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Anticipating Friction

The role of human rights in urban debates on migration and diversity: The case of Amsterdam, Hong Kong and Buenos Aires

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Chapter Three - Hong Kong

3.1 Introduction

This second case study chapter assesses the role of human rights in another city, whilst focusing on another migration debate. It is not just the urban space and the migration dilemma that differ, the chapter presents an entirely different story. A story in which human rights were not framed as an ‘unquestioned good’, but a case in which human rights were disputed in some instances, and buttressed in others.

This chapter focuses on two moments in Hong Kong’s debate on foreign domestic workers. Foreign domestic workers, or FDWs in short, are labour migrants who are granted two-year visas that restrict them to work as private household workers.¹ Their tasks usually range from taking care of children, elderly and/or the household chores. In these two moments, the Hong Kong government’s response to FDWs changed. I describe the actor networks surrounding these moments to explore how human rights functioned in such deliberations.

The first moment revolves around the inclusion of concerns related to FDWs in Hong Kong’s 2018 Universal Periodic Review report. Hong Kong is able to participate in this state-centred process because of the city’s status as a Special Administrative Region of China. This moment portrays how the Hong Kong government drew a connection between FDWs and human rights when present at the international stage, for an international audience. The second moment focuses on the introduction of a specific local regulation. I explore the introduction of the Window Cleaning Clause to the ‘standard contract’ for FDWs. At first sight, this seemed like an irrelevant and minor detail, but it sheds light on how the Hong Kong government handles ‘human rights concerns’ related to FDWs.

Amidst both moments, urban actors invoked human rights, although in different ways. In the first moment, civil society actors called on human rights to make a claim about the treatment of FDWs, while in the second moment, the same actors sometimes deliberately refrained from mentioning human rights. There are tensions and frictions: how human rights function in Hong Kong’s international affairs is not how they function in Hong Kong’s urban affairs. I assess which network circumstances generated this divergence. Hence, I describe how network circumstances, such as urban space, political representation, urban history, civil society strategies, and the legal system, interact with the functioning of human rights in an urban debate on migration and diversity.

I describe these two moments on the basis of the structure presented in the introductory chapter. First, I provide a general introduction to the moment. I describe which actors referred to human

¹ P. Cortes and J.Y. Pan, ‘Outsourcing Household Production: Foreign Domestic Workers and Native Labor Supply in Hong Kong’ (2013) 31 *Journal of Labor Economics*, 2, 327-371; See the information on hiring FDWs as provided by the Hong Kong government: <https://www.gov.hk/en/residents/employment/recruitment/foreigndomestichelper.htm>

rights and which approach to human rights they drew on (as legal norms, moral values or principles of good governance). Subsequently, I provide a description of the main actors/groups that were involved amidst this moment. This is to give insights into the organisation of groups such as ‘the local government’ and ‘civil society’. In the section that follows, I focus on the ‘translation activities’ these actors undertake. This entails describing two processes. First, by assessing the process of problematisation, I describe how actors made sense of their surroundings. Actors acted in response to something. The Hong Kong government introduced a window cleaning clause because the clause supposedly addressed something: a problem. The second, and last, translation process I describe is enrolment. By exploring the process of enrolment, I describe how the roles in the network were divided. This process can further explain that some actors may be better able to exert influence than others. Some might be able to make their account of the problems the dominant one, and able to ignore the visions of others. For example, the ‘author’ of Hong Kong’s report for the Universal Periodic Review was in a more influential position than the NGO that tried to get its concerns in the report. Finally, for each moment I distil how the network circumstances interacted with the functioning of human rights. In the final section of this chapter, I draw parallels between the two moments to explore differences and overlap between the role of human rights in both moments.

I base the descriptions in this chapter on data collected online and during a 6-week fieldwork stay in July 2018. Hence, this chapter portrays the state of affairs before the 2019-2020 mass demonstrations, which started in the summer of 2019. I was able to interview staff members of NGOs that work on FDW issues specifically, and NGOs that concern themselves with ethnic diversity and/or human rights at large. Moreover, I spoke to academics, consulate officials, a leader of a trade union that represents FDWs, an FDW movement and a law firm that handles many cases of FDWs. Lastly, I was able to interview one semi-governmental office: The Equal Opportunities Commission. The full list of the organisations I have interviewed can be found in Appendix A. Government officials were generally reluctant to be interviewed, they often gave evasive answers to my interview requests. For example, they would respond that they did not have time or that they did not work on the topic of this research (even though I knew they did). In addition, NGO staff were careful in sharing the contact details of government officials, because they also struggle to establish such relations. To account for the limited interviews with government officials, I rely on policy documents, interviews with academics and civil society, websites, and governmental statements in the Legislative Council, to represent the perspective of the Hong Kong government. Much material is available to the public on the website of the Legislative Council. Most legislative council meetings are held in English and are transcribed on their website. These transcripts often include background documents prepared by the Legislative Council and written responses/letters of the Hong Kong government.

3.2 The inclusion of foreign domestic workers in Hong Kong’s 2018 UPR report

3.2.1 The moment

The Hong Kong government takes part in several United Nations (UN) human rights reporting procedures, including the Universal Periodic Review (UPR) of the Human Rights Council. The

UPR takes place every five years, for every UN member state. During the UPR, the human rights record of the concerned member state is reviewed by the Human Rights Council, and other member states. The UPR is typically a state activity, but Hong Kong participates because of its status as a Special Administrative Region of China. In general, cities are becoming more visible in the UPR process, as urban actors provide submissions on the human rights performance of their cities.²

The UPR of 2018 was Hong Kong's third reporting cycle and it shows a remarkable change. Earlier reports from 2009 and 2013 did not make mention of concerns related to FDWs. In 2018's report, this changed. The Hong Kong government included the situation of FDWs in their report for the UPR. The report recognises two concerns. The first refers to FDWs as victims of maltreatment and exploitation by their employers and employment agencies. Hong Kong's report states that: 'Foreign domestic helpers enjoy the same employment rights and protections as local employees under labour laws. The government of the Hong Kong SAR will not tolerate any acts of maltreatment or exploitation of foreign domestic helpers by employers or employment agencies. Another new law, which came into effect in February 2018, substantially increased the maximum penalty for the crimes of overcharging on commissions and conducting unlicensed business by employment agencies, thereby providing better protection for job seekers, including foreign domestic helpers'.³

The second recognised concern is that FDWs are victims of human trafficking in Hong Kong. Hong Kong's report describes the Hong Kong government's efforts to tackle this: 'In March 2018, a high-level inter-bureau/departmental steering committee chaired by the Chief Secretary for Administration promulgated the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers to guide the work of the government of the Hong Kong SAR in this regard'.⁴

The Hong Kong government thereby acknowledged a connection between FDWs and human rights problems. By doing so in this particular space, in the international human rights system, the Hong Kong government invoked human rights in a legal approach. They acknowledged that the human rights of FDWs, as laid down in international human rights agreements, were violated with respect to human trafficking and exploitation and abuse by employers and employment agencies.

However, the process of problem acknowledgement was not this straightforward. The link between human rights violations and FDWs was not swiftly and uncontestedly established. The concerns were already flagged by other UN committees⁵ and member states from 1999

² See, for example, the submission prepared by the U.S. Human Rights Cities Alliance for the third cycle review of the USA:

http://wiki.humanrightscities.mayfirst.org/images/4/49/UPR_US_Cities_Stakeholder_Report_2019_Final_Submission_with_summary.pdf

³ Hong Kong Government (2018) Universal Periodic Review 3rd cycle. National report China, online at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/31/CHN/1&Lang=E> (Last visited 20 August 2020), Nr. 103.

⁴ Ibid.

⁵ Namely, by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) committees.

onwards. Moreover, it took years of extensive lobbying by a group of Hong Kong civil society actors, which organised throughout the UPR cycles. The civil society groups have, for years, invoked the legal standards of human rights to incite change regarding the treatment of FDWs.

To explore the network circumstances surrounding the international recognition of human rights concerns related to FDWs, I must first clarify and explain which actors were involved. The Hong Kong government wrote the reports, but that would be a rather imprecise description. More specifically, the Mainland and Constitutional Affairs Bureau handled reporting procedures. Parallely, civil society actors were writing shadow reports, on behalf of FDWs, for their concerns to be incorporated in the country report. Thereafter, I explore how these actors ‘acted’ in two steps. First, I delve into the process of problematisation. The actors did not align, and only some accounts of the problems ended up in Hong Kong’s report for the UPR. I describe which issues the Hong Kong government accepted as human rights issues, and, which they did not. Secondly, I explore the process of enrolment: how roles were assigned to specific actors. During this moment, the roles were rather structured and pre-defined because of the institutionalised context of the UN. The Hong Kong government did have some control over the narrative they disseminated. They could choose what to emphasise and what to leave out, which actors to collaborate with, and with whom not. At last, I assemble the network circumstances surrounding Hong Kong’s 2018 UPR report, to explore how they interacted with the functioning of human rights in this moment.

3.2.2 The actors

This section outlines the crucial actors that acted during this moment. It explains who the FDWs are, why the Hong Kong government engaged in UN reporting procedures and which specific governmental department was responsible. Lastly, it describes which civil society organisations wrote the shadow reports on the situation of FDWs in Hong Kong.

The Hong Kong government

The local government of Hong Kong is an atypical local government. Hong Kong is a Special Administrative Region of the People’s Republic of China (referred to as China from now on). To understand the competences Hong Kong has, with regard to UN reporting procedures and the attraction of FDWs, I must clarify the relation between China and Hong Kong.

After about one and a half-century of British rule, the city of Hong Kong was ‘handed over’ to China on July 1st 1997. The handover to China was regulated through the Sino-British Joint Declaration, which was established in December 1984.⁶ The declaration described that the territory of Hong Kong would become a Special Administrative Region of China under the model ‘one country, two systems’ and ‘Hong Kong people ruling Hong Kong’ for at least 50 years.⁷ Hong Kong would remain to operate as a capitalist system and did not have to transition

⁶ The Sino-British Joint Declaration of the government of the United Kingdom of Great Britain and Northern Ireland and the government of the People’s Republic of China on the Question of Hong Kong, can be found at: <https://www.cmab.gov.hk/en/issues/jd2.htm>

⁷ J. Chan, ‘State Succession to Human Rights Treaties: Hong Kong and the International Covenant on Civil and Political Rights’ (1996) 45 *International & Comparative Law Quarterly*, 4, 928-946; M.C. Davis, ‘Human Rights

to socialism. To execute this model, Hong Kong has its own executive, legislative and judicial authorities. However, in 2047 this arrangement expires. As of today, it is still unknown what Hong Kong's future will hold. It is up to China to decide whether they will extend Hong Kong's status as a Special Administrative Region.⁸

Hong Kong's relation with China defines Hong Kong's political spectrum. Hong Kong's head of government is called the Chief Executive. Carrie Lam is Hong Kong's fourth Chief Executive and has been in office since July 2017. She is not affiliated with a political party, but she was the preferred candidate by China. The Lam Administration has shown an inclination towards China via several choices. This includes the prosecution of pro-democracy activists⁹, the ban on a pro-independence political party¹⁰ and the amendment to the extradition law (about which more later). Several interviewees remarked that Chief Executive Lam, and government officials in general, are under huge pressure by China: 'She is trying to do what she can'.¹¹

In a simplified depiction, the political spectrum has two sides: pro-Beijing, or conservative, versus pro-democracy camps. This pro-democracy versus pro-Beijing divide developed during the period preceding the Handover to China. During this period, many political movements were established, as well as a party system. A party system did not exist earlier because of Britain's long-lasting rule. Moreover, this period was characterised by tense negotiations on the freedoms Hong Kong would have in the 50 years to come: the degree to which Hong Kong would 'move' towards China or maintain close ties with the British governing style. The first two political parties were of pro-democracy nature and later merged into today's Democratic Party. Shortly after, many other political parties commenced, of which pro-Beijing groups.¹² The pro-Beijing group maintains close ties with the Chinese authorities and is more open to a move towards China. The pro-democracy group, contrastingly, is trying to curb the influence by the Chinese authorities, maintain the current government system and/or push for a more democratic government.

The Basic Law is usually referred to as Hong Kong's 'mini-constitution' and sets out how Hong Kong's executive, judicial and legislative authorities function. Hong Kong's judicial system differs significantly from China's system. The Basic Law holds that Chinese national laws are not applicable to Hong Kong and that 'the judicial system previously practised in Hong Kong

and the Founding of the Hong Kong Special Administrative Region: A Framework for Analysis' (1996) 34 *Columbia Journal Transnational Law*, 301-334.

⁸ The only public hint of how Chinese President Xi Jinping views the issue came in 2017, when he mentioned at the party's 19th Congress that 'we should ensure that the principle of 'one country, two systems' remains unchanged.' Some observers interpreted his language as indicating a willingness to extend Hong Kong's status. Another option would be that Hong Kong formally joins China. Hong Kong could still have some enhanced level of autonomy in the format of a special economic zone, comparable to Shenzhen. This would have huge implications for Hong Kong, because these special economic zones do not encompass the judiciary and democratic forms of governance.

⁹ See for example: Amnesty International (2019) News Article, 'Hong Kong: Free jailed pro-democracy Umbrella Movement protest leaders', online at: <https://www.amnesty.org/en/latest/news/2019/04/hong-kong-free-jailed-pro-democracy-umbrella-movement-protest-leaders/> (Last visited 20 August 2020).

¹⁰ See for example: BBC (2018) News Article, 'Hong Kong government bans pro-independence party', online at: <https://www.bbc.com/news/world-asia-45623556> (Last visited 20 August 2020).

¹¹ Interview law firm Daly & Associates; Amnesty Hong Kong; NGO Open Door.

