

**Abused Hands:
The Plight of (Southeast Asian) Foreign Domestic Helpers in Hong Kong**

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Word Count: 8579

FOREWORD

During the writing stage of this essay, China imposed severe national security laws in Hong Kong (on the 30th of June 2020). Whilst not directly related to the thesis of this piece of writing, it deserves at least some recognition: to provide an essay detailing the experiences of some of those that exist in Hong Kong, without acknowledging the threat of these laws feels like a gross negligence on the author's part. The new national security laws have the potential to compromise the rights of all of those that exist in Hong Kong. Such laws threaten to deconstruct any ounce of democracy and freedoms that existed in Hong Kong prior to the enactment. It goes without saying, that these laws do have the ability to severely undermine any protections that are in place for foreign domestic helpers. Similarly, any hope that the suggestions this essay makes could be implemented over time (pertaining to overcoming the exploitation and abuse of such workers) quickly diminishes. Increasing CCP presence in Hong Kong, as well as a fusing of the systems, likely prevents Hong Kong properly seizing the opportunity for reform.

INTRODUCTION

British newspapers reported heavily on the political conflict which consumed Hong Kong, a special administrative region of China, in 2019 and 2020. Unsurprisingly, many of the British people did not know what to make of Hong Kong's dichotomised politics: their view of Hong Kong, in political terms, was somewhat fragmented, at best. For some, the media attention was simply a repeat of the political upheaval in 2014 regarding the Umbrella Revolution. Perhaps the only solid view people had of Hong Kong was of its wealth. It is perceived as an island bursting with commercial success. One needs only to take a look at the gargantuan IFC building to understand why this belief is held, especially as Hong Kong has consistently rated as having one of the highest degrees of economic freedom in the world. But beneath this appearance of thriving pecuniary success lies an untold story of human exploitation, often covered up by Hong Kong's perception as a democracy and Asia's World City,

Over 391,600 foreign domestic helpers (FDHs) are employed to work in Hong Kong¹; almost all of them are Southeast Asian women (namely: Filipino, Indonesian and Thai). Provided with questionable contracts consisting of dubious terms, the tasks these women are required to perform is varied. However, the general consensus is that they work more hours in a day than they do not in order to provide for their (wealthy) employers for a salary which amounts to far less than minimum wage. The economic exploitation of these women is just the tipping point of the abuse they suffer. A high percentage of FDHs suffer physical and verbal abuse at the hands of their employers, leaving some with broken limbs and bruised faces. With nowhere to turn (given Hong Kong's 'live-in rule'), many of these women are forced to simply accept the abuse they endure or risk almost immediate deportation to their country of origin.

This thesis seeks to explore the systemic issues which contribute and allow for the abuse of FDHs to continue in Hong Kong. The rate at which FDHs suffer suggests that these are not isolated incidents, but symptomatic of wider societal and systemic issues which exist in Hong Kong. Therefore, a deeper and wider analysis is required in order to properly understand (and ultimately, seek to overcome) the abuse of FDHs. Three lenses provide for a useful system of analysis: gender, race and class. Each of these perspectives highlight how Hong Kong (and many other countries which adopt a similar employment system) is bound to facilitate the abuse of FDHs. Dismantling these structures and beliefs ought to allow for a reduction in the abuse endured by FDHs, especially when combined with better legal approaches. The ultimate

¹ Legco.gov.hk. 2020. *Policy Protecting The Rights Of Foreign Domestic Helpers In Selected Places*. [online] Available at: <<https://www.legco.gov.hk/research-publications/english/1819rt09-policy-protecting-the-rights-of-foreign-domestic-helpers-in-selected-places-20190726-e.pdf>> [Accessed 1 July 2020].

recommendations provided by this essay are that there are a handful of legal and structural barriers which indirectly contribute to the abuse of FDHs, through the structures they perpetuate. These barriers must be deconstructed, but require support from social and political communities in order to recognise the role of the FDH in Hong Kong society.

FOREIGN DOMESTIC HELPERS IN HONG KONG

(I) BACKGROUND

It is estimated that 391,600 foreign domestic helpers (FDHs) work in Hong Kong, many of which are Filipino women. During the administration of Ferdinand Marcos (1965-1981) in the Philippines, labour migration was viewed as a solution to the economic issues which plagued the country, and was subsequently encouraged in order to support the flailing economy (both through reducing unemployment and remittances of salaries)². In 1974 the Labour Code of the Philippines was decreed, during Marcos' rule as dictator: the Code sought to formalise and govern the rules relating to the exportation of foreign service work. Since then, the Philippines have continued to benefit from the exportation of (predominantly female) labour, with 861 private recruitment agencies being licensed by the Philippine Overseas Employment Agency (POEA)³. The increase in Filipino migrant labour coincided with the growth of Hong Kong's economy, facilitating the upward trend in FDHs as the demand grew. Other than Filipino women, Indonesian women make up a large percentage of FDHs.

As of May 2020, the wage (termed the Minimum Allowed Wage) for FDHs is \$4,630 (as well as a \$1,121 food allowance, if taken in lieu of food) per month. Although the wage would appear more than sufficient, when converted into GBP, this sits at £488.28 per month⁴. It is worth noting that several testimonies suggest that a high percentage of FDHs do not even receive the Minimum Allowed Wage⁵. In comparison, the minimum wage across Hong Kong, for those in contracts of general employment which FDHs are excluded from, is \$34.50 per hour, bringing the monthly wage to the equivalent of \$5,520 (assuming 40 hours of paid work per week, although FDHs work *much* more than this). These figures highlight a distinct difference. Part of the reason why FDHs are paid substantially less is due to the 'live-in' rule. Clause 3 of the Standard Employment Contract and Terms of Employment for Helpers requires FDHs to "work and reside in the employer's residence"⁶. The live-in rule is peculiar, for it only pertains to FDHs, in particular; the general employment contract has no such requirement. As will be explored later, this requirement is a major factor which contributes to the abuse of FDHs. However, it is worth noting that 60% of FDHs live in conditions which are hardly adequate⁷. Of the 57% that have their 'own room', 33% are provided with a room which serves multiple functions, varying from a storage area to a room for pets. The same report carried out a focus group discussion with FDHs, in which one FDH said the following: "I am forced to accept [inadequate living space] because there is no space in my employer's house". As briefly mentioned above, the live-in rule also facilitates extended working hours.

