stress on equality of treatments and non-discrimination between national and migrant workers as the key principles and the extensive mechanisms on formulation, implementation and monitoring. The formulation process and the protection provisions are not only aiming at providing financial assistance for the migrant workers and their families; but, ultimately, to promote social integration and inclusion, and to eliminate discrimination and combat racism against migrant workers (ILO 2006). As such, the framework on the rights of social protection for migrant domestic workers is the intersection of social security Conventions and Recommendations, migrant workers’ Conventions and Recommendations and domestic workers’ Conventions and Recommendations, creating a framework that emphasise characteristics on migration, gender, and work (ILO 2013, 2016). To implement such framework, ILO has called the states to ratify and the apply relevant Conventions, establish bilateral/multilateral agreements between sending and receiving countries on social protection, ensure equality treatment between national and non-national workers, establish the national social protection floors with an inclusion of migrant workers, and to explore community-based mechanisms which include migrant workers in the policy making and implementing social protection for migrant workers (ILO 2015).

Implementation on national level

As major migrant sending countries, the export of migrant worker has been the major income source for the Philippines and Indonesia. The personal remittances contribute to 1.1% of the GDP for Indonesia and up to 10.2% of the GDP for the Philippines in 2015. Recognizing the significant of remittance migrant workers contributed to their family and society and economic security of the country; the Indonesian and the Filipino governments have strengthened their national status and policy to protect the rights of migrant workers. Both countries have ratified

the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Philippines has also ratified the ILO Domestic Workers Convention, 2011 (C189). And starting in 1990s, national policies on social protections have been established for migrant domestic workers and their family, though the scopes of protection are different between the two sending countries.

The execution of Flor Contemplacion, a Filipino migrant domestic worker, in Singapore has caused huge outcry in the Philippines in 1995. In response to the outcry, the Filipino government has endorsed the completion of the Magna Carta of Overseas Filipino Workers (RA No. 8042). The enactment of the law caused a complete change on the government's policy directive on Filipino migrant workers, from focusing on economic impact to the protection of migrant workers. The amended version of the Migrant Worker and Overseas Filipino Act of 1995 was further put forward in 2010 to provide a better legal protection for migrant workers, especially for those who work in the employer's household (Setyawati 2013). Several national agencies govern and regulate overseas labour migration, including the Department of Labour and Employment, the Overseas Workers Welfare Administration and the Department of Foreign Affairs. The Social Security System (SSS) covers all private sector employees, and on voluntary basis also covers domestic employees (Pension & Development Network 2016). The Flexi-Fund programme has been set up exclusively for Filipino migrant workers. In addition to the voluntary programme of the SSS, the Flexi-fund is a provident fund scheme which allows flexible payment terms and easy withdrawal of savings. Any amount contributed in excess of the maximum contribution to the regular SSS programme goes to the worker's individual account. So when the migrant worker returns to the Philippines, he/she will have certain level of protection with the higher than market interest rate, and will have the option to withdraw any amount from the accumulated balance (Migrant Forum in Asia 2011).

Indonesian migrant workers are crowned as 'Economic Heroes' of the nation due to the remittances they send back for the development of the country. Starting from 1998, the Indonesian government took a more proactive approach in the protection of Indonesian migrant workers. The National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI) was established together with the enactment of Law No. 39/2004 to regulate the placement and protection of migrant workers (Setyawati 2013). The office provides financial literacy training for returning migrants, and a specific social insurance is provided for migrant workers which migrant workers could claim if they encounter contract termination and any forms of abusive treatments experienced during their work.

Can international framework be complied in the case of Hong Kong?

Although framework on social protection for MDWs seems to exist, MDWs are still considered to be highly vulnerable for the lack of social protection. With the ultimate goal of social security protection is to achieve social inclusion, the ILO Social Protection Floors Recommendation 2012 has stated that states should apply the principles of universality, equality and non-discrimination, diversity of systems, and transparency and accountable to the public. However, social protection for MDWs extends the social protection framework, but to incorporate elements from the migrant workers instruments and the domestic workers instruments which emphasize transnationality and gender in the formulation of social protection for MDWs.