¹² Davis, 'Human Rights and the Founding of the Hong Kong Special Administrative Region'.

shall be maintained'.¹³ The laws that were valid before the handover remain in force, except for any law that contradicts the Basic Law. The Basic Law also ensures the continuation of the Common Law system. This means that case law from all common law jurisdictions is applicable in Hong Kong courts.¹⁴

While the Basic Law guarantees some level of autonomy from China, it also regulates strong ties. First of all, China's influence on the drafting process of the Basic Law was significant. The 'Basic Law Committee' included 50% Mainland Chinese members (and still does today). The power of amendment of the Basic Law lies with the Chinese government¹⁵, and Hong Kong's Chief Executive, Secretary for Justice and 'principal officials of the executive authorities' need to be approved by China.¹⁶ Defence and foreign affairs are China's responsibility and the Hong Kong government is only allowed to maintain 'relevant' external relations.¹⁷ Despite substantial checks and balances, the Hong Kong government is in charge of most government domains, including public order and (labour) immigration.¹⁸

Because foreign affairs are outside of the Hong Kong government's competences, Hong Kong cannot become a party to international human rights instruments. Yet, under British rule, a number of international human rights instruments were made applicable to Hong Kong. After the handover it was agreed that those international instruments would remain in force. Nowadays, international instruments can still be made applicable to Hong Kong, when granted permission by China. This also accounts for situations in which China is not a party to the concerned human rights instrument.¹⁹ A total of 15 international human rights instruments have been made applicable to Hong Kong, and seven of them require reporting procedures.²⁰ The most relevant human rights instrument regarding FDWs, the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, has not been made applicable to Hong Kong.

Because of the application of these international human rights instruments, Hong Kong is obliged to participate in reporting procedures. This caused some confusion before the handover, because China was not a party to some of the human rights instruments that were made applicable to Hong Kong, such as the ICCPR. It was therefore unknown how Hong Kong would go about its reporting duty to the Human Rights Committee.²¹ It was decided that China would submit Hong Kong's reports, even when China is not a party to the human rights instrument.²²

¹³ Chan, 'State Succession to Human Rights Treaties'; Art 81 Basic Law; see: https://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf

¹⁴ Art 84 Basic Law.

¹⁵ Art 159 Basic Law; China has issued five interpretations of the Basic Law since the 1997 Handover.

¹⁶ Art 15 Basic Law.

¹⁷ Art 13, 14 Basic Law.

¹⁸ Art 154 Basic Law.

¹⁹ A.H.Y. Chen, 'International Human Rights Law and Domestic Constitutional Law: Internationalisation of Constitutional Law in Hong Kong' (2009) SSRN Electronic Journal.

²⁰ Namely, the ICCPR, the ICESCR, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the United Nations Convention on the Rights of Persons with Disabilities. See: <https://www.cmab.gov.hk/en/issues/human.htm>

²¹ Chan, 'State Succession to Human Rights Treaties'.

²² Chen, 'International Human Rights Law'.

When China is a party to the instrument concerned, the contribution of Hong Kong will be integrated or added as an annex. When Hong Kong's contribution is added as an annex, the proportion of Hong Kong's contributions usually become overshadowed by China. This is visible during the UPR. For example, in the 2013 interactive dialogue sessions discussing the report of China and Hong Kong, only one question was raised on Hong Kong. In the 2018 UPR, only five out of the 346 recommendations relate to Hong Kong.

The reporting procedures are coordinated with China, because they are the ones to submit the reports.²³ Consequently, Hong Kong's reports are prepared by Hong Kong's Constitutional and Mainland Affairs Bureau (CMAB). CMAB is formally responsible for the implementation of the Basic Law and functions as an intermediary between Hong Kong's government and the Chinese authorities. Specifically, one of CMAB's core responsibilities is to 'Co-ordinate and promote closer ties and 'win-win' co-operation and development with the Mainland'.²⁴ Because of CMAB's intermediary position and close ties with China, the reports did not showcase progressive views on Hong Kong's autonomy. On the contrary, in the 2018 report, it was underscored that 'the Hong Kong Special Administrative Region is an inalienable part of China'.²⁵

CMAB drafted the reports after input from relevant governmental departments, and consultation with the Legislative Council, NGOs and interested members of the public. However, the actual drafting process of the UN reports is messier and less structured. CMAB is not continuously collecting data for the reports, nor is it always the one to write the report. In the period leading to a report, an ad-hoc committee will be organised in the Legislative Council to discuss the concerned report: 'There is no centralised database for recommendations and implementation [...] the reporting happens every five years and in between there is no continuous work'.²⁶ According to the interviewee of the Equal Opportunities Commission (EOC), much of the actual drafting of these reports is done by the EOC.

The EOC was created in 1996 and is established as an independent body that is tasked with monitoring discrimination in Hong Kong. The EOC does so on the basis of four anti-Discrimination Ordinances (sex-, disability-, family status- and race-). The EOC handles individual complaints and is authorised to start legal procedures against some sections of the government. While the EOC is close to a human rights institution, it does not comply with the Paris Principles for independent human rights institutions.²⁷ The EOC can only judge discrimination on the basis of the four ordinances and cannot incorporate international human rights law. Although CMAB is formally responsible for the UN reports, they habitually send the requests for reports to the EOC.²⁸ The EOC interviewee explained: 'The government [CMAB] always sends it [the call for a UPR report] to us. We write a draft for them'.

²³ Interview NGO Pathfinders; Equal Opportunities Commission.

²⁴ See website of CMAB: <https://www.cmab.gov.hk/en/about/welcome.htm>

²⁵ Hong Kong Government (2018) Universal Periodic Review 3rd cycle. National report China.

²⁶ Interview NGO Pathfinders.

²⁷ B.Y.T. Tai, 'The Hong Kong ombudsman and human rights protection revisited' (2009) 17 *Asia Pacific Law Review*, 1, 95-114; For the Paris Principles, see: <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

²⁸ Interview Equal Opportunities Commission.

Foreign Domestic Workers

This section provides insights into who FDWs are, and how their stay in Hong Kong is regulated by the Hong Kong government. As of 2018, approximately 350,000 FDWs reside in Hong Kong on a population of approximately 7.4 million.²⁹ FDWs make up about 10% of Hong Kong's workforce. Most workers are women from low-income countries, the majority are from the Philippines and Indonesia. A small percentage of FDWs come from Thailand, Myanmar, Bangladesh, Nepal, Pakistan, Sri Lanka and Madagascar.³⁰ FDWs from the Philippines were the first to arrive in Hong Kong, because the Philippines was the first country that introduced a labour migration program. Towards the end of the 1990s, Indonesian workers arrived in Hong Kong. They quickly equalled the number of Filipino workers as they asked for lower wages.³¹ Most FDWs enter Hong Kong with help from an employment agency, although this is not obliged. About 1,400 agencies are involved in the placement of FDWs in Hong Kong. The employment agencies recruit workers abroad, offer them a preparatory training and match an FDW with a household in Hong Kong.

The labour migration arrangement, the FDW program, was introduced in Hong Kong in 1974. Today, workers from mainland China cannot enter Hong Kong as a FDW.³² Furthermore, Hong Kong's immigration system makes an explicit distinction between FDWs and other groups of migrants.³³ Hong Kong's Basic Law describes a form of local citizenship, a legal category of Hong Kong permanent residents, who are guaranteed the right to unconditional stay in Hong Kong's territory and freedom from deportation.³⁴ This 'right of abode' applies to all persons of Chinese nationality born to Hong Kong residents, regardless of their place of birth.³⁵ FDWs, however, can never become Hong Kong residents as they enter Hong Kong through this specific labour migration arrangement.³⁶ Contrastingly, other migrant groups, such as high-skilled

²⁹ J. Anderson and A. Li, 'Refugees or Victims of Human Trafficking? The case of migrant domestic workers in Hong Kong' (2018) 11 *Anti-trafficking Review*, 52-68.

³⁰ HELP for domestic workers (no date) Webpage, 'Key Issues', online at: <https://helpfordomesticworkers.org/en/key-issues/> (Last visited 20 August 2020).

³¹ Cortes and Pan, 'Outsourcing Household Production'.

³² Ibid. Sim adds that Hong Kong deliberately opts for immigration laws that privilege people whose ethnicity and physical appearance is distinctly different from the mainly Chinese population. A. Sim, 'Organising Discontent: NGOs for Southeast Asian Migrant Workers in Hong Kong' (2003) 31 *Asian Journal of Social Science*, 31, 3, 478-510.

³³ A. Ku, 'Hegemonic construction, negotiation and displacement. The struggle over right to abode in Hong Kong' (2001) 4 *International Journal of Cultural Studies*, 3, 259-278.

³⁴ Basic Law, Article 25.

³⁵ Since the Basic Law came into effect in July 1st 1997 there have been struggles about this local citizenship. Directly after July 1st many Mainland Chinese born children of Hong Kong residents who had entered the territory illegally or overstayed their temporary permits plead for their right to abode. The claims became part of a big public debate and several court rulings and administrative measures. Ku states that the process displayed prejudices against certain groups of Mainland Chinese. While the Hong Kong government claimed that it were neutral administrative measures to control the population, Ku argues that it was part of a bigger identity construction project. Ku, 'Hegemonic construction'.

³⁶ 'Helpers are not admitted to Hong Kong for settlement. They are not eligible to bring their dependants to Hong Kong for residence', Standard Employment Contract and Terms of Employment for Helpers. FDWs do not contest their exclusion from becoming Hong Kong residents in general. But, this has been contested in cases whereby the FDW is the parent of a Hong Kong born child. If FDWs have a child with a Hong Kong resident, the child becomes a Hong Kong resident, while the mother (or father) does not. This has been the topic of heated court cases. For example, an FDW who was the only custodial parent to her child with Hong Kong residency started a court procedure in 2011 for her right for abode after denial of a visa by the Immigration Department. Court of First

expats, have the right of abode after 7 years of continuously living in the territory of Hong Kong.

Cortes and Pan describe Hong Kong's FDW program as relatively liberal.³⁷ There is no restriction on the number of FDWs and anyone can hire an FDW as long as they fulfil a set of requirements. These requirements include a minimum household income and the ability to house the FDW. All requirements are laid out in the Standard Employment Contract for 'domestic helpers from abroad'.³⁸ Here I briefly introduce four crucial features of the Standard Employment Contract. First, the Standard Contract prescribes the minimum income for FDWs, which is substantially lower than for local workers.³⁹ It also prescribes that all FDWs ought to live with their employers 'with reasonable privacy' (this is generally referred to as the 'live-in rule').⁴⁰ Moreover, the Standard Contract prescribes that FDWs are entitled to one rest day every 7 days, free food and medical treatment, and paid annual leave.⁴¹ Additionally, it introduces the 'two-week rule'. After the two-year domestic worker visa expires, or in the case that the contract is terminated early, FDWs have a total of 14 days to find a new job or are required to leave the Hong Kong territory.⁴²

Photo 1: Foreign domestic workers on Sundays. By Francisco Anzola, licensed under CC BY 2.0.



The regulations of the Standard Employment Contract have visible consequences. On Sundays, FDWs have their only mandatory day off. Because of the live-in rule, and their lack of private space, the FDWs use public space as their living room. Every Sunday, FDWs scatter over the city's parks, subway entrances, walkways and roofed corners (see photo 1). Certain areas of the city are fully occupied by FDWs. Victoria Park, one of Hong Kong's biggest parks, is the place where Indonesian workers meet, while most Filipinas gather on the streets of the Central

Instance, *Comilang, Milagros Tecson and another v. Director of Immigration* [2014], online at: <https://www.hongkongcaselaw.com/comilang-milagros-tecson-and-another-v-director-of-immigration/> (Last visited 20 August 2020).

³⁷ Cortes and Pan, 'Outsourcing Household Production'.

³⁸ For the Standard Employment Contract for 'domestic helpers from abroad', see: <https://www.immd.gov.hk/eng/forms/forms/fdhcontractterms.html>

³⁹ Standard Employment Contract and Terms of Employment for Helpers, clause 5(a).

⁴⁰ Standard Employment Contract and Terms of Employment for Helpers, clause 3.

⁴¹ Standard Employment Contract and Terms of Employment for Helpers, 'Essential Points'.

⁴² *Ibid.*

business district. Some shopping malls are exclusively filled with shops selling food from FDWs' countries of origin, international package delivery services and money transfer facilities. Moreover, Sunday is the only day that FDWs are able to meet each other and organise events. They are involved in protests, rallies, knowledge- and recreational gatherings.

The shadow-reporters

Parallel to the member state reports, civil society actors also prepare submissions. The UN committee concerned will compile all input into a stakeholder report. On the basis of the stakeholder report, other member states will prepare their questions and recommendations.

Hong Kong's civil society is very engaged with the reporting processes. Many organisations write their own 'shadow reports' or collaborate with others to write a joint report. For instance, in preparation of Hong Kong's 2018 UPR, the Hong Kong UPR Coalition was launched. This is an alliance of civil society actors 'dedicated to advancing human rights in Hong Kong through the United Nations Universal Periodic Review process'.⁴³

Over the years FDWs have been able to secure support from a growing number of NGOs, lawyers, academics, and unions. These different actors all engage in the shadow reporting exercise. I will provide some examples of NGOs that wrote submissions on behalf of FDWs. Some NGOs focus solely on FDWs, while others concern themselves with a number of migrant groups (such as refugees and other ethnic minorities).⁴⁴ NGOs such as HELP for Domestic Workers concern themselves solely with FDW-matters and perform a combination of activities. They provide legal advice on how to handle labour or immigration conflicts, offer emergency shelter and medical assistance, and engage in advocacy to lobby for structural changes in the FDW regulations.⁴⁵ Most NGOs have specific concerns on their agenda. For instance, Pathfinders concerns itself with the situation of FDWs who become mothers whilst working in Hong Kong. NGO Justice Centre is specialised in providing assistance to migrants with non-refoulement claims, and has more recently taken up the topic of FDWs.⁴⁶ The International Organization for Migration (IOM) recently became more involved in the topic of human trafficking and employment agencies.⁴⁷ While each organisation has its own priorities, the priorities of the different organisations seem to be complementary rather than contradictory.

3.2.3 Translation activities

This section explores how the aforementioned actors were acting in relation to the 2018 UPR. Through the process of problematisation, I describe that the Hong Kong government indeed addressed the human rights violations of FDWs, but only regarding a small number of concerns. The shadow-reporters, contrastingly, provided a different account of the problems. They flagged that the human rights of FDWs were violated in many additional ways. Second, through

⁴³ For the Hong Kong UPR Coalition, see: <https://www.facebook.com/HongKongUPR/>

⁴⁴ Interview Amnesty Hong Kong; NGO Justice Centre.

⁴⁵ Interview NGO HELP for Domestic Workers.

⁴⁶ Interview NGO Justice Centre.

⁴⁷ Interview International Organization for Migration.

the process of enrolment, I describe how the UPR reporting cycle displays a balancing act of the Hong Kong government. A balancing act between profiling Hong Kong as a flourishing city with an excellent human rights record, economic interests and actual willingness and/or ability to address concerns.