² de Guzman, O., 2003. *Overseas Filipino Workers, Labor Circulation In Southeast Asia, And The (Mis)Management Of Overseas Migration Programs*. [online] Kyoto Review. Available at: <https://web.archive.org/web/20070504051343/http://kyotoreview.cseas.kyoto-u.ac.jp/issue/issue3/article_281.html> [Accessed 1 July 2020].

³ Philippine Overseas Employment Agency. 2020. *Status Of Recruitment Agencies*. [online] Available at: <<http://www.poea.gov.ph/cgi-bin/agList.asp?mode=actLB>> [Accessed 1 July 2020].

⁴ Currency conversion correct as of May 2020. Generally, 1 HKD is equivalent to 0.10 GBP.

⁵ Amnesty International, 2014. SUBMISSION TO THE LEGISLATIVE COUNCIL'S PANEL ON MANPOWER – 'POLICIES RELATING TO FOREIGN DOMESTIC HELPERS AND REGULATION OF EMPLOYMENT AGENCIES'. [online] Available at: <<https://www.refworld.org/pdfid/530c6c2a4.pdf>> [Accessed 1 July 2020].

⁶ Immd.gov.hk. 2020. *Standard Employment Contract And Terms Of Employment For Helpers | Immigration Department*. [online] Available at: <<https://www.immd.gov.hk/eng/forms/forms/fdhcontractterms.html#footnote>> [Accessed 1 July 2020].

⁷ Mission for Migrant Workers, 2017. *Pictures From The Inside*. [online] p.27. Available at: <https://issuu.com/migrantshk/docs/pictures_from_the_inside_a4> [Accessed 1 July 2020].

The live-in rule is just one example of the restrictive employment conditions which FDHs are subject to. A further condition which demands attention stems from the standard two-year employment contract, which requires FDHs to return to their place of origin for home leave in between commencing new contracts. Chief Justice Ma suggests that the requirement for home leave is because FDHs are “expected to maintain genuine links in their home country”⁸. Therefore, by requiring FDHs to return home for a minimum period of seven days every two years, it is thought that they will still identify with their country of origin. As Ma highlights, this reflects the governmental policy of allowing FDHs into Hong Kong for a particular purpose; namely, to fill labour shortages. In the eyes of policy, FDHs are not people, but mere bodies which fill a specific purpose. In addition, when a standard employment contract does end, FDHs are required to find new work (with a new household) within two weeks or return home: this is colloquially known as the ‘two-week rule’. Imposed by the New Conditions of Stay (1987), the two-week rule is a mechanism which forces FDHs to continue working with their current household or return home; neither of which may particularly appeal (or be feasible) to FDHs.

(II) ABUSE

It is estimated that 20.5% of foreign domestic helpers experience physical abuse, at the hands of their employers. This figure rises to 34.4% for verbal abuse⁹. The type of abuse suffered by FDHs varies greatly, but there are notorious cases which highlight the unspeakable violence which some FDHs are subject to. In order to highlight the severity of abuse endured by FDHs, I will consider the case of Erwiana Sulistyaningsih.

Erwiana Sulistyaningsih

Erwiana Sulistyaningsih’s case gained international traction in 2014, following a string of abuse by her employer. Sulistyaningsih came to Hong Kong in 2013 through an Indonesian agency, PT Graha Ayu Karsa. She was immediately employed by Law Wun Tang, who would go on to severely abuse Sulistyaningsih whilst she worked for her in Kowloon. During the course of her employment, Sulistyaningsih was deprived of water and beaten with various household items - mops, rulers, hangers - whilst her head was repeatedly slammed against the walls of her employer’s home. The abuse was so severe that Sulistyaningsih was left unable to walk. Finally, Law Wun Tang gave Sulistyaningsih a few dollars and told her to go back to Indonesia. It was at the airport that Sulistyaningsih was found and taken to hospital. Sulistyaningsih’s injuries are shocking without context, but the knowledge that the injuries were sustained at the hands of an abusive employer make them all the more devastating. In response to Sulistyaningsih’s case and the outrage at the obvious abuse of FDHs, Andy Tsang (Commissioner of Police) declared that there are only “three or four cases [of abuse towards FDHs] every month”¹⁰. As much as the Hong Kong government tried to suggest that Sulistyaningsih’s case was a rarity, this clearly is not true: Sulistyaningsih’s abuse was the product of systemic issues that exist in Hong Kong.

Sulistyaningsih’s case received major international attention, which ultimately contributed to her success in court. Law Wun Tang was sentenced to six years in prison, following convictions for assault, grievous bodily harm and criminal intimidation. The trial judge, Amanda Woodcock, commented how Wun Tang had “contempt [which] was reserved for those she saw as beneath her”¹¹. This demonstrates the complex nature of abuse against FDHs, who are systematically undervalued. However, Wun Tang was released after serving

⁸ *Vallejos and Domingo v Commissioner of Registration* (2013) 16 HKCFAR 45

⁹ Cheung, J., Tsoi, V., Wong, K. and Chung, R., 2019. Abuse and depression among Filipino foreign domestic helpers. A cross-sectional survey in Hong Kong. *Public Health*, 166, pp.121-127.

¹⁰ 政府新聞處 Information Services Department, HKSARG, 2014. *No Surge In Helper Abuse: Police Chief* (12.2.2014). [video] Available at: <<https://www.youtube.com/watch?v=jq8KX853p2I>> [Accessed 5 July 2020].

¹¹ The Guardian. 2015. *Employer In Hong Kong Maid Abuse Case Is Sentenced To Six Years' Jail*. [online] Available at: <<https://www.theguardian.com/world/2015/feb/27/hong-kong-court-sentences-woman-to-6-years-in-prison-for-abusing-indonesian-maid-0>> [Accessed 8 July 2020].

only four years in Lo Wu Correctional Institution¹². This is unsatisfactory in itself; Hong Kong had the potential to properly denounce the abuse of FDHs with a case that had international traction. However, it failed.