The major challenges for such extended framework are to ensure social protection's coverage, portability and qualification condition are extendible from both the sending and receiving countries for MDWs. However, in reality, social protection system in a country is highly bounded by territoriality, nationality, and limited cooperation among states. The territoriality and nationality are the most fundamental challenges on social protection for migrants as states usually have high preferences to provide social protection for its own citizens (ILO 2013, 2015). For MDWs and other irregular migrant workers, it is even more difficult to obtain social protection than other migrant workers due to the irregularity of their contract and employment period are usually shorter than the requirement for permanent stay. However, due to their mobility, sending countries' social protection system usually could not cover them as they are not working within the territory. The lack of coordination in a form of bilateral and multilateral states agreements limit the transferability of social protection; as a result only formal workers working within the territory could be protected. Another major challenge would be the access of information by the migrant workers. Very often, migrant workers are lack of knowledge about their rights and do not have sufficient knowledge about the policy and protection systems render by the receiving states (ILO 2013, 2015).

International organizations have heavily rely on the ratification of international treaties on social security, migrant workers and domestic workers in order to ensure the social protection of MDWs and to guard against these challenges. However, the status of full ratification for all these areas of treaties by the states is rare. Comparing with the Philippines and Indonesia, Hong Kong has ratified 50 ILO treaties, which are more than 19 ratified ILO treaties of Indonesia and 37 of the Philippines. However, none of those ratified by Hong Kong falls to the migrant workers and domestic workers provisions; whereas the Philippines and Indonesia have covered these two provisions including the ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The discrepancy on the binding effect of the international treaties on the sending and receiving countries caused difficulties in extending social protections of MDWs in Hong Kong and limiting their protections when back to home countries.

Portability - Lack of regional mechanism, bilateral and multilateral agreements

Transnational migration has a large impact on redefining the concept of welfare. As the ultimate goal of social protection is for social development and building social inclusion, social protection has a strong correlation with citizenship for nation building (Ciobanu and Bolzman 2015). However, acknowledging the contributions of migrant workers make to the receiving countries but without settling in the receiving countries, transferability of welfare between sending and receiving countries started to be the one of the main features in the migrant workers' social protection framework.

Portability denotes the possibility of transfer of entitled social security and/or social protection savings the migrant workers contributed during their stay in the migrant receiving countries back to their country of origin (Migrant Forum in Asia 2013). The ILO Multilateral Framework on Labour Migration suggests that all states should consider 'entering into bilateral, regional or multilateral agreements to provide social security coverage and benefits, as well as portability of

social security entitlements, to regular migrant workers and, as appropriate, to migrant workers in an irregular situation' (ILO 2006, 18).

Holzmann, Koettl and Chernetsky (2005, 7) classified social protection status for migrant workers into four regimes according to the portability of fund:

Regime I (Agreement): Access to social security benefits and advanced portability regulated by bilateral agreements between the migrant sending and receiving country.

Regime II (National): Access to social services and security benefits in the absence of bilateral agreements and any coordination between the migrant sending and receiving countries.

Regime III (No access): Legal migrants do not have access to social security benefits.

Regime IV (Informal): Undocumented legal migrants who participate in the informal sector of the host country are excluded from social protection even they are regarded as facing the greatest challenge.

According to the classification of the four regimes, Hong Kong, as a host for MDWs, could not be straightly fall into any specific regime, rather it has the elements crossing regime II and III. Though MDWs are covered with social protection as stated in the Standard Employment Contract which includes medical allowance and end of contract leave and travel allowances; these protections fall to the responsibility of the employers rather than the government. However, dedicated social services for MDWs could be found, which are contracted to the social service organizations by the government. These services include mental help services, language support services, hotline services on employment and immigration enquiries, and other supportive services for access to information and social engagement.