Problematization

The Hong Kong government launched a call for civil society submissions for the 2018 UPR, the shadow-reporters responded and wrote their shadow reports. The Hong Kong government prepared its report after the input from civil society and sent it to the Human Rights Council. Simultaneously, other UN member states could send-in their questions. The Office of the United Nations High Commissioner for Human Rights prepared a compilation report of earlier reporting procedures of the UPR and other human rights instruments. Subsequently, during the UPR Working Group at the UN headquarters, Hong Kong's (and China's) report was assessed and questioned by other member states, a process that is guided by a selected group of rapporteurs of other member states. The rapporteurs, subsequently, prepared the summary and outcome of the review, which included the decisions of the Hong Kong government on the recommendations. Through these different steps, actors problematized. I focus my description on the UPR of 2018, but I also draw on earlier review processes, of the UPR, the ICCPR⁴⁸, CEDAW⁴⁹, the ICESCR⁵⁰ and the ICERD⁵¹, to put the 2018 UPR in perspective.

I start with the problematization by the shadow-reporters. The shadow reporters prepared their shadow-reports, which they sent to the Human Rights Council. The shadow-reporters were far from positive about the treatment of FDWs. Since the arrival of FDWs in the early 70s, there have been reports of misconduct.⁵² To illustrate today's amount: the Indonesian consulate handles about 500 cases of Indonesian FDWs each year.⁵³ While these shadow-reports generally touch upon many issues, they have a common thread and point to a number of recurrent issues. It must be noted that the main concerns of the shadow-reporters have by and large been echoed by UN committees, they provided a similar account of the problems related to FDWs.

The following comment of the CEDAW committee summarises these recurrent issues: 'The Committee was concerned that foreign women domestic workers continued to be subjected to abuse and unfavourable working conditions, such as lower wages, fewer holidays and longer working hours than prescribed by law, and that they were abused by recruitment and placement agencies, which charged exorbitant fees and sometimes confiscated travel documents. It was also concerned about the two-week rule, which required them to leave Hong Kong, China,

⁴⁸ The International Covenant on Civil and Political Rights.

⁴⁹ The Convention on the Elimination of All Forms of Discrimination Against Women.

⁵⁰ The International Covenant on Economic, Social and Cultural Rights.

⁵¹ The International Convention on the Elimination of All Forms of Racial Discrimination.

⁵² Piper describes that FDWs in other countries face similar problems that are all related to long working hours and a low salary. N. Piper, 'Rights of Foreign Domestic Workers – Emergence of Transnational and Transregional Solidarity?' (2005) 14 *Asian and Pacific Migration Journal*, 1-2, 97-119.

⁵³ Interview Consulate Indonesia.

within two weeks of their contracts being terminated, and the live-in rule, which required them to live with their employers'.⁵⁴

For the sake of clarity, I will briefly explain these concerns in more detail on the basis of information provided by shadow-reporters. Due to Hong Kong's tight housing market and limited buildable land, apartments are small and FDWs are frequently not provided with adequate housing. A survey by NGO Mission for Migrant Workers shows that only 57% - of the 3000 FDWs in their sample - has their own room.⁵⁵ Moreover, the live-in rule plays into uncontrollably long working hours and a level of control of the employer over the worker; while enlarging the risk of (sexual) abuse.⁵⁶ The shadow-reporters asked the Hong Kong government to repeal the live-in rule because of these reasons. The two-week rule is also contested. NGO HELP argued that the two-week rule leaves FDWs stuck in abusive and exploitative situations.⁵⁷ It is hard to find a new employer in two weeks, and therefore, FDWs often will not take the risk of deportation because of fear of losing their (family) income. Hence, the shadow-reporters asked the Hong Kong government to repeal the two-week rule as well. Other concerns relate to employment agencies. Employment agencies frequently ask for high fees or they withhold wages until the FDW had paid its 'debt'. The practices of employment agencies have been described in terms of human trafficking by the IOM.⁵⁸ The shadow-reporters have asked the Hong Kong government to introduce anti-trafficking legislation. Lastly, the FDWs' minimum wage was considered problematic. FDWs' minimum wage is relatively low for Hong Kong standards, because FDWs are not subject to Hong Kong's general Wage Ordinance. In sum, to the shadow-reporters, the crux of the problems relates to the regulations of the Hong Kong government, as laid down in the Standard Employment Contract, and to the lack of legislation in the area of human trafficking.

In a next step, other member states were allowed to ask questions to China (and Hong Kong and Macau). A few member states asked questions to Hong Kong directly. Of the 346 recommendations that were received by China, five relate to Hong Kong. Of those five recommendations, two relate to FDWs. It does not come as a complete surprise that the two member states that asked questions are the biggest FDW-sending countries. The Philippines asked Hong Kong to enhance the monitoring of the implementation of the Standard Employment Contract for migrant domestic workers. Indonesia asked Hong Kong to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW).⁵⁹

⁵⁴ Universal Periodic Review third cycle China (2018) Report of the Office of the United Nations High Commissioner for Human Rights, compilation on China, online at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/259/12/PDF/G1825912.pdf?OpenElement> (Last visited 20 August 2020).

⁵⁵ Mission for Migrant Workers (2017) Pictures from the inside: Investigating living accommodation of women migrant domestic workers towards advocacy and action, online at: https://issuu.com/migrantshk/docs/pictures_from_the_inside_a4?fbclid=IwAR2ERs1dNS6Qde0v0A-d1JRRgmkFMTtWWv-duiADVZ620QqurzzNqQxuJU (Last visited 20 August 2020).

⁵⁶ Interview NGO HELP for domestic workers.

⁵⁷ Ibid.

⁵⁸ Interview International Organization for Migration; N. Constable, 'Migrant workers and the many states of protest in Hong Kong' (2009) 41 *Critical Asian Studies*, 1, 143-164.

⁵⁹ Universal Periodic Review third cycle China (2018) Questions submitted in advance.

Subsequently, Hong Kong's report and response to the submissions of the shadow-reporters and the member states shows their account of the problems. The Hong Kong government problematised the treatment of FDWs in Hong Kong, they acknowledged that there were problems and presented a positive story about the steps they have undertaken to address them. The 2018 report lists the two measures the Hong Kong government has undertaken: they 'substantially raised' the penalty for overcharging employment agencies and 'a high-level inter-bureau/departmental steering committee promulgated an Action Plan to tackle trafficking-in-persons and to enhance protection of Foreign Domestic Helpers in Hong Kong'. Furthermore, the Philippines' question about the monitoring of the Standard Employment Contract was accepted as the Hong Kong government responded that this was already taken care off.⁶⁰

But the Hong Kong government only echoed a *particular* set of concerns. The recommendations that were taken on board, and integrated in the Hong Kong report, were of a particular nature. That is, they did not connect to Hong Kong's immigration system and cannot be attributed to the performance of the Hong Kong government. And, the Hong Kong government rejected all other recommendations. By not accepting these recommendations, in the 2018 UPR and during earlier reviews, the Hong Kong government implicitly upheld that the two-week rule, the live-in rule and the minimum wage were not 'human rights problems'.

The Hong Kong government provided the following explanations. Indonesia's question about the ratification of the CRMW was not accepted, because Hong Kong was 'not ready' for such legislation yet.⁶¹ On the exemption of the Minimum Wage Ordinance the Hong Kong government has stated: 'The exemption [of the Minimum Wage Ordinance] of live-in domestic workers also reflects the provision of in-kind benefits arising from them living in the household of their employers free of charge. Such in-kind benefits include provision of free accommodation and usually free food by the employers, as well as savings in transport cost. We have no plan to remove the exemption'.⁶²

On the two-week rule the Hong Kong government has argued: 'The two-week rule is of paramount importance in maintaining effective immigration control. It helps to prevent foreign domestic helpers from job-hopping frequently and working illegally after contract termination'.⁶³

Subsequently, according to the Hong Kong government, repealing the live-in rule would 'defeat the purpose of a live-in domestic worker'. The Hong Kong government did not acknowledge a relation between the live-in rule, long working hours, exploitation and abuse: 'The live-in requirement forms the cornerstone of Hong Kong's policy of importing FDHs [...] Although some helpers may claim this requirement to be an inconvenience, we maintain that it is in keeping with the well-established policy that non-local workers are only allowed to work in the

⁶⁰ Universal Periodic Review third cycle China (2018) Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, online at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/041/01/PDF/G1904101.pdf?OpenElement> (Last visited 20 August 2020).

⁶¹ Ibid.

⁶² Hong Kong Government (2014) Hong Kong Special Administrative Region (HKSAR) Government's Response to the List of Issues raised by the United Nations Committee on Economic, Social and Cultural Rights in relation to the second periodic report of the People's Republic of China.

⁶³ Ibid.

HKSAR where there is an inadequate supply of local workers. In the case of foreign domestic helpers, they are brought in to meet employers' needs for live-in domestic helpers. To allow foreign domestic helpers to live out as a matter of course would defeat the purpose of importing full-time live-in domestic helpers. As regards working hours for live-in foreign domestic helpers, it may be noted that there are no statutory prescriptions on working hours in Hong Kong. Working hours is one of the terms and conditions of employment which is to be agreed between employers and employees in the light of market conditions'.⁶⁴

In sum, the Hong Kong government did alter its account of the problems by addressing employers, employment agencies, and human trafficking in relation to human rights violations. Nonetheless, the Hong Kong government showed no willingness to change its perception of the problems regarding the two most debated regulations: the live-in rule and the two-week rule. Since 1999, the review processes bring up the same recommendations regarding FDWs. All UN committees and shadow-reporters condemned the two-week rule, the live-in rule and FDWs' exemption of the general Wage Ordinance. The Hong Kong government always responded in the same dodging way. On these concerns, all actors stick to their accounts of the problem and frame the problem according to their own perception.

Enrolment

The actor network surrounding the UPR was one with strict rules and pre-determined ways of interaction, which is inherent to an institutionalised setting like the UN. All actors had pre-defined roles: to write submissions and report, ask questions and respond. The process of enrolment was rather structured.

Even though the shadow-reporters were formally invited by the Hong Kong government to provide input for the report, the shadow-reporters were not satisfied with this role. They also sent their own submissions to the Human Rights Council because they perceived that their concerns were not reflected in the reports prepared by the Hong Kong government.⁶⁵ The shadow-reporters wanted to participate in the UN reporting procedures, because they noticed that the Hong Kong government is relatively receptive during UN meetings: 'It is the only reason I go all the way to Geneva. Because that works. So, in 2013 for the children's rights committee hearing, I spoke about education and ethnic minority issues and within about four months after the government abolished the designated school policy. Because the concluding observations [of the committee] came out. And it [the school policy] was racial segregation. So, it was a big stain on Hong Kong's reputation'.⁶⁶

The word 'reputation' is crucial. Several shadow reporters I interviewed were convinced that the Hong Kong government was very cautious about their 'human rights image' at the UN.⁶⁷ An interviewee from HKU stated that Hong Kong's international image would become

⁶⁴ Hong Kong Government (2008) Tenth to Thirteenth Reports of the People's Republic of China under the International Convention on the Elimination of All Forms of Racial Discrimination - Part Two: Hong Kong Special Administrative Region.

⁶⁵ Interview NGO Pathfinders; NGO Justice Centre; NGO Unison; Hong Kong University.

⁶⁶ Interview Hong Kong University.

⁶⁷ Interview law firm Daly & Associates; Hong Kong University; International Organization for Migration.

damaged by a discrimination problem or human rights abuses. ‘They want to be seen as a civilised territory’ argued the interviewee of IOM. According to the interviewees, the Hong Kong government cared about its ‘human rights image’, not only for the sake of the treatment of FDWs, but also because of acculturation to the global society for the sake of image-building. Hence, the shadow-reporters enrolled happily because they observed that there was something at stake for the Hong Kong government: its image. This image was then utilised, by the shadow-reports, to lobby for their demands.

It is not remarkable that the Hong Kong government referred to human rights in this actor network. It was what this actor network required from the actors. The Hong Kong government had to assess their city in terms of human rights, and report on it. And, the Hong Kong government had to respond to the questions and concerns of the other members states. Therefore, during UN reporting procedures, the Hong Kong government had no choice but to speak in human rights language. The Hong Kong government, consequently, articulated a strong commitment to human rights. For example, Hong Kong’s 2018 UPR report starts with the statement that ‘in HKSAR, human rights are fully protected by law’, after which the legal system is explained.⁶⁸ In the UPR report, the EOC is presented as a human rights organisation, whereas the interviewee of the EOC had a different perception: ‘The government deliberately tries to make us look like an independent (non-government) entity, so that they could tell the UN that we have a sort of human rights organisation. But we know we are not a human rights organisation, despite what the government is saying’.⁶⁹ The interviewee explained that the EOC does not function as independently as it should, and that the EOC is presented as something it is not.

This sparks the question: why were Hong Kong’s image and reputation *that* crucial? Hong Kong’s peculiar constitutional arrangement made image-building a crucial activity for the Hong Kong government. Hong Kong’s status as a Special Administrative Region has allowed Hong Kong many financial benefits: it facilitates the city’s success as a global financial hub. At the same time, these financial benefits were also dependent on Hong Kong’s image as a place with a solid legal system that protects freedoms and human rights. For example, Hong Kong has established favourable trade relations with the United States, but these relations are evidently interwoven with Hong Kong’s human rights performance. In 2019, the United States introduced the Hong Kong Human Rights and Democracy Act, which requires the United States to assess whether Hong Kong is still autonomous enough, and whether human rights are still respected, to justify the favourable trading relations.⁷⁰ Revocation of the favourable trade relations by the United States, would have substantial economic consequences for Hong Kong.⁷¹ Hence, Hong Kong’s human rights image could affect the business climate and Hong Kong’s competitive position in the global economy.⁷²

⁶⁸ Hong Kong Government (2018) Universal Periodic Review 3rd cycle. National report China, 91.

⁶⁹ Interview Equal Opportunities Commission.

⁷⁰ For the Hong Kong Human Rights and Democracy Act of 2019, see: <https://www.congress.gov/bill/116th-congress/house-bill/3289>

⁷¹ Hong Kong would, for instance, be subject to the trade war between China and the US, but it would also have implications for e.g. visa regulations and currency exchange rates.

⁷² Interview Hong Kong University; law firm Daly & Associates; International Organization for Migration.