The abuse suffered by Sulistyaningsih raises the significant issue of the perpetrator systems involved in the abuse against FDHs. Contrary to popular perceptions of abusers, Sulistyaningsih's employer (Law Wun Tang) was female. This exposes the complex relationships that exists within the household. The relationship between the FDH and employer is further complicated by the East-West divide in employers. Western employers tend to treat their FDHs better than Eastern employers. The reason for this is hardly clear, but Cheung and Mok suggest that differential treatment is grounded in "Chinese and Western employers [having] different conceptions of the... maid as a human being"¹³. As will be discussed in the following sections, race, class and gender relations are complicated by the employer themselves. Chinese, or Eastern, employers are much more integrated into Hong Kong society, and thus internalise and perpetuate some of the issues that are to be discussed. On the contrary, Westerners (expatriates) that choose to live in Hong Kong have the luxury of exempting themselves from the political and social community. Therefore, it is easier to see the FDH by strictly Western standards.

Having said this, the very *best* employers are often Chinese. The reasons for this are twofold: Chinese employers are likely to live in Hong Kong for more extended periods of time (whereas Westerners are more likely to live in Hong Kong for the limited duration of their employment), as well as Confucian norms. Bell and Piper present the view that Confucian ethics are able to guide the treatment of an FDH through the relatively flexible concept of family: the Chinese employer that adopts such norms are able to absorb the FDH into their family unit, and subsequently treat them as one of their own (albeit, she will be expected to work)¹⁴. Integrating into the family structure affords the FDH the greatest security within their employment, bridging the gap between respect for the employee and full assimilation. This analysis demonstrates that the relationship between the employer and FDH is one shrouded in complexity; no general statement can be provided for the conditions in which FDHs and their employers operate. However, understanding that there is such diversity leaves us with an even greater opportunity for a percentage of women to experience horrific abuse at the hands of their employers. As briefly described above, Eastern employers are statistically more likely to exist within the perpetrator system, yet this is by no means definitive: abusers often exist where we least expect.

It is, of course, important to recognise that Sulistyaningsih's experience represents one of thousands of cases of abuse against FDHs. Whilst her experience may be considered close to torture, and one of the worst cases of abuse, we cannot ignore the everyday abuse endured by FDHs across Hong Kong. For example, Elysa Surabaya, an Indonesian FDH, said the following, when recalling the abuse she suffered: "[s]he made me sleep with the dog on the floor, and gave me expired food. She made me take care of three children and work non-stop. She would ask me to do something whenever she saw me taking a break. Worst of all, she would talk nasty in my face, saying things like 'Indonesians are stupid'."¹⁵ Just these two cases alone illustrate the severity of abuse endured by FDHs.

CONTRIBUTING FACTORS TO THE ABUSE OF FOREIGN DOMESTIC HELPERS

In order to assess the factors which contribute to the abuse of FDHs, I will engage in discussion through three separate perspectives (gender, race and capitalism) as well as directing attention towards specific governmental policies which expose FDHs to the risk of abuse.

¹² Lau, C., 2018. *Hong Kong Woman Who Tortured Domestic Helper Gets Out Of Prison Early*. [online] South China Morning Post. Available at: <<https://www.scmp.com/news/hong-kong/law-and-crime/article/2174279/woman-who-tortured-indonesian-domestic-helper-erwiana>> [Accessed 5 July 2020].

¹³ Cheung, T., 1998. How Filipina Maids Are Treated in Hong Kong—A Comparison Between Chinese and Western Employers. *Social Justice Research*, 11(2), p.191.

¹⁴ Bell, D. and Piper, N., 2005. Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore. In: W. Kymlicka and B. He, ed., *Multiculturalism in Asia*. Oxford University Press.

¹⁵ Zhang, A., 2020. *After A Lifetime Of Challenges, Domestic Worker Becomes Champion Of The Oppressed*. [online] Hong Kong Free Press HKFP. Available at: <<https://hongkongfp.com/2016/07/31/lifetime-challenges-domestic-worker-becomes-champion-oppressed/>> [Accessed 2 July 2020].

(I) Gender: Reinforcing the Subjugation of Women

The role that gender plays, in contributing to the abuse of FDHs, is almost indisputable. Almost all of FDHs are female - 99%, to be exact. Such a statistic makes it difficult to not see the abuse of FDHs as a gender-based issue, as opposed to a more general one. It ought to be recognised, however, that the promotion of women's rights in Hong Kong is built upon this foundation of inequality. The presence of an FDH in middle class households facilitates the woman within a family to go out to work, which adds an estimated \$12.6 billion to the economy¹⁶. Whilst beneficial for these women, who are given the freedom and independence to seek work in Hong Kong, it comes at the expense of continued patriarchal and gender-based abuse against FDHs.

Becoming an FDH presents women with an opportunity to become independent and transcend traditional boundaries associated with femininity, at least in their country of origin: they become the 'breadwinner', often sending a large percentage of their salary back to their family. This presents them with a certain degree of power, and rightfully so. However, such power is arguably undermined in the labour-receiving country. In their new country, FDHs are forced to readopt notions of femininity which they had previously shed. The jobs they perform in Hong Kong - cooking, cleaning, dressing the home and performing chores - are associated with patriarchal stereotypes of gender. From an employer's perspective, these tasks have the ability to reduce the liberated woman into the mould of traditional gender hierarchies. The consequence of this is that the FDH is perceived as not only powerless as a result of their gender, but also weak (and therefore unable to protect themselves against abuse). Of course, the abuse cycle of an FDH is complex - the perpetrator, as in Erwiana Sulistyarningsih's case, could be the matriarch of a household. Nonetheless, the author is of the view that gender can still play a significant role. If we were to visualise the household hierarchy of a family and FDH, the father would typically sit at the top (as a male), followed by the women: the mother and then the FDH. Gender issues set FDHs at a disadvantageous hierarchy, of which they sit at the bottom of.

It is also difficult to separate gender from the sexual abuse endured by FDHs. An Equal Opportunities Commission survey found that 6.5% of the FDHs interviewed were sexually harassed by their employer¹⁷. Various policies contribute to this figure, including the live-in requirement which forces these women to live in their employer's home. But this figure is also symptomatic of how FDHs are bound to traditional gender roles, forcing them to be perceived as women who ought to do anything for their employer. The household represents a microcosm of the experiences of these women in society, and such a pressured environment combined with the employer-employee power dynamics is bound to create unsafe situations for countless women.