These service provisions were initiated based on the non-Chinese racial identity of the MDWs under the anti-racial discrimination framework, rather than under the migrant work social protection framework. Under the anti-racial discrimination framework of the HKSAR government, 'discrimination, harassment and vilification on the ground of race unlawful, serves to ensure that people of different races are treated equally in Hong Kong' (HKSAR Constitutional and Mainland Affairs Bureau 2017). Stated by the then Permanent Secretary for Home Affairs, Carrie Lam, MDWs are included in the anti-racial discrimination protection provisions:

'On domestic helpers, I should emphasise that the exception applies only to appointment. Once appointed, the domestic helper is protected from racial discrimination in other aspects of employment. He or she naturally also enjoy safeguards in other protected areas of activities such as provision of goods or services. It is therefore misleading to allege that we are denying foreign domestic helpers protection from racial discrimination under the Bill.' (HKSAR Government 29 November 2006)

Not only services for MDWs are not based on the migrant worker social protection framework; the lack of regional mechanism overseeing transnational migration further limits the possibility of establishing bilateral/multilateral agreement on social protection. Regional governance bodies have played crucial role in facilitating bilateral/multilateral collaboration between migrant send and receiving countries within or outside the region. Setting bilateral and multilateral agreements

between sending and receiving countries to ensure the portability of social protection has been suggested as the best way to ensure the transferability and portability of funds under transnationalism (Holzmann, Koettl and Chernetsky 2005; Holzmann and Koettl 2010; Migrant Forum in Asia 2013). Taking the example of the European Union (EU), due to the dense movement across countries within the EU, coordination of social security systems has been put in place to facilitate the movement of citizens. EU citizenship and social rights are limited to those who hold national citizenship of the Member States, “European citizenship [...] engages with national welfare systems and requires the Member States to deliver social rights to qualifying EU nationals who migrate” (Ackers and Dwyer 2004, 452). Specifically on the provision of retirement protection, insurance record is preserved for persons within the EU in all countries. When a person has been insured, s/he could transfer the pension to any EU member states or the other countries that have signed agreement (Ciobanu and Bolzman 2015).

Though there is no specific regulation on migrant workers social protection under ASEAN, the Task Force on ASEAN Migrant Workers (TFAMW) has proposal a model on ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers that highly emphasised the importance of bilateral and multilateral social security agreements that cover migrant workers and their families (Migrant Forum in Asia 2011). Malaysia and Indonesia have signed MoUs covering short-term contract workers and Indonesian MDWs to be protected under the Foreign Workers Compensation Scheme, which stipulated the obligations of the employers in paying compensation for the workers upon injury or death (Hall 2012). However, there is a lack of strong regulatory and monitoring mechanisms in overseeing labour movements and the rights of migrant workers in the receiving countries in East Asia. Migrant workers are highly excluded in East Asian migrant receiving countries (Stalker, 2008; van Ginneken 2013).

Coverage - Access to protection provisions

As mentioned above, social protection coverage for MDWs is much limited than local workers, and highly depending on the contribution of the employer. These limited coverage stems from the differences between the labour condition and the condition of stay which differentiate local workers and MDWs and the subsequent entitlement towards social protection. However, although there are strategies and programmes on social protection for migrant workers in the sending countries, the coverage and accessibility of these protections are still questionable.

Pension scheme in Indonesia is highly work-based under provident fund and insurance systems. The schemes only cover workers from the formal sectors with establishments of more than 10 employees or a monthly payroll of at least 1 million rupiah. Employees in informal sectors can enrol in the schemes voluntarily, but only cover the death benefits (Pension & Development Network 2016). The schemes do not include Indonesian MDWs working overseas. The National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI) was established in 2006 to regulate and oversee MDW issues. The BNP2TKI provides financial literacy training for returning migrants. MDWs are also cover by another social insurance where MDWs need to pay in the pre-departure stage. The social insurance provides MDWs with claims upon their return due to contract termination and any forms of abusive treatments experienced during their work. Yet the MDWs need to make their claims within one month upon their return

(Human Rights Watch 2004). Yet a study conducted by IOM found that the enforcement of the scheme is extremely weak as the scheme is administered through a centralized system which lack coordination with the regional governments, and most of the Indonesian MDWs lack information about the protection and do not know they could make claims through the social insurance scheme (IOM 2010).