One may reason that this ‘human rights image-building’ would be a project of the pro-democracy group in particular, because the pro-democrats are more oriented towards Hong Kong’s independence, the (western) global community and its normative language. The fact that Hong Kong’s reports were coordinated by the Beijing-oriented CMAB, and often sent to the ‘human rights knowledgeable’ EOC, also shows the opposite: at the time, it was also in the interest of the pro-Beijing group to show Hong Kong in a positive light. The economic flourishing of Hong Kong was in the benefit of everyone, including pro-Beijing politicians.

Hong Kong’s city brand is illustrative for Hong Kong’s image-building, it makes plainly visible what kind of self-image the Hong Kong government wants to present to the world: a secure city for business, because of its legal system.⁷³ Hong Kong’s city brand is called ‘Brand Hong Kong’ and its slogan is ‘Hong Kong, Asia’s World City’.⁷⁴ The website of Brand Hong Kong describes that after the handover to China, the need to establish Hong Kong as a ‘top international city’ arose. It is explained that the Hong Kong government had a goal after 1997: for Hong Kong to fulfil a similar role as New York and London, but in Asia. Chu and Shen argue that it was feared that Hong Kong would become ‘just another Chinese city’.⁷⁵ Shen moreover stresses that the Hong Kong government emphasised everything that would set Hong Kong apart from its neighbouring cities.⁷⁶ In doing so, Hong Kong’s legal system was mobilised to underline its business potential with the catchphrase: ‘One Country, Two *Legal* Systems’.⁷⁷ But likewise, today this branding activity should not be seen separately from pro-Beijing interests. Brand Hong Kong underlines that Hong Kong ‘is not just another Chinese city’, but at the same time, the city brand is also visibly pro-Beijing oriented, e.g. by supporting the 2020 National Security Law.⁷⁸ Brand Hong Kong simply promotes the financial potential of the city: ‘In Hong Kong, the rule of law is upheld and every effort is made to ensure a just, corruption-free society where people can feel secure and businesses can compete on a level playing field’.⁷⁹

Because of the UN reporting obligation, Hong Kong’s government had a direct outlet to reach a global public. And, the Hong Kong government used its reporting role as such. The narrative

⁷³ Shen and Chu too stress that Hong Kong’s brand is intrinsically connected to entrepreneurship, expats, economic freedom and financial services. X.H.S. Shen, ‘Re-branding without re-developing: constraints of Hong Kong’s ‘Asia’s World City’ brand (1997–2007)’ (2010) 23 *The Pacific Review*, 2, 203-224; S.Y. Chu, ‘Brand Hong Kong: Asia’s World City as Method?’ (2010) 24 *Visual Anthropology*, 1-2, 46-58.

⁷⁴ Brand Hong Kong (2020) Brand Hong Kong Factsheet, ‘What is Brand Hong Kong?’, online at: <https://www.brandhk.gov.hk/html/en/BrandHongKong/WhatIsBrandHongKong.html> (Last visited 20 August 2020).

⁷⁵ Chu, ‘Brand Hong Kong’; Shen, ‘Re-branding without re-developing’.

⁷⁶ Shen, ‘Re-branding without re-developing’.

⁷⁷ The website of Brand Hong Kong also provides a ‘legal system factsheet’ that displays how well Hong Kong scores in rule of law related indexes. The factsheet presents that Hong Kong ranks nr. 2 in Asia, and nr. 15 worldwide, in respect of the rule of law in the Worldwide Governance Indicators Project of the World Bank.

⁷⁸ The section ‘press releases’ on the website of Brand Hong Kong is telling. For example, the introduction of the National Security Law by China, which sparked outrage by the pro-democracy camp, was applauded on the website of Brand Hong Kong: ‘The National People’s Congress has passed the Decision on establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special Administrative Region to safeguard national security. [...] One Country, Two Systems has been Hong Kong’s top advantage, and a stable and safe society will provide a favourable business and investment environment. This will help better Hong Kong’s development down the road’. Brand Hong Kong (2020) News article, ‘Update National Security Law’, online at: <https://www.brandhk.gov.hk/html/en/WhatSon/Hong-Kong-Update-National-Security-Law.html> (Last visited 20 August 2020).

⁷⁹ Brand Hong Kong (2020) Brand Hong Kong Factsheet, ‘What is Brand Hong Kong?’.

of Hong Kong's city brand transpired to the UN meetings. The speech of the Chief Secretary for Administration, at a meeting with the Human Rights Council amidst the 2018 UPR, illustrated this. His speech echoed the narrative of the city brand: 'We are determined to safeguard the rule of law and freedom. They are the core values of Hong Kong and the cornerstone of our long-term prosperity and stability [...] Hong Kong ranks first in Asia in terms of judicial independence. We are also one of the world's safest cities [...] Hong Kong is a vibrant, highly open and international city. The Heritage Foundation of the United States has ranked Hong Kong the world's freest economy for 25 consecutive years [...] We are committed to upholding the principle of 'one country' whilst leveraging our unique advantages under 'two systems'.'⁸⁰

At the same time, Hong Kong's carefully constructed self-image was tested at the UN reporting procedures. The Hong Kong government could not choose which actors enrolled and what story these actors presented. They could not influence what other member states, shadow-reporters, rapporteurs and committees wrote down in their submissions and questions. The reports were published online to be read by whoever interested. Moreover, these reports only reflected human rights concerns/violations and thus did not present a positive narrative. FDWs became a more central topic in reporting procedures, because shadow-reporters and other member states (particularly the FDW' countries of origin) continued to have the topic on their agendas. The Hong Kong government had to respond in one way or another. They chose to underline the city's legal system and to make their message a positive one: they are committed to better the treatment of FDWs, at least on some aspects.

However, the Hong Kong government's enrolment at the UPR did not have binding consequences. Hong Kong government's role was to report on their human rights performance, but these reports could paint an overly positive picture. The Hong Kong government could support a recommendation but act otherwise, or they could present an accomplishment that meant little in practice. Several interviewees reasoned that the efforts the Hong Kong government presented were soft 'administrative measures': actions that did not incite changes in Hong Kong's legal system or the Standard Employment Contract for FDWs. I repeatedly asked my interviewees: Why was this set of legislation not implemented? Why was this convention not simply made applicable? An interviewee answered that the Hong Kong government would argue along the lines of: 'The [domestic] laws in Hong Kong are excellent, you do not need trafficking laws if you have a problem, there are always domestic laws to deal with it'.⁸¹ Moreover, interviewees argued that the Hong Kong government implements human rights as 'a framework without any substance'.⁸² The interviewee of Amnesty stated: 'The Hong Kong government states that human rights are very important and that they are working on that. But actually, there is not a lot of work, it is decorative'.⁸³ 'It is talking the talk, without walking the walk', concluded an interviewee from Hong Kong University.⁸⁴

⁸⁰ Hong Kong Government (2018) Press release, 'Speech of the Chief Secretary for Administration at United Nations Human Rights Council plenary meeting', online at: <https://www.info.gov.hk/gia/general/201903/15/P2019031500785.htm> (Last visited 20 August 2020).

⁸¹ Interview International Organization for Migration.

⁸² Interview NGO Justice Centre.

⁸³ Interview Amnesty Hong Kong.

⁸⁴ Interview Hong Kong University.

The Hong Kong government was inclined to opt for administrative measures, rather than the introduction of new international norms. These administrative measures often displayed clever manoeuvres and excellent timing in relation to UN reporting procedures, and were used to present a positive story during a UN meeting.⁸⁵ For example, the Hong Kong government denied the existence of human trafficking for a long time. In 2014, they stated: ‘The HKSAR is neither a destination for human trafficking nor a place of origin or transit for such illicit activities’.⁸⁶ This line of thinking has changed recently and the Hong Kong government acknowledged that there are cases of human trafficking.⁸⁷ Though, the Hong Kong government did not want to extend the Palermo Protocol⁸⁸, because ‘the existing legislation provides a solid framework underpinning our robust efforts to combat human trafficking’.⁸⁹ Quickly before the United States Trafficking in Persons Report came out, Hong Kong launched a human trafficking and domestic worker action plan.⁹⁰ According to the interviewee from HKCTU that was a ‘marketing move’. This tendency was underlined by the interviewee from Daly & Associates. He reasoned that in many cases the preference were administrative measures rather than introducing new legislation.⁹¹ To give another example, before the review for the Convention on the Rights of the Child (CRC), the Hong Kong government introduced a commission that is tasked with assessing whether the CRC should be incorporated in domestic legislation. The commission has a three-year deadline to decide whether the CRC will be incorporated: ‘They have got a three-year deadline to just babble [...] a toothless tiger’.⁹²

In sum, the process of enrolment portrays stable network circumstances, on the one hand, and clever manoeuvres on the other. The actor network itself was structured, the roles were pre-determined and it was defined who could speak and in which order. All actors, therefore, did explicitly invoke human rights. In this sense, there was little room for surprise. The room for manoeuvre, however, was in what was accepted as a human rights violation, and what not, and what was done with a recommendation, and what not. These choices do not only reflect what the Hong Kong government may have thought of a given concern, they also reflect how the Hong Kong government wanted to be seen. In this regard, Hong Kong’s situation was out of the ordinary, because it could participate in the UPR as a city, because of its peculiar constitutional arrangement as a Special Administrative Region. This constitutional arrangement was also the reason why the Hong Kong government wanted to be portrayed well at the

⁸⁵ Interview law firm Daly & Associates.

⁸⁶ Hong Kong Government (2014) Hong Kong Special Administrative Region (HKSAR) Government’s Response to the List of Issues raised by the United Nations Committee on Economic, Social and Cultural Rights in relation to the second periodic report of the People’s Republic of China.

⁸⁷ Hong Kong Government (2018) Universal Periodic Review 3rd cycle. National report China; Hong Kong Government (2019) Fourth Report of the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China (PRC) in the light of the International Covenant on Civil and Political Rights; Interview International Organization for Migration.

⁸⁸ The Palermo Protocols are three UN protocols focused at combatting human trafficking. They supplement the UN Convention against Transnational Organized Crime (the Palermo Convention). See: <http://www.unodc.org/unodc/en/human-trafficking/index.html>

⁸⁹ Hong Kong Government (2014) Hong Kong Special Administrative Region (HKSAR) Government’s Response to the List of Issues raised by the United Nations Committee on Economic, Social and Cultural Rights in relation to the second periodic report of the People’s Republic of China, 52.1.

⁹⁰ Interview Hong Kong Federation of Trade Unions.

⁹¹ Interview law firm Daly & Associates.

⁹² Ibid.

international stage: Hong Kong's international 'human rights image' and economic success go hand in hand. The shadow-reporters made use of Hong Kong's dependency on their image. They knew that the Hong Kong government cared about its portrayal at the international level, and used the moment to exert pressure in collaboration with other member states and UN committees. However, the process of enrolment also shows that what was presented by the Hong Kong government may be overly positive, it displays an urge to dodge possible friction and undesirable attention.

3.2.4 Network circumstances and function

Because of Hong Kong's constitutional context, the Hong Kong government was obliged to engage with human rights as legal norms at the global level. They were obliged to write reports about their human rights record. It was not 'just' an exercise of reporting. The network circumstances centred around strategising for image-building and audience-perception. Hong Kong's international 'human rights image' was of vital importance in order to make full use of the status as a Special Administrative Region. Hence, in this moment, human rights were crucial to present and show what kind of city Hong Kong is.

And, the international human rights system provided the Hong Kong government with a direct outlet to the world. Particularly, it allowed the Hong Kong government to present a narrative about the city, which suited their economic interests. A commitment to human rights, and a 'good' human rights track record, suited Hong Kong's self-image as employed in the Hong Kong Brand 'Asia's World City', as it underlined Hong Kong's position as a global economic hub with an excellent legal system. The latter had its benefits for both the pro-democracy as well as the pro-Beijing group: both thrive by a successful urban economy.

But this reporting obligation created not only an opportunity for the Hong Kong government, it also did so for the shadow-reporters. While the Hong Kong government was seeking to evade frictions and critique regarding its human rights track record, the shadow-reporters sought to incite friction and make known their concerns. It provided shadow-reporters with a moment in which the Hong Kong government *must* discuss human rights, while the world was watching. And because of this opportunity, Hong Kong's civil society actors organised themselves, wrote reports, and in some cases even attended the Working Sessions.

Human rights did not function as unnegotiable standards that can guide local policies. The Hong Kong government may have been concerned about human rights violations made public, but they tried to refute the majority of the recommendations and argued that many of the concerns related to FDWs were actually not human rights problems. The Hong Kong government seemed to pick and choose to address the human rights concerns that suited them. The Hong Kong government, consequently, only supported a small number of recommendations, which did not focus on the Hong Kong government's regulations, but on the actions of others (employers and employment agencies). But of those supported recommendations, many efforts of the Hong Kong government resulted in soft administrative measures that came off as clever manoeuvres. The apparatus of the Hong Kong government thus was able to process the recommendations into measures that suited their liking, and no one was able to interfere.

3.3 The introduction of the Window Cleaning Clause

3.3.1 The moment

In November 2016, Hong Kong's Labour Department announced that it would introduce a 'safety clause' to the Standard Employment Contract for foreign domestic workers. The clause prescribed safety measures for the cleaning of exterior windows that are not located at ground level, which is very common for a vertical city like Hong Kong. The clause was added to the Employment Contract of FDWs in specific.

During my fieldwork in Hong Kong, many interviewees mentioned the window cleaning clause. Initially, I did not consider the clause interesting. It seemed like a small, mundane regulation compared to the big questions concerning the live-in rule, the two-week rule, human trafficking and exploitation by employers and employment agencies. Yet, the case of the window cleaning clause is unusual, and at the same time emblematic, for the ways in which the Hong Kong government acts upon concerns of other urban actors. The Hong Kong government has recurrently stressed that amending the Standard Employment Contract is difficult and time-consuming.⁹³ NGOs, therefore, were surprised by the fast amendment, and used this example strategically, to lobby for other concerns: 'The employment contract was recently amended to include a clause regarding cleaning windows, adding a few words to ensure we protect the women and their unborn children should be possible'.⁹⁴ Through the case of the window cleaning clause, I assess how the Hong Kong government defined what they considered a problem and what not. This moment portrays that 'human rights concerns' often competed with considerations over the urban economy and the density of Hong Kong's urban space.