(II) Race: Hong Kong as an Ethnocracy

As previously described, the vast majority of FDHs are Southeast Asian women, originating from countries such as the Philippines and Indonesia. It is hardly unsurprising, then, that race is a factor which underpins the systematic abuse of FDHs: the FDH population is essentially comprised of groups of women which sit at the bottom of a crystallised racial hierarchy. To allow these women to exist at the bottom of a hierarchy predisposes them to the potential for abuse in the home. They are seen as unimportant, and the power imbalance which exists (for employers naturally tend to sit above these women in the racial hierarchy) combined with the intimacy of the home, make abuse somewhat unfortunately predictable.

Hong Kong's relationship with race is hardly simple, as it is inherently cast upon a background of colonialism and exterior power structures. Nonetheless, race is undoubtedly a factor which contributes to the abuse of FDHs in Hong Kong. This is due to the way in which Hong Kong exists as an ethnocracy. An ethnocracy is a type of political structure which allows for power to be vested in a particular racial group, which subsequently allows for their interests to be furthered by the use of state apparatus. In Barry Sautman's words, "[e]thnocracy's *raison d'être* is to secure the key instruments of state power for the

¹⁶ Leung, H., 2020. *Here's How Much Domestic Workers Add To Hong Kong's Economy*. [online] Time. Available at: <<https://time.com/5543633/migrant-domestic-workers-hong-kong-economy/>> [Accessed 1 July 2020].

¹⁷ Siu, P., 2014. *Rights Group Says 6.5Pc Of Foreign Domestic Helpers Sexually Harassed*. [online] South China Morning Post. Available at: <<https://www.scmp.com/news/hong-kong/article/1650221/rights-group-says-65pc-foreign-domestic-helpers-sexually-harassed>> [Accessed 4 July 2020].

dominant ethnic collectivity”¹⁸. A classic example of an institutionalised ethnocracy would be the South African apartheid. Whilst not as clearcut as this example, it is clear that Hong Kong operates within the realms of an ethnocratic regime, which unduly favours certain ethnic groups (read Chinese and Westerners) and disregards other ethnic groups (namely, Southeast Asians). Sautman characterises Hong Kong as a ‘semi-ethnocracy’; it is described as *semi* ethnocratic because the racial hierarchy is not totalised and rigidly enforced (the non-dominant group may occupy limited influence) but is an omnipresent fact of Hong Kong society. Sautman’s analysis of Hong Kong puts the Hong Kong Chinese at the apex of this hierarchy (which is further divided into Cantonese and Shanghainese speakers, with the latter dominating elite institutions). Mainland Migrants, East Asians and Westerners sit on the second tier, leaving Southeast Asians (of which the majority are FDHs) at its base.

Discussing structures which promote ethnic stratification, especially in the fairly discrete way that Hong Kong does so, presents us with a significant analytical difficulty: unlike South Africa’s apartheid laws, which explicitly sought to institutionalise racial hierarchy, Hong Kong does not formally divide racial groups. Rather, the existing pattern of having Southeast Asian people remain at the base of a hierarchy is arguably coincidental with race having little to no influence. Whilst it can be conceded that Hong Kong is hardly comparable to the apartheid (although its approach to resolving race discrimination is hardly adequate, *cf* Racial Discrimination Ordinance), racial bias pervades in Hong Kong society. Such bias not only prevents the mobility of Southeast Asian people, but augments the existing issues they suffer. It is as a result of these biases, which crystallise the political and social structures, that race plays a major factor in contributing to the abuse and discrimination of FDHs in Hong Kong.

Unsurprisingly, the wider social bias against southeast Asian people does not stop at the front door; it follows the FDH into their home, making their existence a microcosm of the racial hierarchy which confronts them. The feminist phrase, ‘the personal is political’, certainly applies. Chen Shu-ju describes how “[t]heir inferior status is in fact shaped by the established racial hierarchy of the society in the labor-receiving countries [Hong Kong] and materialised within the family constructed upon this social hierarchy”¹⁹. Shu-ju’s idea reinforces the view that the FDH cannot escape the bias that discriminates against them. These rigid hierarchies automatically place the FDH on a lower level than their employer (particularly when that employer sits at the top of and benefits from the apex of such an ingrained hierarchy), making abuse all the more likely. Returning to some of the ideas expressed earlier in this essay, Chinese employers are thought to be more likely to abuse FDHs. As Cheung and Mok expressed²⁰, this is likely due to different conceptions of the FDH. Where the Chinese employer is wholly integrated into a racial hierarchy, which sees them sitting at the top (particularly likely if they have the excess income to fund a helper), they are more likely to internalise some of the social and political structures which are built upon racial inferiorisation. In contrast, the Western expat can choose to absolve themselves of these structures, continuing to exist in their own Western world, despite benefiting from the hierarchy which does place them almost at the apex.

For the most part, Hong Kong does not directly legitimise these racial biases that disproportionately affect FDHs. However, policies that the Hong Kong government implement towards FDHs indirectly uphold these structures and do nothing to weaken the racial hierarchy (of course, the majority of the government benefit from ethnic stratification). Two particular examples are noteworthy: the standard two-year employment contract and the two-week rule. Under the standard employment contract, which lasts two years, an FDH is required to return to their country of origin (for a minimum of seven days) prior to the renewal of their contract. As described above, the two-week rule requires FDHs to return to their country of origin if they are unable to find new employment within two weeks (which is, in practice, impossible due to the length of time needed to negotiate new contracts). Although most criticism is directed at the latter policy, both policies “[exacerbate] the precariousness of their stay”²¹. As Lai describes, policies such as these reinforce “belonging and ties” to the country of origin. It may, of course, be put forward that these policies are not to

¹⁸ Sautman, B., 2004. Hong Kong as a semi-ethnocracy. In: N. Pun and A. Ku, ed., *Remaking Citizenship in Hong Kong: Community, Nation and Global City*. Francis Group, pp.103-124.

¹⁹ Cheng, S., 1996. Migrant Women Domestic Workers in Hong Kong, Singapore and Taiwan: A Comparative Analysis. *Asian and Pacific Migration Journal*, 5(1), p.143.

²⁰ Bell, D. and Piper, N., 2005. Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore.