The social protection in the Philippines is slightly better than Indonesia. The Social Security System (SSS) covers all private sector employees, and on voluntary basis for domestic employees and all self-employed persons up to age 60 earning at least P1,000 a month earning (Pension & Development Network 2016). Filipino MDWs are not covered by SSS automatically but can enrol on voluntary basis under the self-employed category. The limitation in its coverage for Filipino MDWs was mainly because of the portability problem and a lack of arrangement with the migrant receiving countries (Hall 2012). To enhance the coverage of SSS for Filipino MDWs, the Philippine Overseas Employment Agency, Department of Labour and Employment, the Overseas Workers Welfare Administration and the Department of Foreign Affairs closely collaborate to regulate and oversee the welfare of Filipino MDWs abroad. More than 50 bilateral agreements have been signed between the Filipino government and the government of the migrant receiving countries. Under the bilateral agreement, employers in the receiving countries need to contribute to the SSS. However, not only Hong Kong has not signed the bilateral agreement; the signed countries often poorly implement the agreement due to the lack of governance, as a result, Filipino MDWs often unable to receive their benefits (Hall 2012).

Social participation - Involvement of MDWs in policymaking

Social participation and public engagement have been set as one of the major important elements in the formulation of social protection policy. Clause 13 of the Social Protection Floors Recommendation 2012 stated that the formulation and implementation of the social protection strategies should be based on 'national consultation through social dialogue and social participation'. And because of migrant workers' specific situation and needs, it is quintessential to have migrant workers' participation in the policy formulation. Such participation should be ensured in both sending and receiving countries; and not only on specific policy issue, but to ensure migrant workers could have full participation in all forms of social and political discussions. Thus labour organizations in a form of unions and migrant rights groups should be allowed to negotiate, implement and monitor any social protection policy (Migrant Forum in Asia 2013).

However, migrant workers are often absent from these consultation and policy formulation process. MDWs have confined citizenship status in Hong Kong, and such restriction limits MDWs' political rights. Due to their lack of permanent residency under the immigration policy, MDWs have limited political rights, and scope for political activity is highly constrained. Not only are they not eligible to vote in elections, they are excluded from governmental policies and structures. Although constituting the largest part of the non-Chinese population in Hong Kong, MDWs are not considered targeted ethnic minority groups for social integration under the integration policy, due to their migration status. Such exclusion further alienates them from government policy consultations which target the residents in Hong Kong. Also, MDWs are not eligible for appointment by the government to a government advisory or consultative body. This

makes it difficult for MDW concerns to be noticed and discussed within government structures (Baig, 2016).

The exclusion of MDWs in the government's public consultation exercises is indeed caused by the Hong Kong government to deliberately differentiate their status from local workers. The formulation of labour and social protection policies, if not specifically targeting MDWs, would have excluded MDWs. The Statutory Minimum Wage has come in to force in 2011 and the wage level has been under periodical review through public consultation. However, no MDW groups/organizations and unions have been included in the consultations (Minimum Wage Commission 2014, 2016). The government spokesperson claimed that such exclusion was due to the government's consideration on MDWs' distinct live-in work pattern and they have been receiving food, medical care and accommodation benefits (SCMP 10 September 2014). Similar exclusion could be found in the retirement protection consultation in early 2016 (HKSAR Labour and Welfare Bureau 2017).

MDWs are only included in government consultation exercises on issues directly associated with their migrant identity, such as the review on minimum wage for MDWs and services for ethnic minorities. However, MDWs reflected that meetings with the governments are often being held on weekdays which they could hardly attend due to their work (Baig 2016). And thus MDWs have often been represented by unionists and other advocates.

Equality and non-discrimination – Gender equality and life autonomy at stake

The important essence of all the international frameworks on social protection for migrant workers is equality and non-discrimination. The concept of equality and non-discrimination goes beyond equal treatments between local and migrant workers, but eradicate different forms of discrimination to achieve social inclusion of migrant workers. Social Protection Floors Recommendation, 2012 recognizes the importance of social security as a tool to prevent and reduce poverty, inequality, social exclusion and social insecurity, and to promote equal opportunity and gender equality.

However, the current social protections entitled to MDWs in Hong Kong and the sending countries not only have a limited protection provisions, but further affects MDWs' freedom and autonomy. Social and political exclusions as mentioned above could cause limited access to information by MDWs. The lack of information and the exclusion from social and political discussions, especially those on social protection, could hinder the expansion of social protection provisions to cover MDWs. And also, the lack of information could constraint the negotiation power of the MDWs with their employers (ILO 2016). Under the live-in policy where MDWs' treatments highly depend on the employer, the lack in negotiation power could adversely affect MDWs to claim rights as their necessities, including food and shelter, are all held up the employer. The dependency towards the employers has highly constrained MDWs' freedom and autonomy and subjected MDWs to high level of gender discrimination, physical and psychological abuses and sexual exploitation, prejudice and stereotyping towards their labouring as low status and not valuable (Equal Opportunities Commission 2014; Islam and Cojocar 2015).