The Hong Kong government did not initiate the clause spontaneously. NGOs lobbied for change: 'As with other employees, they [FDWs] must enjoy equal rights and protection in safe environments', argued NGO Enrich.⁹⁵ Consulates put it on the agenda during talks with government officials.⁹⁶ The Minister of Labour from the Philippines visited Hong Kong to discuss the matter (among other things). The delegation of the Philippines concluded: 'They [the Hong Kong government] recommended the safety education to be enhanced, but we feel prohibition would be a more effective strategy'.⁹⁷ Several international media published articles about 'window-washing deaths' and migrant rights in Hong Kong: 'Domestic workers fell to their deaths while cleaning windows'.⁹⁸ The South China Morning Post reported that two FDWs

⁹³ Interview NGO Pathfinders.

⁹⁴ Pathfinders (2017) Written Submission on the Review of Statutory Maternity Leave, online at: <http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-Written-Submission-on-Review-of-Statutory-Maternity-Leave-18-July-2017.pdf> (Last visited 20 August 2020).

⁹⁵ NGO Enrich in South China Morning Post. South China Morning Post (2016) News Article, 'Window-cleaning ban for Hong Kong's domestic helpers will not keep them safe, campaigners say', online at: <https://www.scmp.com/news/hong-kong/education-community/article/2047296/window-cleaning-ban-hong-kongs-domestic-helpers> (Last visited 20 August 2020).

⁹⁶ Interview Consulate Indonesia.

⁹⁷ Philippine Labour minister in South China Morning Post (2016) News Article, 'Window-cleaning ban for Hong Kong's domestic helpers will not keep them safe, campaigners say'.

⁹⁸ New York Times (2016) News Article, 'After Window-Washing Deaths, a Debate Over Migrants' Rights in Hong Kong', online at: <https://www.nytimes.com/2016/11/23/world/asia/hong-kong-migrants-domestic-workers.html> (Last visited 20 August 2020); BBC (2016) News Article, 'Hong Kong maids seek high-rise window cleaning ban', online at: <https://www.bbc.com/news/world-asia-37271705> (Last visited 20 August 2020); South

passed away in the same year because of window-washing: ‘In August, a 35-year-old Filipino helper plunged to her death from the Phase III building of Lohas Park in Tseung Kwan O. A 47-year-old Filipino helper died after falling from a block in the same residential estate on March 18 this year’.⁹⁹

Relatively quickly, the Hong Kong government amended the Standard Employment Contract for it to include a window cleaning clause. The spokesman of the Labour Department stated: ‘The HKSAR Government is committed to safeguarding the occupational safety of employees, including Foreign Domestic Helpers’.¹⁰⁰ But, while the New York Times explicitly reported on migrant rights being violated, the Hong Kong government, consulates and local civil society actors did not always frame the situation as such. They did not invoke specific articles of the human rights instruments that have been made applicable to Hong Kong. This moment does not depict a situation in which urban actors explicitly referred to human rights, as legal norms, moral values or principles of good governance. It is a moment in which human rights were sometimes deliberately not made explicit. By describing the network circumstances surrounding the introduction of the window cleaning clause, I explore how human rights functioned in this implicit way.

To do this, I follow the same structure as set out in the first part of this chapter. I first provide insight into the different actors involved. In this case, this includes the complex internal dynamics of the Hong Kong government, the pro-democracy and pro-Beijing divide, and the actors that advocate for FDWs. More specifically, I describe how the pro-democracy and pro-Beijing divide played out in relation to Hong Kong’s legal human rights system. This provides crucial insight as to why human rights have become considered as politically sensitive, and at times best avoided. Thereafter, I delve into the processes of problematisation and enrolment to grasp how the actors made sense of their surroundings and roles. In the final section, I bring the different network circumstances together to describe how they interacted with the usages of human rights.

3.3.2 The actors

The Hong Kong government

I use this section to further describe the internal dynamics of Hong Kong as a Special Administrative Region. Hong Kong’s government consists of an executive referred to as the Administration, the legislature called the Legislative Council (LegCo) and the judiciary, which consists of several levels of courts.

China Morning Post (2016) News Article, ‘Stop forcing domestic workers to clean windows, Philippine government insists after series of high-rise deaths’, online at: <https://www.scmp.com/news/hong-kong/economy/article/2021749/philippine-government-ask-hong-kong-officials-remove-window> (Last visited 20 August 2020).

⁹⁹ South China Morning Post (2016) News Article, ‘Window-cleaning ban for Hong Kong’s domestic helpers will not keep them safe, campaigners say’.

¹⁰⁰ Labour Department (2016) Letter to the LegCo Commission on Manpower. Occupational Safety of foreign domestic helpers when cleaning outward-facing window, online at: <https://www.legco.gov.hk/yr16-17/english/panels/mp/papers/mp20161115cb2-218-1-e.pdf> (Last visited 20 August 2020).

Hong Kong is considered a semi-democracy because the majority of Hong Kong's population (including FDWs) is not allowed to vote. Although there are elections for the Chief Executive and LegCo, the outcome will not always reflect the preferences of the Hong Kong public. The Chief Executive is chosen by an election committee, but the candidate also needs to be approved by China. In the 2017-elections, the election committee only had 1200 members. The election committee ought to reflect the population, it therefore consists of members from different political parties and 'occupation sectors'. However, the selection committee has been criticised for over-representing businesses and pro-Beijing interests. The remainder of the Administration officials is not elected. On the contrary, high Administration positions such as the Secretary of Justice need to be approved by China as well.¹⁰¹

35 of the 70 legislators are directly selected by a small committee of 'geographical constituencies'. These constituencies represent different geographical areas of Hong Kong. The remaining 34 legislators are indirectly selected by 'functional constituencies' representing occupation sectors.¹⁰² LegCo is dominated by pro-Beijing legislators, but about 40% are affiliated with pro-democracy parties. The election procedures have caused huge agitation and demands for universal suffrage by many pro-democracy politicians and voters. The voting procedures have been discussed numerous times in LegCo and during UN reporting procedures without result.¹⁰³ Moreover, it has resulted in wide-spread protests of pro-democracy groups (about which more later).

LegCo's function is to 'make laws, approve budgets and public expenditure and monitor the work of the government in general'.¹⁰⁴ In practice, the Administration, particularly the Department of Justice Law Drafting Division, introduces almost all new legislation. This practice is described on the website of the Department of Justice as 'a general rule'.¹⁰⁵ Legislators can only introduce bills that do not involve public expenditure, relate to the political structure or to the operation of the government. Because there are hardly bills that would not involve one of the three, LegCo is very restricted. Though, all new bills do need to go through three rounds of consultation by LegCo before they become accepted. When the public wants to express their views or concerns to the government, LegCo is the formal venue. Legislators can ask questions and introduce motions on behalf of the public, to which the Administration has to respond. In addition, legislators can initiate public hearings, wherein civil society members are invited to express their views.

Because of LegCo's restrictions, the Administration has more influence. The majority of the actual decision-making takes place in the Administration departments. What happens behind the closed doors of these departments remains hard to trace. All administration officials declined to be interviewed. I have received responses such as: 'You mentioned in your email about a research on Human Rights in Hong Kong. The primary function of the Department of

¹⁰¹ Electoral Affairs Commission, Chief Executive Elections. See: <https://www.eac.hk/en/chief/cee.htm>

¹⁰² Davis, 'Human Rights and the Founding of the Hong Kong Special Administrative Region'; Electoral Affairs Commission, Legislative Council Elections. See: <https://www.eac.hk/en/legco/lce.htm>

¹⁰³ For the legislative council debates on the topic, see: https://www.legco.gov.hk/database/english/data_ca/ca-electoral-and-registration-system.htm

¹⁰⁴ Basic Law, articles 66-79. See also: https://www.legco.gov.hk/general/english/intro/about_lc.htm

¹⁰⁵ See the website of the Law Drafting Division of the Department of Justice: <https://www.doj.gov.hk/eng/about/ldd.html>

Justice is to provide legal services to the Government of the Hong Kong Special Administrative Region. We are afraid that we are not in a position to provide assistance on the matter you raised'. The Administration appears closed off, and interviewees confirmed this: 'In Hong Kong the culture for civil servants is 'if I do less there will be less opportunity for me to do something wrong''.¹⁰⁶ Administration officials will not speak out on an individual basis. I cannot argue that all individuals that work for the Administration are pro-Beijing oriented, and interviewees did provide accounts of 'progressive Administration officials', who face 'a lot of pressure'. But I can conclude that most civil servants are disciplined to conform. Because Administration officials are not elected and because the candidates for higher Administration positions need to be approved by China, I can by and large assume that the environment of the Administration is pro-Beijing oriented.

Two Administration departments are predominantly involved in matters related to FDWs: The Immigration Department and the Labour Department. The Immigration Department approves and prepares the visas for FDWs and the Labour Department is in charge of everything related to their employment contracts. The Standard Employment Contract is drafted by the Department of Labour, which is in charge of an 'FDW service section' that controls and administers matters related to FDWs.¹⁰⁷ If an FDW wants to file a complaint concerning wages, a lack of rest days, or 'any infringement of labour rights', they can seek for a solution via the Labour Tribunal.¹⁰⁸

The pro-democrats and the pro-Beijing group

In Hong Kong's urban affairs, contrary to during international affairs, human rights remained somewhat invisible in relation to FDWs. Why was human rights language occasionally considered as *too* political? This section, in more detail, discusses the pro-Beijing and pro-democracy groups of Hong Kong's political spectrum. More specifically, I describe how this political divide has played out in relation to Hong Kong's legal human rights system. The latter provides crucial background information, which has to be explained before I discuss the processes of translation.

The outline of Hong Kong's legal human rights system was established in the period preceding the Handover to China. I must underscore that this period was one of clashing interests and uncertainty about Hong Kong's future. Despite the assurances of the Sino-British Joint Declaration, the decision to return Hong Kong to China did provoke fear with regard to the freedoms and the protection of human rights that were established during British rule.¹⁰⁹

¹⁰⁶ Interview Amnesty.

¹⁰⁷ The website provides information in many languages spoken by the FDWs. See: <https://www.fdh.labour.gov.hk/en/home.html>

¹⁰⁸ Interviewees note that there are some practical difficulties in this set up. In practice, many FDW related concerns are intersectional. The concerns transcend issues of labour, immigration and safety: 'Sometimes we have problems when the cases are multi-layer. They involve overstay of the visa, abuse and violation of labour rights. So when we talk to the Labour Department, they are not in the capacity to handle the other issues. And sometimes these departments do not talk to each other so we have to submit new data', Interview Consulate Indonesia; Hong Kong Federation of Trade Unions.

¹⁰⁹ C.J. Petersen, 'Equality as a Human Right: The Development of Anti-Discrimination Law in Hong Kong' (1997) 335 *Columbia Journal of Transnational Law*, 34, 337-388.

Moreover, the drafting process of Hong Kong's Basic Law was not trouble-free. The process was disturbed by the 1989 mass demonstrations on Tiananmen Square.¹¹⁰ During the massacre in Beijing, almost 20% of Hong Kong's population protested on Hong Kong's streets to support the demonstrations. The Chinese government accused Hong Kong of inciting democratic movements in China.¹¹¹ This affected the negotiations on the Basic Law, claim Petersen and Davis.¹¹² Hong Kong's human rights system was created amidst this tense situation. Britain and parts of the Hong Kong people became more concerned about securing human rights, democracy, freedom and 'the Hong Kong way of life', while China was pushing back in providing Hong Kong with certain freedoms.¹¹³ For instance, at the time a proposal to create a Human Rights and Equal Opportunities Commission was turned down by China.¹¹⁴

Human rights norms, nevertheless, became embedded in Hong Kong's domestic legal system. The ICCPR and ICESCR are incorporated in local legislation and have a strong position in Hong Kong's legal system. The Sino-British Joint Declaration secured that the ICCPR 'shall remain in force' in Hong Kong after the handover.¹¹⁵ Article 39 of the Basic Law subscribes that this also accounts for the ICESCR and labour conventions that had been made applicable to Hong Kong. Moreover, during the negotiations on the Basic Law, another human rights bill was (relatively quickly) established in 1991. After a combination of international, local and British pressure, the Bill of Rights Ordinance was adopted.¹¹⁶ The Bill of Rights is an ordinance that adopts and interprets the ICCPR to Hong Kong and is considered an influential human rights mechanism.¹¹⁷ Petersen and Davis consider the introduction of the Bill of Rights Ordinance to be a strategic move. Its introduction secured a legal basis for human rights in Hong Kong, just before the Handover to China.¹¹⁸

Furthermore, the four Discrimination Ordinances, that are implemented by the EOC, were initiated by pro-democracy legislators. The formulation of the first Discrimination Ordinance in 1994, the Sex Discrimination Ordinance, was the result of civil society and legislative pressures on the basis of CEDAW, while CEDAW was not made applicable to Hong Kong at

¹¹⁰ The Tiananmen Square Massacre, which is referred to by China as the July 4th Incident, was a mass student led protest against corruption and in favour of democratic reforms (among more); the demonstrations were turned down by the Chinese authorities with extreme force resulting in an estimate of at least 300 protesters being killed.

¹¹¹ Petersen, 'Equality as a Human Right'.

¹¹² Petersen, 'Equality as a Human Right'; Davis, 'Human Rights and the Founding of the Hong Kong Special Administrative Region'.

¹¹³ Davis, 'Human Rights and the Founding of the Hong Kong Special Administrative Region'.

¹¹⁴ Ibid.

¹¹⁵ Sino-British Joint Declaration, article 13 of Annex 1.

¹¹⁶ Petersen, 'Equality as a Human Right'; Davis, 'Human Rights and the Founding of the Hong Kong Special Administrative Region'.

¹¹⁷ Tai, 'The Hong Kong ombudsman'; Chen, 'International Human Rights Law'. Furthermore, Chen quantifies the number of court cases where human rights have played a role between 1991-2009 and he judges this as quite high. The ICCPR ends up first place being referred to in 255 relevant cases, followed by the ECHR with 150 relevant cases. Chen asserts that although the reasons for enshrining the ICCPR in the Bill of Rights might have been political, it does allow access to a large pool of international (human rights) jurisprudence and thus creates 'a convenient surrogate for an indigenously drafted bill of rights'.