²¹ Lai, M., 2011. The present of forgetting: diasporic identity and migrant domestic workers in Hong Kong. *Social Identities*, 17(4), p.569.

the detriment of FDHs; many do not plan on making Hong Kong their forever home, rather their employment is a useful stepping stone to bettering their life in their country of origin. This argument is truly a valid one to make; it does, indeed, represent the majority of FDHs. However, these policies should not be dismissed, for they indirectly contribute to the racial stratification that ultimately is factor in the abuse of these women. Therefore whilst the policies may be practicable (for they do allow for the maintaining of ties to the home country), the negative effects cannot be ignored. The standard length of the employment contract, the requirement to go back to the country of origin and the two-week rule combine to reinforce the 'otherness' of FDHs. Any ethnic group which exists as an 'other' is bound to be ground down to the base of any hierarchy, including race. It follows that Hong Kong policies exacerbate existing racial issues, which contribute to the abuse of FDHs.

(III) Capitalism and Class: Hong Kong's Plutocracy

Hong Kong possesses one of the freest economies in the world. Whilst its perception as a rich island is true, the same cannot be said for the poorest of Hong Kong's society. The wealth gap that plagues Hong Kong is immense: the richest Hong Kong households earn 44 times that of the poorest households²². Further, the Gini co-efficient (an index which measures wealth disparity, with 1 being the highest) had risen to 0.539 in 2017 - a figure which is the highest it has been in 45 years²³. It is argued that Hong Kong operates as somewhat of a plutocracy, facilitating the growth of financial tycoons whilst simultaneously degrading those that exist on the lowest rungs of society. Jacob describes Hong Kong as "rigged to ensure that... all men were created equal, but businessmen were infinitely more equal than others"²⁴. The structure of Hong Kong's society means that this is often at the peril of FDHs, who represent some of the least paid workers in Hong Kong (especially when the excessive working hours are factored in to their salary).

In analysing these contributing factors, it is difficult to ignore the latent relationship between gender, race and class (particularly the latter two). The wealth and class disparity in Hong Kong serves to reinforce ethnic stratification; these divisions allow the underlying race issues in Hong Kong to materialise in a more tangible way. By pushing Southeast Asian FDHs to the bottom of the wealth hierarchy, primarily due to the low wages and inaccessibility to Hong Kong society, Hong Kong is bound to uphold ethnic (and gender, to a degree) discrimination in a way that FDHs are associated with poverty and the underclass. When we consider the preceding analysis, offered by Jacob, it is difficult to perceive a situation in which the position of FDHs (as an economic group) would get better. When policy is dictated by a group of tycoons - valued for their wealth, gender and ethnicity - it remains in their best interests to only perpetuate this stratification, as opposed to destroying it. Such a mindset comes at the detriment of the thousands of FDHs working in Hong Kong, who are systematically demeaned due to their class, race and gender.

(IV) Government Policies

Government policies represent a unique, but significant, relationship between the three preceding factors (gender, race and class) as well as legislative policy. As briefly outlined above, Hong Kong does not formally legislate against FDHs. In fact, Hong Kong does have some of the better protections for FDHs compared to other labour-receiving countries. Nonetheless, government policies contribute to the abuse of FDHs in various ways. Naturally, government policy cannot contribute to the abuse of FDHs in the sense of rising up and becoming a perpetrator; however, government policy can serve to reinforce and amplify existing structures and issues which contribute to other factors which encourage high rates of abuse. For clarity, each notable policy will be assessed individually.

Wages and Working Hours

²² Yau, C., 2020. *Wealth Gap In Hong Kong Hits Record High*. [online] Business Insider. Available at: <<https://www.businessinsider.com/hong-kong-wealth-gap-problem-2017-6?r=US&IR=T>> [Accessed 1 July 2020].

²³ Oxfam Hong Kong, 2018. *Hong Kong Inequality Report*. [online] Available at: <https://www.oxfam.org.hk/tc/f/news_and_publication/16372/Oxfam_inequality%20report_Eng_FINAL.pdf> [Accessed 4 July 2020].

²⁴ Jacob, R., 2000. Hong Kong Voters Cautious of Odds Stacked against the Will of the People. *FT*, p.10.

The shocking unregulated working hours of FDHs can be considered a form of abuse in itself, as well as factoring into the wider scheme of abuse endured by FDHs. Unlike most forms of employment, FDHs are not subject to any regulation in the hours they work. Although some employers may be generous and flexible in the hours they expect from the FDHs, relying on good faith naturally leads to exploitation. An Amnesty International report found that some FDHs would work upwards of 17 hours a day²⁵, whilst 70% of FDHs working at least 13 hours a day²⁶. In the case of Erwiana Sulistyaningsih, she was forced to work for 21 hours in a single day. These figures have generated great contention in Hong Kong, with the lack of regulation surrounding working hours being a particular action point for FDHs and trade unions. Given the employment context of the FDH, with them all currently required to live in the household, regulation is naturally very difficult. However, with no firm attempt at encouraging good employment practice, the current government stance (which appears indifferent to the perils of FDHs, especially concerning overworking) is indirectly reinforcing complex notions of subservience and, to a degree, modern slavery.

Despite some of the issues Hong Kong has, it does provide a Minimum Allowed Wage for FDHs. However, the level at which this wage is set is hardly reason for celebration. As outlined, the Minimum Allowed Wage is \$4,630 per month. This is, of course, much lower than the standard minimum wage of \$34.50 per hour. Although it is easy to criticise the Minimum Allowed Wage, it is important to balance the need for the FDH to be properly compensated for their work with various other factors such as ensuring the salary Minimum Allowed Wage is ‘low’ enough that it is affordable for middle class households, for example. Were the Wage to increase substantially, the demand for migrant labour would decrease, leaving FDHs without any employment prospects in Hong Kong. It should be noted that the level at which the Minimum Allowed Wage is set does not directly contribute to the abuse of FDHs, having the level set so low further reinforces some of the existing issues that affect FDHs, such as dehumanisation and contribution to the class struggle. Naturally, both of these factors then materialise in the abuse of FDHs. This exposes the complex relationship that exists between society and government policy, and the way in which government policy can indirectly support systematic issues which culminate in the abuse of FDHs.