Gender also plays a role in determining the family responsibilities of migrant workers which affects their ability to pursue personal savings. Studies show that migrant women send home higher proportion of their salary as remittance than men (Spitzer and Torres 2008). Social norms and expectations in certain countries emphasize intergenerational transfers, and women are expected to take care of the family and the younger generations. The care-taker role increases the burden on all women, and migrant women in particular (Bauer and Sinning 2006). Migrant rights activists in Hong Kong echoed with the above claim. An interviewee from an international organization for domestic workers mentioned during the interview that many MDWs have sent their salary back to their home countries to build houses for their families and pay their children's education fee, not many of them could have savings (Interview with conducted on 12 March 2016). Another researcher from an international human rights organization also said, 'People in Hong Kong often think migrant domestic workers are having very high salary in Hong Kong when compared with their third-world home country ... but they don't know things are actually getting more expensive back there and they keep paying for their families ... how much they can use in Hong Kong?' (Interview was conducted on 30 October 2015). The lower level of education attainment and financial literacy of migrant women also put them in a more vulnerable position. A social worker from an organization working for MDWs in Hong Kong mentioned that MDWs from rural areas gain less access to information about their rights due to illiteracy. Two other migrant rights activists in the Philippines and Indonesia echoed this urban-rural discrepancy (Interviews were conducted on 23 and 24 September 2016). The social protection systems in the Philippines and Indonesia could not address these gender-based challenges when MDWs return to their home countries as the systems in both countries are highly voluntary-based and non-universal.

Conclusion and suggestions

Though there is no single international framework on social protection for MDWs, the combination of three crucial international frameworks on social security, migrant workers and domestic workers could acknowledge the specific situation of MDWs and reflect the specific considerations of MDWs' social protection. Through analysing the comparability of the international frameworks, the paper sought to understand the existing situation of social protection for MDWs. For MDWs in Hong Kong, as due to visa restriction on their application for permanent residency, transnationality between Hong Kong and their home countries is the predominant feature for MDWs. International framework on the rights of migrant workers emphasises portability of social protection under bilateral/multilateral agreement between the migrant sending and receiving countries. However, due to the lack of regional mechanism and without ratifying migrant workers related international treatments; no agreement and collaboration were being put in place for MDWs' social protection. On the other hand, the coverage of social protection for MDWs is limited and largely voluntary; the Hong Kong, Indonesian and Filipino governments take a passion role on providing and regulating the social protection of MDWs. The limited coverage further instigates social exclusion and discrimination towards MDWs. MDWs are trapped in the vicious cycle of social protection and social and political exclusions; where MDWs are social and politically excluded, their ability to reflect their needs towards social protection to the authorities is then restricted.

International instruments on governing states' obligations rest highly on the state's status of ratification. Since ratification on international treaties is voluntary for the states, especially when there is no other existing mechanism, such as regional governing mechanism, regulating state's obligation. With the lack of international and regional governance on the transnational movement of MDWs between Hong Kong and the Philippines and Indonesia; besides calling for the states to ratify equivalent international treaties, the paper attempts to offer a few suggestions to strengthen the social protection for MDWs:

Establish bilateral/multilateral agreement – to ensure portability and transferability of social protection funds for MDWs between sending and receiving countries. The assurance of portability could further enforce the Hong Kong government to expand the social protection provisions, such as retirement protection, to the MDWs as the fund would not be negated after the MDWs leave Hong Kong.

Against discrimination – the governments should eradicate all forms of discrimination against MDWs, particularly gender and racial discriminations, so as to ensure MDWs could access to information, services and resources equivalent to the level obtained by local workers.

Social inclusion – the governments should incorporate MDWs in social protection discussions as the same status of local workers so that MDWs could reflect their specific needs to the policymakers.

Bottom-up social protection policy framework – instead of the governments design the protection provisions for the MDWs, protections should be constructed with full participation of the MDWs so as to construct a social protection system that could truly reflect the specific situations and needs of MDWs.

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