¹¹⁸ Petersen, 'Equality as a Human Right'; Davis, 'Human Rights and the Founding of the Hong Kong Special Administrative Region'.

the time.¹¹⁹ In September 1993, pro-democracy legislator Anna Wu, by great exception¹²⁰, drafted two bills: an equal opportunities bill and a bill on the establishment of an equal opportunities and human rights commission. Both bills were supported by members of LegCo unanimously, though they were not received with much excitement by the British Hong Kong government. A human rights commission was out of the question, especially since it would anger China argues Petersen.¹²¹ Quite strategically, the British Hong Kong government proposed to write its own anti-discrimination legislation. Two anti-discrimination bills (sex and disability) were speedily drafted and adopted. They, however, remained much narrower and more conservative than the bills proposed by Anna Wu.¹²² The Race Discrimination Ordinance (RDO) is also limited in its scope. The RDO came into operation in 2009 and protects all individuals against discrimination, harassment and vilification on the ground of race.¹²³ This is considered unlawful in activities including education, employment, the provision of goods, services, facilities and housing. However, the RDO exempts many government services such as the police forces and the immigration services.¹²⁴

The question remains: why are human rights considered as *too* political, despite Hong Kong's legal human rights system. The history of the legal human rights system, and the division in the Hong Kong government's political affiliations provide some answers. Human rights are overly 'politically sensitive', stressed all my interviewees. When discussing this topic, I noticed that some interviewees became very self-aware and cautious of their choice of words, while others bluntly stated that this politicisation is connected to China's growing influence on Hong Kong. The interviewee of Open Door reasoned: 'In Hong Kong it is very difficult to be political. Even the word fair can be considered political [...] it has to do with the Hong Kong history and the Chinese influence'.¹²⁵ An activist researcher from Hong Kong University stated that: 'There is a resistance to rights-oriented language as something that is western. So even though I talk about a rights-based approach, it is sometimes met with a lot of resistance or scepticism. Like, no this is Hong Kong, we do things our own way'.¹²⁶ The interviewee from Pathfinders reasoned: 'They [human rights] are strong but they are also highly political. Because at the moment we cannot separate human rights from politics. And that is always the nexus when communities tend to fragment, then human rights tend to become a political thing'.

This fragmentation refers to the pro-Beijing versus pro-democracy divide in Hong Kong's political spectrum. While it is not within the scope of this research to assess the full specifics

¹¹⁹ Petersen, 'Equality as a Human Right'.

¹²⁰ Since the tradition was for the Administration to draft and propose new bills; and for the legislature merely to assess them. Anna Wu wrote clever bills in order to prevent public expenditure. Petersen, 'Equality as a Human Right'.

¹²¹ Petersen, 'Equality as a Human Right'.

¹²² Ibid.

¹²³ In the RDO, race refers to the descent, colour or ethnicity of a person. For the RDO see: <https://www.elegislation.gov.hk/hk/cap602>

¹²⁴ Art 55, RDO.

¹²⁵ Interview NGO Open Door.

¹²⁶ Interview Hong Kong University. Several studies have shown differences between how Western and Eastern societies perceive human rights. In the West, human rights are often considered to be universal, while the notion does not always go together with Asian values that have an emphasis on family and social harmony, differences that are also reflected in political models. See also D.A. Bell, *East meets west. Human rights and democracy in East Asia* (Princeton: Princeton University Press, 2006).

of China's influence, it does play a concrete role in this moment. I base my information on the work of other scholars and remarks by interviewees. In 2008, Leung already argued that the Administration's stance towards human rights was influenced by China. When a human rights issue would, in any way, connect to China, the Administration would be inclined to take a 'conservative approach'.¹²⁷ A conservative approach generally implies a reluctance to speak in human rights language.¹²⁸ Scholars Tai and Leung stress that this political divide has only grown starker.¹²⁹ On the one hand, this is the case because China is intensifying its grip on the Hong Kong government.¹³⁰ For instance, by disqualifying legislators to assume office because they offended China when taking their oaths¹³¹, by screening Hong Kong's candidates before elections, by issuing interpretations of the Basic Law, and by introducing new laws by pressuring the Hong Kong Administration.¹³²

On the other hand, pro-democracy movements responded to this intensifying grip, which also deepened the divide. In 2013 and 2019-2020 there were immense protests about the perceived lack of democracy, fragmenting freedoms and the influence of China on Hong Kong's government. These protests are known as Occupy Central¹³³, the Umbrella Movement¹³⁴ and the 2019-2020 protests¹³⁵. Generally, the pro-Beijing-camp did not support the movements and some of the protest leaders are still awaiting prosecution.

¹²⁷ An interviewee from the law firm Daly & Associates claimed that courts are also inclined to take a 'conservative approach'. They try not to get caught up in the political cases, to be able to obtain their impartiality, although this has already been challenged by five interventions by Mainland China. He described a tendency whereby court cases are usually only won on the basis of a very narrow point. He argued that courts are becoming more afraid to base their decisions on human rights principles (beyond domestic law) because of long term consequences. The long-term consequences would be that the international human rights norm would become anchored and could thus be used in other cases. Courts have grown more reluctant to generate such structural implications argued the interviewee.

¹²⁸ Interview Equal Opportunities Commission; Hong Kong University; law firm Daly & Associates.

¹²⁹ B.Y.T. Tai, 'Hong Kong No More: From Semi-democracy to Semi-authoritarianism' (2018) 4 *Contemporary Chinese Political Economy and Strategic Relations: An International Journal*, 2, 395-430; C. Yeung, 'Human rights in Hong Kong: One Country Looms as Two Systems Fade' (2018) 4 *Contemporary Chinese Political Economy and Strategic Relations: An International Journal*, 2, 431-449.

¹³⁰ Yeung argues that China is intensifying its grip because they feel unease that 'the hearts of Hong Kong people have not yet returned to the motherland'. Yeung, 'Human rights in Hong Kong'.

¹³¹ Yeung, 'Human rights in Hong Kong'.

¹³² Tai, 'Hong Kong No More'.

¹³³ Occupy Central started as a violence-free 'civil disobedience campaign' that was launched in September 2014. The campaign mainly focused on democratic reformations of the electoral system. Occupy Central incited the Hong Kong public to take over the public space of the Central district. In December 2014, the leaders surrendered to the police and some are still awaiting prosecution.

¹³⁴ The Umbrella Movement refers to the larger protests rather than the Occupy Central campaign. The Umbrella Movement started as student-led protests incited by the proposed changes to Hong Kong's electoral system, which would enhance China's involvement. After Occupy Central started its campaign, the Umbrella protests turned into a series of 'sit-in street protests' near governmental offices and major roads. The movement developed into a wider pro-democracy movement, demanding better protection of civic freedoms and human rights.

¹³⁵ In the summer of 2019, a series of new mass demonstrations commenced. Initially, the protests focused on the opposition of the Fugitive Offenders Amendment Bill that was proposed by the Administration. The bill would allow the Hong Kong government to detain and extradite criminal fugitives who are wanted by the Chinese authorities. The protesters argued that the bill would undermine the autonomy and civic freedom of Hong Kong. After the protests turned into lengthy mass-demonstrations and (police) violence, Chief Executive Lam first suspended and later withdrew the bill. However, the protests did not end there. The protest developed into a bigger movement, as the protesters demanded democratic reforms that were already discussed during the Umbrella Movement.

Amidst this political divide, pro-democracy groups are advocating for human rights, because they perceive the pro-Beijing group is enabling a future with deteriorating human rights.¹³⁶ Human rights have become a project of the pro-democracy group. And, as described earlier, this was already the case before the handover. Most human rights legislation in Hong Kong is the result of efforts by the pro-democracy group. Human rights have become associated with the pro-democracy group and are therefore not considered as neutral standards. When human rights are invoked, for instance in LegCo, they likely do not facilitate a common stance. On the contrary, when an issue becomes connected to human rights, the issue is more likely to end up in a political deadlock.

In fact, concerns that do not lead to a political divide will be dealt with first. This is a common practice of the Administration and LegCo. In the 2018 Chief Executive Policy Address in LegCo, Carrie Lam expressed how well this approach had been working: ‘I would not harbour the unrealistic wish that all our political parties or Members of this Council share the same political stance [but] there should be plenty of room for collaboration. The approach of ‘dealing with simple issues before the difficult ones’ adopted by the Government in presenting many funding items to this Council after consultation with Legislators of different parties [...] has helped reduce confrontation in this Council and contributed to the smooth passage of initiatives that benefit our economy and people’s livelihood’.¹³⁷ This ‘dealing with the simple issues’ approach is illustrated by the Administration’s response to the EOC’s extensive review of discrimination in Hong Kong. In 2018, the EOC presented 73 recommendations, of which 27 priorities, to eradicate discrimination.¹³⁸ The Administration responded that they will start with 8 recommendations. The interviewee of the EOC argued that the Administration has chosen the 8 easiest recommendations ‘that do not touch the core problems concerning human rights and equality’. For instance, the Administration chose to focus on legislation regarding breastfeeding, service dogs and physical accessibility, rather than recommendations about the Administration’s exemption from the Racial Discrimination Ordinance.¹³⁹ Although the window cleaning clause was not among the EOC’s recommendations, it illustrates a similar tendency. A relatively small concern was taken up, amidst a range of ‘more political’ concerns that were left waiting.

The FDW-advocates

The previous moment already depicts that FDWs do not simply adhere to the regulations as laid out by the Administration. On the contrary, FDWs are organised in associations, have allies in consulates, NGOs, Administration officials and legislators, and lobby for a large number of concerns. FDWs in Hong Kong are organised, especially in comparison with FDWs in

¹³⁶ Yeung, ‘Human rights in Hong Kong’.

¹³⁷ Hong Kong Government (2018) Speech by the Chief Executive, ‘The Chief Executive’s 2018 Policy Address to the Legislative Council’, online: <https://www.policyaddress.gov.hk/2018/eng/speech.html> (Last visited 20 August 2020).

¹³⁸ Equal Opportunities Commission (2016) Discrimination Law Review - Submissions to the Government, online at: <https://www.eoc.org.hk/EOC/GraphicsFolder/Infocenter/dlr/content.aspx?ItemID=13656> (Last visited 20 August 2020).

¹³⁹ Interview Equal Opportunities Commission.

Singapore, South Korea and Middle Eastern countries.¹⁴⁰ I call this group of lobbyists the ‘FDW-advocates’. This section describes how the FDW-advocates are organised in Hong Kong.

FDWs find allies in NGOs, which have been described in the section on the shadow reporters. These NGOs prepare submissions for the UN reporting procedures, but they are also involved in lobbying, directed at legislators and Administration officials, in Hong Kong. The same accounts for unions. FDWs can become members of unions themselves. The Hong Kong Confederation of Trade Unions (HKCTU) is a pro-democracy labour group that has over 61 trade union affiliates, of which about 20 FDW unions. These FDW unions are affiliated with the Hong Kong Federation of Asian Domestic Workers.

Consulates are crucial allies because they relatively easily meet with Administration officials.¹⁴¹ The consulates of the FDW sending countries, particularly Indonesia and the Philippines, are most involved, but outreach is also directed at other consulates. Generally, each consulate has its own national priorities to convey. For instance, the consulate of the Netherlands speaks out on LGBTQ rights, while the US has a focus on human trafficking.¹⁴² FDWs and NGOs make use of such foreign policy profiles and seek for alliances on specific issues. For instance, an NGO would seek to establish good relations with the Dutch consulate, so the Dutch Consul would refer to a certain struggle of FDWs when meeting with Administration officials.¹⁴³

Over the years FDWs have also found allies in legislators. NGOs and unions try to find likeminded legislators who can bring their issues to LegCo.¹⁴⁴ But not all legislators are allies. Some legislators lobby on behalf of FDWs, while others take a more critical approach towards the freedoms of FDWs. The legislators who ask for improvements concerning the treatment of FDWs are with no exception part of the pro-democracy group. Legislators of pro-democracy parties generally ask questions and prepare motions on behalf of FDWs, while legislators of pro-Beijing parties generally do not.¹⁴⁵ For example, legislator Fernando Cheung from the Democratic Party, is known as an ally of FDWs. He continues to voice their concerns in LegCo meetings. As a result, abuses, wages, corrupt employment agencies and human trafficking are discussed in LegCo on a regular basis.¹⁴⁶ Pro-Beijing legislators, on the other hand, have flagged that FDWs ‘occupy’ the public parks on Sundays. Furthermore, pro-Beijing legislators have asked questions related to medical expenses and ‘job-hopping’ of FDWs. On December 2017 a pro-Beijing legislator expressed concerns on the medical expenses employers need to cover for FDWs: ‘Given that employers have no authority to stop FDWs from going out (even during inclement weather) or engaging in high-risk activities on non-working days, but

¹⁴⁰ Constable, ‘Migrant workers and the many states of protest’; N. Piper, ‘Temporary Migration and Political Remittances: the role of organisational networks in the transnationalisation of human rights’ (2009) 8 *European Journal of East Asian Studies*, 2, 215-243.

¹⁴¹ Interview NGO Justice Centre; Consulate Indonesia; NGO Pathfinders; Consulate Netherlands.

¹⁴² Interview Consulate Netherlands; Hong Kong Federation of Trade Unions.

¹⁴³ Interview Consulate Netherlands.

¹⁴⁴ Interview NGO Justice Centre; NGO Pathfinders.

¹⁴⁵ This is also underscored by Constable, who argues that the fact that FDWs protest, congregate and claim their rights resonates with those legislators and Hong Kong people who fight for their freedoms. Constable, ‘Migrant workers and the many states of protest’.

¹⁴⁶ LegCo Minutes 19 April 2016; 25 May 2016; 01 June 2016; February 2017.

employers are required to bear the medical expenses incurred by FDHs due to their injuries caused by accidents during such period of time, whether the Government will reconsider amending clause 9'.¹⁴⁷ Thus, both sides of the political spectrum have a different relation with FDWs: pro-Beijing legislators more often flag problems that are *caused* by the presence of FDWs, while pro-democracy legislators address problems that *affect* FDWs.

But what do these allies do for FDWs? FDWs are not able to vote in Hong Kong and thus not able to influence legislative and administrative decisions. Furthermore, FDWs rarely get an opportunity to interact with administration officials. This has practical reasons as well. Interviewees note that the Labour Department's FDW Service Section is understaffed, but more importantly, they do not work on Sunday's (FDWs' only day off).