Right to Abode and Citizenship

The right to abode and citizenship represents a unique policy, which arguably contributes to the abuse of FDHs. Article 24(2)(4) of the Hong Kong Basic Law (HKBL) provides for the acquisition of permanent residency status for those who are not of Chinese nationality, but have lived and worked in Hong Kong for a period not less than seven years. However, section 2(4)(a)(vi) of the Immigration Ordinance excludes FDHs from being “ordinarily resident”, preventing FDHs accruing the period of residency required for the acquisition of permanent residency status. Ordinary employment contracts, however, do allow the individual to be “ordinarily resident”. Depriving FDHs of permanent residency, despite ordinary employees being able to access it, forces FDHs to remain legally second-class. Being unable to access permanent residency, FDHs are prevented from properly enjoying the rights and obligations captured under the third chapter of HKBL (although Article 41 does allow those other than Hong Kong residents enjoy some rights, according to other law). The third chapter guarantees rights such as equality (Article 25), freedom of speech and expression (Article 27) and the right to social welfare (Article 36). Importantly, a lot of the political civil rights are captured by chapter three, too: the right to vote and stand in elections forms part of Article 26.

The Final Court of Appeal decision in *Vallejos and Domingo v Commissioner of Registration* (2013) 16 HKCFAR 45 held that excluding FDHs from being “ordinarily resident”, and therefore preventing from gaining the right to abode, was legal. Chief Justice Ma rejected the proposition that “ordinarily resident” ought to be given its natural meaning, but had to be considered in light of its factual position. Therefore, Chief Justice Ma held that the position of an FDH was factually different from the ordinary worker (drawing from sociological perspectives on the purpose of FDHs) so much so that their residency was qualitatively different from what is traditionally ordinary. Therefore, s2(4)(a)(vi) was consistent with HKBL. The decision in *Vallejos*, as it is commonly referred to, cannot be considered an independent factor that contributes to the abuse of FDHs; withholding the right to abode does not make employers more likely to commit acts of abuse

²⁵ Amnesty International, 2014. SUBMISSION TO THE LEGISLATIVE COUNCIL’S PANEL ON MANPOWER – ‘POLICIES RELATING TO FOREIGN DOMESTIC HELPERS AND REGULATION OF EMPLOYMENT AGENCIES’

²⁶ Lok-kei, S., 2019. *Most Of Hong Kong’S Domestic Helpers Work Over 13 Hours A Day*. [online] South China Morning Post. Available at: <<https://www.scmp.com/news/hong-kong/society/article/2185976/more-70-cent-foreign-domestic-helpers-hong-kong-work-over-13>> [Accessed 3 July 2020].

against their FDH. However, what the decision does indicate is the direction of government and judicial policy (*cf* the politicisation of the Hong Kong judiciary). The decision effectively relegates FDHs to second-class citizenship; they are forced to accept a degree of transience in their existence in Hong Kong. Whilst the right to abode is not a key goal of FDHs, with most intending to return to their home country (although not all, demonstrated by the fact that Vallejos and Domingo sought to do challenge the legality of s2(4)(a)(vi)), the decision still serves to reinforce structures which contribute to the abuse of these women.

Live-In Rule

Like working hours, the live-in rule is one of the most contentious policies endured by FDHs. It is of the author's opinion that the live-in rule is the most significant government policy in exposing FDHs to the risk of abuse; a view echoed by FDHs in Hong Kong. Erwiana Sulistyaningsih said the following in regard to the live-in rule: “[t]he live-in rule means there is no way to talk about your problems. It enforces a practice of slavery... No one will ever know what happens to a helper inside the home. Even if the employer does have a camera, the privacy ordinance means they don't have to show it to anyone – even in court”²⁷. As outlined above, a large percentage of living conditions for FDHs are hardly satisfactory. By requiring FDHs to live in the same house as their employer, the Hong Kong government is undoubtedly failing to protect these women from abuse.

Locked in a home with the employer at all hours of the day, except for the weekly rest day (if the employer allows this to be taken), FDHs are unable to escape. Not only can they be called upon at any hour of the day, which is frequently reported, but it prevents the FDH removing themselves from the household hierarchy. The factors described above place FDHs at a specific level within their household, oftentimes a very low one. The live-in rule prevents these women temporarily excusing themselves from this hierarchy, which ultimately reinforces their position within the household, contributing to their abuse. Of course, the live-in rule does facilitate the formation of Confucian-style families, especially in Chinese households. However, this represents a small minority of cases. For the most part, the live-in rule serves no proper benefit to the woman.

The response from the government and the courts, in relation to demands made by FDHs to abolish the live-in rule, exposes the lack of understanding from those benefitting from the current systems which degrade FDHs. The legality of the live-in rule was challenged by Lubiano Nancy Almorin in 2018, reaching the High Court. Lubiano argued this on four key points: the requirement was *ultra vires* of the Director of Immigration's power²⁸, the requirement heightens the risk of breaching FDHs' rights, the requirement is discriminatory and irrational. The legal issues, then, were whether the Director had such power, whether customary international law prevented the requirement, whether the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Migration for Employment Convention (MEC) are enforceable in Hong Kong courts, whether differential treatment is justifiable and finally, whether the Director acted irrationally. Briefly, the High Court held the requirement was legal: the live-in requirement is a matter of contract between the FDH and employer, international obligations were not directly enforceable in domestic courts and, bizarrely put by the court, an FDH would still be exposed to abuse regardless of whether the live-in requirement was upheld. The court put forward the view that the employer is the problem, instead of the live-in requirement. In the words of Judge Chow, “[w]here ill-treatment does occur, it seems to me that the real cause of the problem lies in the employer.”²⁹ Whilst we cannot ignore the obvious role that the employer has in abusing FDHs, it appears that the court overlooked the lived experience of women existing in these households. The decision of the court, unsurprisingly, is compatible with the government's own view of the live-in rule, as argued by their counsel against Lubiano. A spokesman for the government responded to the First Instance ruling, clarifying that the live-in requirement follows the government policy to prevent

²⁷ Cummins, A., 2016. *Interview: Erwiana Sulistyaningsih*. [online] Time Out Hong Kong. Available at: <<https://www.timeout.com/hong-kong/blog/interview-erwiana-sulistyaningsih-052016>> [Accessed 9 July 2020].

²⁸ The term, *ultra vires*, is used to refer to the use of power which is outside of an individual's prescribed power.

²⁹ Siu, J. and Lau, C., 2020. *Domestic Helper Loses Bid To Live Away From Employer*. [online] South China Morning Post. Available at: <<https://www.scmp.com/news/hong-kong/economy/article/2133296/judge-quashes-domestic-workers-bid-change-live-out-rule-hong>> [Accessed 5 July 2020].

‘moonlighting’ and that FDHs are free to terminate a contract where they are not happy with the conditions³⁰. Whilst the government response is not inaccurate, the shocking disregard for the effect that the live-in rule can have on contributing to abuse is sadly symptomatic of a government seeking to prevent being blamed for the systematic issues. To suggest a woman simply terminate a contract if they are no longer willing to share their living space with an abusive employer undermines the role that Hong Kong policy has in reinforcing the structures which are up against FDHs, and fails to recognise the effect abuse can have on a woman.

OVERCOMING THE EXPLOITATION OF FOREIGN DOMESTIC HELPERS

Deconstructing Legal and Structural Barriers

If we are to overcome the exploitation and abuse of FDHs in Hong Kong, we should seek to revise some of the policies which contribute to the high rates of abuse, either directly or indirectly. The main legal and structural barriers which negatively impact FDHs, as discussed above, are: the two-week rule, unregulated working hours, the right to abode and citizenship, and the live-in requirement. These policies represent a barrier, which if recognised, could easily be deconstructed. Erwiana Sulistinyangsih, speaking of her abuse, said the following: “I hope the government can open its eyes, its heart, so that it can protect its workers”³¹. By opening its eyes and heart, the Hong Kong government could take active steps to reduce factors which perpetuate existing structures that damage FDHs.

Firstly, the government should reconsider the two-week rule. Faced with an abusive employer, the two-week presents the FDH with two options: continue to be abused but continue being employed, or risk sacrificing employment and potentially be sent back to their country of origin. The choice, if it can be properly regarded as such, is hardly ideal; it disempowers and prevents women coming forward with their experiences, knowing that they must find a new employer within two weeks (so long as she is not provided with a discretionary extension). The reality of this rule is that it is extraordinarily hard to comply with. Amnesty International report that the Immigration Department recognise that the process of finding new employment and obtaining the relevant permits can take “about 4-6 weeks”. The inability to find new employment prevents women reporting abuse, as they are faced with the extremely realistic chance of being sent back to their country of origin (or staying in Hong Kong illegally, risking huge fines). As the Amnesty International report explores, the two-week rule is a major disincentive to FDHs coming forward with their experiences. A subtle change in the laws, perhaps by extending the period in which an FDH has the opportunity to find further employment (a period which is compatible with the realistic length of time it takes to have relevant documents accepted) would act as an incentive for women to report their employers without fear of losing their stream of income and being sent away. Such a minor change would have a major effect on emboldening the FDH and serve to create a more positive structure for reporting abuse and exploitation.

Secondly, it is essential that some degree of regulation is provided in relation to the working hours of FDHs. Unregulated working hours leaves FDHs vulnerable to excessive working hours, and as illustrated in the case of Erwiana Sulistyaningsih, exacerbates existing abuse against FDHs. As it currently stands, employers are free to choose how long each FDH works, so long as they are provided with the single rest day each week. Introducing some kind of rules as to the number of hours that FDHs can work would remind employers that FDHs are not to be overworked; they are workers, not modern day slaves. However, there are arguments which militate against the introduction of regulation of working hours. Bell and Piper suggest that regulating the working hours of FDHs has the potential to “poison the atmosphere” of the household³²; limiting the number of hours that are worked would disrupt the extension of Confucian relationships within the household. Whilst Bell and Piper’s overall argument, that the imposition of working hour limits would dramatically transform the employer-employee relationship, is accurate, to arrive at the conclusion that policies should not change errs on the side of Confucian ethics, as opposed to liberal justice - which the author argues, ought to be favoured. It is important to emphasise that the standard FDH contract is one of employment; they are workers. It follows that, regardless of the potential affective ties that may incidentally form with the host family/employer, worker’s rights ought to prevail. These rights can be guaranteed through

³⁰ Info.gov.hk. 2016. *Government Welcomes Court Of First Instance Judgment On*. [online] Available at: <<https://www.info.gov.hk/gia/general/201802/14/P2018021400770.htm>> [Accessed 5 July 2020].

³¹ CNN, 2015. *Abused Maid: I Can Forgive My Former Employer*. [video] Available at: <<https://www.youtube.com/watch?v=zrYdVOxWpV8>> [Accessed 6 July 2020].

the imposition of capped working hours. It is somewhat impossible to implement firm working hours given the natural differences and needs of families which use a FDH. Therefore, specifying the number of hours would provide for the best way to regulate the working hours of FDHs. Of course, these limits will rely on the candour of the employer and employee; the intimacy of the home prevents any proper enforcement of these working hours. However, it is not unreasonable to push for greater inspection from officials and better contact with FDHs.

Thirdly, we must confront the issue of the right to abode and citizenship. Neither of these issues sit at the top of demands made by FDHs, likely influenced by the fact that many do not intend to live in Hong Kong forever. However, as aforementioned, excluding FDHs from the right to abode and citizenship represents a distinct anomaly in Hong Kong law. Whilst typical workers are entitled to build up a period of ordinary residence, FDHs are excluded from doing so under s2(4)(a)(vi) of the Immigration Ordinances. The government is keen to maintain the compatibility of the Immigration Ordinances with HKBL, but in doing so, the government is inadvertently maintaining structures which perpetuate the second-class citizenship of FDHs. Whether the right to abode should be extended is contentious, with most of the arguments against circling around the policy factors of the FDH system. However, to continue formalising inequality between FDHs and regular employees prevents any proper advancement in the governmental approach to FDHs. The right to abode and permanent residency should be seriously considered as potential for change, and for the government to start recognising the significant social and economic roles played by FDHs. Even if permanent residency is not extended, the government should seek to identify a satisfactory compromise which balances their interests and the interests of FDHs, who ought to finally viewed as an equal instead of a second-class citizen.