In general, the relation between civil society and the Administration is perceived as difficult. Several NGOs stated that they hardly get opportunities to talk with Administration officials: 'It is like an exceptional achievement if you can meet with them in Hong Kong'.¹⁴⁸ The interviewee of Pathfinders underscored this: 'Our biggest concern is whether government officials will meet us'. Interviewees note that lobbying work in Hong Kong is complex and involves personal relations.¹⁴⁹ The interviewee explained that FDW-advocates employ a multifaceted tactic: 'It is not just submitting your submissions. Making a submission to the LegCo is one mechanism. Meeting with a legislator, going to a conference, going to the Indonesian diplomatic mission or having a side conversation, that is where and how it matters. So sometimes it is a slow game. It is filtering it into different buckets to then create a machine that leverages to the result you want to get'.¹⁵⁰

3.3.3 Translation activities

Was the window cleaning clause introduced only because it was a relatively simple adaptation? The processes of translation show that there was more to it. The window cleaning clause was lobbied for by FDW-advocates, considered by the Administration, approved in LegCo and implemented by the Administration. Through these different steps, actors were assigned roles and they problematised. The process of problematisation, in which the actors tried to make sense of the supposed problem, depicts that it was a contest of framing. The actors perceived of the problems related to FDWs differently, and, therefore proposed different explanations and solutions. The Administration perceived of FDWs as temporary workers, who should be protected during working hours. FDW-advocates, on the other hand, perceived that the treatment of FDWs should be improved far beyond 'labour matters', thereby touching upon a wider spectrum of human rights. However, this change in perception did not play out this literally or explicitly in the actual discussions between the FDW-advocates and the

¹⁴⁷ 'To prescribe a cap on the amount of medical expenses to be borne by employers and expressly exclude the medical expenses incurred by FDHs due to critical illnesses, chronic diseases, giving birth and injuries caused by accidents during their voluntary engagement in high-risk activities on non-working days, so as to avoid employers having to bear an unreasonable financial burden'. LegCo, 6 December 2017.

¹⁴⁸ Interview NGO Justice Centre; NGO Pathfinders; Hong Kong Federation of Trade Unions.

¹⁴⁹ Interview NGO Pathfinders, NGO HELP for domestic workers; Equal Opportunities Commission; Hong Kong Federation of Trade Unions.

¹⁵⁰ Interview NGO Pathfinders.

Administration. The process of enrolment illustrates that although FDW-advocates were formally invited to voice their opinions to the Administration, they had to play by the rules. The Administration defined the roles and thereby confined *how* FDW-advocates could voice their complaints.

Problematization

How did the different actors make sense of the problems concerning FDWs in Hong Kong? The New York Times reported on migrant rights and exploitation in Hong Kong.¹⁵¹ This particular news article was noticeably the result of interaction with the FDW-advocates as the article cites the Consulate of the Philippines, several NGOs and the HKCTU trade union. Though, the FDW-advocates themselves used different words to explain the problems in Hong Kong. While the FDW-advocates acted because of human rights, this was not what the debates always literally showed.

In Hong Kong's urban debates, the window cleaning lobby was not explicitly framed as a 'human rights problem'. FDW-advocates did problematise the window cleaning clause and the wider range of concerns as migrant rights violations, but they framed their account of the problems differently. More than a few FDW-advocates I spoke with did not profile themselves as human rights organisations, and/or did not extensively refer to human rights on their websites. However, these FDW-advocates did state in our interview that they considered themselves to be human rights organisations. They believed in the values of human rights, and strived to improve FDWs' access to rights, but did not always see a strategic purpose in emphasising this.¹⁵²

Hence in their problematisation, the FDW-advocates also made use of other terminology. The interviewee from the HKCTU argued that using rights language was useful depending on the situation: 'When we talk [with the Administration] about employment agencies overcharging, in Chinese we use words like illegal agency, overcharging. We use less domestic workers rights'. Open Door, likewise, reasoned that there were two options: learn others her (human rights) vocabulary, or learn others' vocabulary. She believed that the second approach worked best. The interviewee of Pathfinders explained that their organisation has removed all human rights language from their website and limits human rights language in (written) submissions to LegCo: 'We modify our approach and advocacy by referring less to western trigger words and international treaties. We know it is not popular. So, the way we phrase things is factual. We remove adverbs and we try to bring in local law rather than 'under this treaty you should be doing this', which is a western style'. This was similar for the consulates. During my interview with the Indonesian consulate, it became clear that human rights are not part of their talks the Administration: 'To be honest ... no'.¹⁵³

¹⁵¹ New York Times (2016) News Article, 'After Window-Washing Deaths, a Debate Over Migrants' Rights in Hong Kong'.

¹⁵² Interview NGO Pathfinders; NGO UNISON; NGO Justice Centre; NGO Open Door; NGO HELP for Domestic Workers.

¹⁵³ Interview Indonesian Consulate.

In relation to the high-rise window cleaning, the FDW-advocates used other types of words, they frequently referred to safety, protection, security and risks. NGO Enrich, for example, stressed: ‘The ban on window-cleaning will offer protection and prevent tragic accidents from happening which, in turn, will protect the families they work for and families back home dependent on them’.¹⁵⁴ NGO HELP argued: ‘Any tasks or activities that pose risks to the safety of any worker should be regulated and the government must develop strict measures to minimise those risks [...] While it is reasonable to maintain a balance between the safety of workers and the needs of employers, workers’ safety should always be the priority’.¹⁵⁵

However, the FDW-advocates did not only problematise the high-rise window cleaning. The crux of their problematisation related to something else. Namely, that the high-rise window cleaning was just the ‘tip of the iceberg’. FDW-advocates used the momentum of the window cleaning clause to present their other concerns: the exploitation and abuse that is facilitated by the two-week rule and live-in rule. The FDW-advocates stressed in the South China Morning Post that FDWs were ‘still vulnerable to exploitation because of their unspecified duties and unrestricted working hours’. The window cleaning clause would not address the other concerns and was considered ‘a band-aid approach’.

The Administration too provided an account of the problems. The Administration responded to the news articles in the (international) media, the talks with consulate officials and foreign ministers, the protests of FDWs, and the lobbying by NGOs. Their response was very considerate of the concerns of the other actors: ‘The HKSAR Government is committed to safeguarding the occupational safety of employees, including FDHs. In view of the community’s concerns about the safety of FDHs when cleaning outward-facing windows, the Labour Department has over the past few weeks consulted various stakeholders, including the consuls general of FDHs’ home countries in Hong Kong, FDH employer groups, FDH groups and employment agencies associations. They all care about the safety of FDHs and accept that FDHs should not be asked to work in unsafe situations. We are grateful to all stakeholders who have provided us with pragmatic and useful suggestions on how to ensure that FDHs can perform exterior window cleaning safely’.¹⁵⁶ The Administration understood the safety concerns and acted upon them: they introduced the window cleaning clause. Hence, the Administration provided a straightforward account of the problem: there was a labour safety issue that they tackled with a clause to the standard contract, because the Administration stressed that it was their task to guarantee ‘occupational safety’.

The account of the problems by the Administration was emblematic for the ways they responded to other concerns of the FDW-advocates. While the Administration and the FDW-advocates agreed on the problems concerning the window cleaning, this was not the case for the other concerns. The Administration perceived of FDWs as *workers*, whose safety must be protected during the time of their stay. Other concerns that relate to other rights, were not

¹⁵⁴ NGO Enrich in South China Morning Post (2016) News Article, ‘Window-cleaning ban for Hong Kong’s domestic helpers will not keep them safe, campaigners say’.

¹⁵⁵ NGO HELP for Domestic Workers in South China Morning Post (2016) News Article, ‘Window-cleaning ban for Hong Kong’s domestic helpers will not keep them safe, campaigners say’.

¹⁵⁶ Hong Kong government (2016) Press Release, ‘Safety clause on cleaning outward-facing windows to be added to Standard Employment Contract for foreign domestic helpers’, online at: <https://www.info.gov.hk/gia/general/201611/14/P2016111400643.htm> (Last visited 20 August 2020).

considered. The Administration has been receptive to concerns, beyond the high-rise window cleaning, that relate to labour safety: exploitation by employers and employment agencies, and human trafficking.¹⁵⁷ The Administration, however, persisted to ignore the concerns (related to physical integrity, privacy, adequate housing, long working hours) that were maintained by the live-in and two-week rule, while these two rules were considered, by the FDW-advocates, as the root of most harm.¹⁵⁸

The problematisation of the Administration was also shaped by other, perhaps more pragmatic, concerns. The Administration did not only have the treatment of FDWs on its mind, they were also occupied by more managerial problems. More specifically, two pragmatic and/or economic considerations: FDWs needed to remain cheap and temporary. I will explain both.

The minimum wage of FDWs has been increased several times, the latest was a 2,5% increase in September 2018. The minimum wage of FDWs grew to 4520 HK dollar (503 Euro).¹⁵⁹ The salary raise, however, was always kept to a minimum and the salaries of FDWs remained considerably lower than those of Hong Kong residents. The latter was crucial for economic reasons. An FDW is not a luxury that is exclusively available to the elites. FDWs support the growing middle class and enable a situation wherein two parents can work full-time jobs.¹⁶⁰ As a consequence, the availability of FDWs has been of crucial importance for Hong Kong's economy. If a 'human rights concern' would impair this, then it would have less chance of 'success', stressed two interviewees.¹⁶¹ Substantially raising the average salaries of FDWs would make them less affordable for middle incomes households, which would have an inevitable effect on the workforce, which the Administration tried to avoid.

Besides this economically driven problem, the interviewee from HKCTU asserted that the Administration would never change the live-in and two-week rules because those two regulations touch the heart of Hong Kong's immigration system. These rules control that FDWs cannot stay in Hong Kong without work, nor have a life independent of their employers. This points to the second managerial problem of the Administration: one that relates to population control and Hong Kong's confined space. Immigration control is an intrinsic part of Hong Kong

¹⁵⁷ The Administration tried to prevent misconduct by Employment Agencies, have increased the fines and introduced a Code of Practice for Employment Agencies. Labour Department (2018) Code of Practice for Employment Agencies, online at: https://www.eaa.labour.gov.hk/res/pdf/CoP_Eng.pdf (Last visited 20 August 2020). They refer employers to the Equal Opportunities Commission (2010) Understanding the Race Discrimination Ordinance A Guide for Foreign Domestic Helpers and their Employers, online at: <https://www.eoc.org.hk/EOC/Upload/UserFiles/File/rdo/FDHbooklet-e.pdf> (Last visited 20 August 2020). Also, the Administration launched a human trafficking and domestic worker action plan in 2018, Hong Kong Government (2018) Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong, online at: <https://www.sb.gov.hk/eng/special/pdfs/Action%20Plan%20to%20Tackle%20TIP%20and%20to%20Protection%20FDHs.pdf> (Last visited 20 August 2020).

¹⁵⁸ Interview NGO HELP for domestic workers; NGO Justice Centre; NGO UNISON.

¹⁵⁹ Hong Kong government (2018) Press Release, 'the Government announced today (September 28) that the Minimum Allowable Wage (MAW) for foreign domestic helpers (FDHs) in Hong Kong will be increased by 2.5 per cent, from \$4,410 to \$4,520 per month', online at: [https://www.info.gov.hk/gia/general/201809/28/P2018092800357.htm#:~:text=The%20Government%20announced%20today%20\(September,%244%2C410%20to%20%20%244%2C520%20per%20month](https://www.info.gov.hk/gia/general/201809/28/P2018092800357.htm#:~:text=The%20Government%20announced%20today%20(September,%244%2C410%20to%20%20%244%2C520%20per%20month) (Last visited 20 August 2020).

¹⁶⁰ Piper, 'Rights of Foreign Domestic Workers'; Cortes and Pan, 'Outsourcing Household Production'.

¹⁶¹ Interview Justice Centre; Pathfinders.

and is characterised by pressure on the territory's resources. Hong Kong's territory is small, and only a limited part of it is suitable to be built on.¹⁶² Over the years, immigration control has intensified. The entrance of persons of Chinese ethnicity from Mainland China was not regulated until 1940, when a large flight of refugees from Guangzhou put too much pressure on the colony's resources.¹⁶³ In the years that followed, the immigration control was further developed and amplified.¹⁶⁴ The Administration underlined this population control element in LegCo during a discussion on the live-in rule: 'They [FDWs] do not have the right of permanent residence in Hong Kong, which already faces persistent and huge pressure on housing and other social services'.¹⁶⁵

After the handover in July 1997, regulating citizenship and immigration became part of a bigger identity construction project, argues Ku.¹⁶⁶ Hong Kong might appear as a multicultural city at first glance, but 95% of the Hong Kong residents are of Chinese descent.¹⁶⁷ On the one hand, there was simply no space to house FDWs separate from their employers, and on the other hand, it was also a matter of perceiving FDWs as non-citizens. FDWs were simply not seen as (potential) Hong Kong residents by the Administration.¹⁶⁸ An interviewee drew a comparison with New York: 'Everyone living in New York is considered a New Yorker, no matter immigration status. In the Hong Kong logic, FDWs do not have a claim on rights. It seems to be difficult to see them as citizens'.¹⁶⁹ Most FDW-advocates I interviewed underscored this observation: FDWs were seen as (cheap) temporary workers, and not as inhabitants (or in some

¹⁶² A.H.Y. Chen, 'The Development of Immigration Law and Policy: The Hong Kong Experience' (1988) 33 *McGill Law Journal*, 4, 362-375.

¹⁶³ Chen, 'The Development of Immigration Law'.

¹⁶⁴ *Ibid.* More specifically, in 1971 the Immigration Ordinance of 1971 introduced the 'right to land' which meant that certain resident groups were allowed entry and could not be deported or only on limited grounds. This concept of the right to land has proven to be significant as it took away some of the discretionary powers of the immigration authorities for the first time. In the 70s the influx of (illegal) immigrants from Mainland China grew significantly as well. In 1973 an estimate of 56,000 illegal immigrants arrived in Hong Kong, which led to a policy called 'touch base' which meant that illegal immigrants were only repatriated when caught in territorial waters or in the border region. Once they reached Hong Kong's territory they were not to be deported. This touch base policy existed until 1980. Simultaneously large groups of Mainland Chinese entered Hong Kong through legal immigration and in 1978 a peak of 310 immigrants were entering Hong Kong per day. This explains that today the majority of Hong Kong people are of Mainland Chinese descent.

¹⁶⁵ Legislative Council (2019) Paper on The formal adoption by the United Nations Human Rights Council of the report by its Working Group on the Universal Periodic Review on the third review of the Hong Kong Special Administrative Region, online at: <https://www.legco.gov.hk/yr18-19/english/panels/ca/papers/ca20190415cb2-1179-3-e.pdf> (Last visited 20 August 2020). A similar line of reasoning was used amidst the 2018 UPR. Hong Kong responded, during the Working Group on the Universal Periodic Review, that it could not ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families because 'it is incompatible with HKSAR's existing policy that imported workers and foreign domestic helpers (FDHs) are not allowed to bring their dependants to Hong Kong for residence. This policy needs to be upheld, otherwise there will be significant policy and resource implications on the provision of various public services in overcrowded Hong Kong'.