Finally, the live-in requirement represents a hotbed of discontent amongst FDHs. The government's response, that FDHs accept the requirement upon signing their contract, fails to properly tackle some of the issues raised by FDHs. Despite the government asserting that rigorous checks are carried out to ensure that FDHs are provided with adequate accommodation in the employer's house, lived experiences of countless women are demonstrating a disconnect between the government's assertions and reality: as explored above, 60% of FDHs are in accommodation we would not consider reasonable. However, it is no secret that Hong Kong is experiencing somewhat of a housing crisis; living in Hong Kong is extremely expensive, the Mercer 2019 Cost of Living Survey ranked Hong Kong the most expensive city to live in. If the Third Clause was retracted from the standard employment contract, allowing FDHs to live outside of their employer's home (yet still having the choice to live in), FDHs would be left with limited options with where to live based on the salary they receive. Therefore, removing the live-in requirement creates pragmatic challenges. However, to simply provide the option for FDHs to find their own accommodation would shift the power in favour of the FDH in demanding better living conditions within the household. Employers tend to favour the FDH live in, as it does provide better flexibility for them, so they would be pressured to provide better accommodation if the FDH could legally find accommodation outside of the household. Outside of better living conditions, the ability for FDHs to live elsewhere would remove one of the contributing factors of the physical and verbal abuse. Having the FDH live out would prevent overworking, at least to the degree it occurs where they live in the household.

Society and Wider Politicisation

However, dismantling legal and structural barriers is not enough to fully overcome the abuse of FDHs in Hong Kong; these advances must be accompanied by wider change within the political community in order to humanise the FDH and make any significant change. As explored throughout this essay, a lot of the primary factors which contribute to the abuse of FDH surround the social and political structures which are stacked against the FDH. Hong Kong society is full of overlapping hierarchies - race, gender and class - all of which push the FDH to the bottom, making abuse all the more likely. Deconstructing the legal and structural barriers which do not actively promote proper treatment of FDHs can only go so far in bettering the treatment of these women. Haumont, commenting on the ruling in *Vallejos and Domingo* (2013), endorses a view based on the communitarian efficiency of rights³³. Whilst FDHs have access to basic rights, any legal or structural change towards the treatment of FDHs (such as providing access to the right of abode), must be joined with a political encounter with Hong Kong's communities. To provide these rights means little if they are not respected by the communities in which FDHs exist; Haumont suggests that rights

³³ Haumont, G., 2017. Foreign Domestic Helpers' Struggle for Recognition in Hong Kong: Time to go Beyond the Rule of Law?. *Revue interdisciplinaire d'études juridiques*, 79(2), pp.289-311.

provided to these women must function alongside a community which recognises the FDHs entitlement to these rights.

It is upon this wider politicisation and social realisation that we could start to see progressive change in the treatment towards the FDH. Once we humanise and raise up these women, more pressure will be placed on the government to deconstruct legal and structural barriers, as well as implementing positive action to prevent the high rate of abuse. It is easier (and subsequently, more likely) for the government to take serious yet simple action to prevent abuse when the political and social communities become critical of the current treatment of these women. Currently, the Hong Kong government maintains that it carries out regular inspections of FDH agencies and employers; however, anecdotal evidence provided by FDHs suggests otherwise. If the social and political communities were able to restructure how the FDH is viewed, there would be increasing pressure on the government to take active steps to prevent abuse against these women.

How this wider politicisation can take place is not necessarily known. However, one suggestion is to create discourse. Hong Kong regards itself as a democracy. To be properly regarded as a democracy, it is integral that a vibrant political and social discourse is prevalent within society. Whilst the author of this essay appreciates that Hong Kong is undergoing severe threat under national security laws, there has been a disappointing lack of conversation surrounding the structures which contaminate Hong Kong society. As discussed, this is likely due to the way in which these structures uphold power for those with a voice (such as wealthy, Chinese and Western males). Perhaps it is time for pressure to be placed on Hong Kong to initiate these discussions, not only for the sake of the thousands of women being abused by their employers, but for the social health of Hong Kong. If Hong Kong is to present itself as Asia's World City and a flourishing democracy (at least prior to the greater intrusion of China), it must be open to discourse, even if that runs the risk of challenging engrained (plutocratic, ethnocentric and sexist) structures. It is posited that we, as part of the Western world, must embrace the opportunity to contribute to the initiation of this discourse. Despite the abuse of FDHs in Hong Kong being a significant issue, there is a disappointing lack of systematic and dedicated governmental condemnation of Hong Kong's questionable polity and policies. Any condemnation that arises in the British media seemingly adopts a narrow critique towards the abuse of FDHs, such that specific instances of abuse are criticised as opposed to calling for wider change. For example, the media coverage which arose following the abuse of Erwiana Sulistyarningsih appeared targeted only at that particular case. It appears that there has been little consistent calls for reform, with most of this (somewhat naturally) coming from countries such as the Philippines and non-governmental organisations. If we are to play a role in overcoming the abuse of FDHs, we should certainly start with triggering a discourse in Hong Kong and critiquing the structures which perpetuate a society prone to such issues.

CONCLUSION

At this very moment, thousands of women are working in what can be regarded as modern slavery. They do so primarily in order to feed their families back home. These women are bravely willing to pack their bags and move to a country where they lack sufficient protection and face social prejudice, which places them at an immediate disadvantage. Hong Kong does not represent an island of abuse, however; it is better seen as an archipelago of labour-receiving countries which do not do enough to defend the women that come to assist the middle and upper classes. Despite this, the author is of the view that this does not have to be the case for much longer.

Recognising the social and political communities which systematically degrade these women, so far to expose them to high levels of abuse, allows us to reconsider and deconstruct. Of course, this process cannot be radically destroyed overnight. In order to reorganise society and place the FDH in a position of value, Hong Kong society must undergo a degree of introspection and reflection. Only upon this reflection will any of the attempts to remove legal and structural issues have any true impact. For the abuse of FDHs to be minimised, they must be able to emerge and exist in a society which is not constructed in such a way that it will amplify elements of their existence which make abuse all the more likely.

In coming to this conclusion, it is important that we do not erase individual abuse stories. When performing a broader sociological analysis of a society, especially one such as Hong Kong, it is easy to focus purely on these wider issues. However, what underpins any and all of this analysis (at least for the purposes of this essay) are the individual women being abused by their employers. Whilst critiquing structures is appealing, and most definitely necessary, we must recognise the agency of employers who gravely perpetuate these issues in their own ways. Unfortunately, some employers will simply desire to abuse anyone who works for them. However, if we were to initiate critical discourse within Hong Kong society, one would hope the

government would take active steps to prevent FDHs falling through the gaps and into the literal hands of these abusers.

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