¹⁶⁶ Ku, 'Hegemonic construction'. Many Mainland Chinese born children of Hong Kong residents who had entered the territory illegally or overstayed their temporary permits plead for their right to abode. Ku states that the process displayed prejudices against certain groups of Mainland Chinese, while the Hong Kong government claimed that it were neutral administrative measures to control the population.

¹⁶⁷ N. Constable, 'Migrant Workers, Legal Tactics, and Fragile Family Formation in Hong Kong' (2013) 3 *Oñati Socio-Legal Series*, 6, 1004-1022.

¹⁶⁸ Interview NGO Open Door.

¹⁶⁹ *Ibid.*

cases humans).¹⁷⁰ The interviewee of IOM provided an example about the use of public space: ‘When FDWs hang out during their day off, statements are being made such as why are FDWs occupying the parks?’. This question was even taken up in LegCo. In May 2018, a legislator from the Pro-Beijing New People’s Party asked a question about the large number of FDWs that congregate in public space, thereby ‘affecting the daily lives of the public’. The legislator argued: ‘At present, there are over 350 000 foreign domestic helpers (‘FDHs’) in Hong Kong. During holidays, a large number of FDHs congregate in public places, such as parks, footbridge passages and places under flyovers. They sit, eat and sleep on the ground, thus affecting the daily lives of the public, the operation of shops and the environmental hygiene in public places. The problem has persisted for many years and shows a worsening trend’.¹⁷¹ The legislator referred to Sundays and public holidays, FDWs’ only mandatory days off.

Moreover, the statement also shows that FDWs were generally referred to, by media, the Administration and some legislators, as ‘helpers’. While this terminology did not seem to be a major topic of debate, many FDW-advocates did not use the term. The NGO ‘HELP for Domestic Helpers’ even changed their organisation’s name to ‘HELP for Domestic *Workers*’. The interviewee of HELP explained: ‘It was a very intentional change of name to reflect that people are not just helpers. I mean, if I were to come to your house to do the washing up, I would be helping, but FDWs are not helpers but workers, workers with rights’.

Eventually, LegCo had to vote over the proposed window cleaning clause. There was no major disparity between the stance of pro-democracy and pro-Beijing legislators and the proposal was easily accepted.¹⁷² However, this would manifestly not be the case for other concerns regarding FDWs. The Administration and the FDW-advocates aligned over the problematisation of the window cleaning: it was a matter of safety. The problematisation also aligned because the FDW-advocates chose to frame their concerns in such a way. The FDW-advocates actors strategically avoided human rights language, notwithstanding Hong Kong’s legal human rights system. At the same time, there was a major difference in problem perception of other concerns. For the FDW-advocates, the high-rise window cleaning was only a small problem, next to problems of exploitation and abuse. The Administration, on the other hand, did not only problematise the treatment of FDWs, it was also thinking about economic and pragmatic problems: population control in terms of space and perhaps ethnicity, and the affordability of FDWs. FDWs needed to remain cheap, for economic purposes, as well as temporary, to regulate population control.

Enrolment

The process of enrolment allows me to grasp how the roles of the actors were defined. In this actor network, it was the Administration that defined the roles. They determined whom they

¹⁷⁰ Interview Hong Kong Federation of Trade Unions; NGO Open Door; NGO HELP for domestic workers; NGO Justice Centre.

¹⁷¹ ‘As we all know, the footbridges in Central, Tai Wai and Mong Kok are all occupied by FDHs during holidays and only a very narrow passage is left on the pavement for one person to walk through. In view of this, from the viewpoint of Hong Kong people, I wonder how social inclusion can be achieved?’, LegCo, May 2018.

¹⁷² LegCo Minutes 9 November 2016.

would listen to, when and how. I discuss the different actors, the FDWs and the FDW-advocates, that were assigned roles by the Administration.

First of all, FDWs were enrolled as temporary labourers, and despite several factors of discontent, FDWs continued to arrive in Hong Kong. FDWs wanted to exert their role as cheap and temporary workers in Hong Kong because of several reasons. Firstly, because of the socio-economic position of their countries of origin. The migration to Hong Kong is one of economic opportunities, a flight from poverty and a lack of prospects. Anderson and Li remark that this economic situation is what makes FDWs stay, even in cases of misconduct.¹⁷³ More than often, FDWs provide a substantial amount of the household income of their families back home. Ending their domestic worker contract would mean a (temporary) loss of their family income. Moreover, Constable also provides accounts of the shame that intertwines with a ‘failed’ trip abroad and an early return.¹⁷⁴ In other cases, the opportunity to work abroad is used as a way to escape from a situation of exploitation in FDWs’ country of origin. In those cases, a return back home can be more dangerous.¹⁷⁵

Secondly, although this chapter may come across differently, Hong Kong is a desirable place among FDWs. The conditions were generally perceived as more favourable than in other ‘receiving countries’. Hong Kong’s Employment Ordinance is applicable to FDWs.¹⁷⁶ FDWs are enabled to organise themselves. Compared to Singapore, Malaysia, Taiwan, the Middle East and the Gulf States, FDWs in Hong Kong are organised and involved in public protests.¹⁷⁷ This would not occur without difficulty in the Middle East and the Gulf States, nor in many of FDWs’ countries of origin. Furthermore, other receiving countries exert higher levels of control. Singapore, for instance, is explicit about its protection of ethnic purity and population control. FDWs are prevented from having relationships with permanent residents. Furthermore, female FDWs have to take pregnancy tests twice a year and are to leave the country when found pregnant.¹⁷⁸

The FDW-advocates were assigned a particular role: they were invited to express their opinions. Although FDW-advocates argued that interaction with the Administration was difficult, the Administration did accommodate for several spaces of dialogue. There were formal and informal channels for interaction between civil society, legislators and Administration officials. FDW-advocates’ allocated role, as civil society actors, was to make use of these channels for interaction. LegCo was the formal avenue. FDWs could transfer their ideas to FDW-advocates, and subsequently, FDW-advocates could convey their thoughts to legislators, provide oral submissions in LegCo meetings, or send written submissions. Direct relations with Administration officials provided a second channel for interaction. FDW-advocates who

¹⁷³ Anderson and Li, ‘Refugees or Victims of Human Trafficking?’.

¹⁷⁴ Constable, ‘Migrant Workers, Legal Tactics’.

¹⁷⁵ Anderson and Li, ‘Refugees or Victims of Human Trafficking?’.

¹⁷⁶ But the Wage Ordinance is not. For the Employment Ordinance, see:

<https://www.labour.gov.hk/eng/legislat/content2.htm>

¹⁷⁷ Constable, ‘Migrant workers and the many states of protest’; Piper, ‘Temporary Migration and Political Remittances’.

¹⁷⁸ See: <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/six-monthly-medical-examination>

established personal relations with specific Administration offices regularly met with Administration officials.¹⁷⁹

Consequently, the Administration frequently listened to the concerns expressed by FDW-advocates. Moreover, they responded (relatively) swiftly to the concern about high-rise window cleaning. The perceived problem was reported, received and acted upon. In this instance, the actor network operated smoothly. For other concerns, this was not the case. An interviewee explained: 'The government will ask groups to respond and provide their opinions. So, they take the submissions, but what is done with them is quite vague. They just do whatever they want anyway'.¹⁸⁰ FDW-advocates exerted their role as active members of civil society, but this did not mean that the Administration had to act in response.

The Administration exerted control over the rules and the ways of doing things. LegCo was very restricted in their ability to introduce new bills, so they could hardly force the Administration to do anything. FDW-advocates could voice their opinions in LegCo or directly to the Administration, but the Administration had the discretion to decide whom to listen to. In this situation, the Administration also defined what the preferred language was. To remain part of the actor network, the FDW-advocates adapted their language and spoke of security and safety rather than of human rights. FDW-advocates that ignored the unwritten conditions took the risk of being taken less seriously, the risk of being ignored, or removed from the network. There was room for discussion, but the terms were defined by the Administration.

The FDW-advocates, therefore, repeatedly adapted to the 'rules'. If human rights language hindered a meeting with Administration officials, it was considered more effective to rephrase, but maintain the objective. Still, FDW-advocates had some room for manoeuvre, although some were better able to manoeuvre and lobby for their concerns than others.

The consulates of FDW sending countries exerted a leverage position, and correspondingly, their concerns were taken up every now and then. Hong Kong's Immigration Ordinance prescribes that visas for FDWs need to be legalised by the sending countries before the visa is issued. The Administration therefore maintained close relations with the Indonesian and Filipino representatives.¹⁸¹ Hong Kong is dependent on the FDW workforce, because FDWs provide a crucial type of labour. Because of this economic dependency, consulates had a leverage position: 'Say if 300.000 FDWs would suddenly stop working, what would happen?'.¹⁸² It would be chaos. The interviewee of the Indonesian Consulate revealed how they balanced between asking for change, whilst not going 'too far'. Speaking out on certain topics could be considered as questioning Hong Kong's sovereignty argued the interviewee: 'So many people ask Hong Kong to review and change these rules [two-week and live-in rule], but I think we cannot do that. We cannot convey this concern because [...] we would like to not be thought as interfering in internal affairs of their sovereignty. They have their own regulation. And also, we think that those regulations resulted from their very democratic and fair processes'.¹⁸³ The interviewee remained very diplomatic and would not explicitly acknowledge that he did not

¹⁷⁹ Interview NGO Pathfinders; NGO UNISON; NGO Justice Centre; Hong Kong Federation of Trade Unions.

¹⁸⁰ Interview NGO Open Door.

¹⁸¹ Interview Indonesian Consulate.

¹⁸² Interview International Organization for Migration.

¹⁸³ Interview Indonesian Consulate.

agree with some of the regulations. Although, his non-verbal language showed that he might have had other views. At the same time, the interviewee of IOM remarked that we should not overestimate consulates' leverage position. There is competition among sending countries to provide (the cheapest) FDWs. For instance, Saudi Arabia first 'panicked' when Indonesia (temporarily) stopped sending their workers, but Bangladeshi workers were lining up to fill the positions.¹⁸⁴

For other FDW-advocates, the 'wrong' framing of the concern, could be even more counterproductive. For instance, when NGOs were thought to be lobbying, they could lose their tax-exempt charitable status, which some wanted to avoid. This explained why some NGOs were not as vocal on human rights advocacy on their websites and social media as they were during international meetings. NGO Pathfinders mentioned that they were at risk of losing their charitable status because they had the item 'Advocacy' on their website, which they then rephrased. Moreover, when FDW-advocates were known as human rights advocates, their chances of directly meeting with Administration officials diminished.¹⁸⁵

Even a formally independent organisation such as the EOC was disciplined to avoid human rights language. The EOC's website does not refer to human rights explicitly. When I asked the interviewee whether this was a deliberate choice, the interviewee confirmed. He argued that this was the case because of the EOC's peculiar relationship with the Administration. The EOC is fully funded by the Administration and therefore cannot operate as the independent body it is supposed to be. This became evident in my interview with the EOC. The interviewee stated that the EOC has 'an unspoken compromise that for the next few years we do not talk about human rights, we respect that because of money [...] we can criticise the government, we still can compared to well...the mainland government. But on that end, if you actually cross too much, you might be prohibited in for example taking further education or getting into a government job'.¹⁸⁶ Another interviewee argued that the chairman of the EOC is in an impossible situation: 'They [the EOC chairmen] will be gone if they do too much'. Many interviewees by and large agreed that the EOC's first chairman was most progressive, with a background in human rights. This chairman successfully took the Director of Education to court.¹⁸⁷ The court ruled that the policy of the Direction of Education was indeed discriminatory. Shortly after, the EOC chairman had to leave her position. The reason for this leave was not made explicit, but it has been interpreted as the result of this court case. It was, therefore, more strategic to avoid 'sensitive vocabulary', argued the interviewee of the EOC.¹⁸⁸

The process of enrolment portrays a network in which the Administration controlled the terms and conditions. The Administration provided spaces for dialogue for the government and civil society to interact. But whoever employed the 'wrong' frame or language could be silenced. FDW-advocates adjusted to this situation and adapted their language on the one hand, and

¹⁸⁴ Interview International Organization for Migration.

¹⁸⁵ Interview NGO Justice Centre; NGO Pathfinders; NGO UNISON.

¹⁸⁶ Interview Equal Opportunities Commission.

¹⁸⁷ Interview NGO UNISON; University of Hong Kong; High Court of Hong Kong, No. 1555 of 2000, *Equal Opportunities Commission v. Director of Education* [2001], online at: <https://www.escribnet.org/caselaw/2009/equal-opportunities-commission-v-director-education-no-1555-2000> (Last visited 20 August 2020).

¹⁸⁸ Interview Equal Opportunities Commission.

sought for space for manoeuvre on the other. Especially consulates had a leverage position, to some degree, because of the economic dependency on the FDW-workforce. Finally, this actor network was kept in place also because FDWs were happy to enrol, driven by poverty and the *relatively* good conditions Hong Kong offered.

3.3.4 Network circumstances and function

The two sections above, on problematisation and enrolment, portray the network circumstances surrounding the introduction of the window cleaning clause. These network circumstances illustrate that human rights functioned in a rather multifaceted network. The network was multifaceted because, what was literally observable did not always tell much.

On the one hand, it was a network in which international human rights instruments were incorporated in local legislation. On paper, human rights seemed to exert a vital role in Hong Kong, as legal standards and a frame of reference. Yet, in discussions (in LegCo and behind closed-doors) human rights did not visibly have such a vital role. Despite Hong Kong's legal human rights system, mobilising human rights to convey a concern was not always strategic, because human rights have become associated with one side of the political spectrum. They cannot be used as neutral standards.

The problematisation of the FDW-advocates was adapted to fit the terminology of the Administration, which preferred to avoid the 'politically sensitive' language of human rights. Administration officials were disciplined to not engage with human rights openly, regardless of their personal preferences. Most actors adapted their language in interaction with the Administration, because human rights did not create space for manoeuvre. On the contrary, invocations of human rights could complicate relations with the Administration. It was relatively easy to introduce the window cleaning clause precisely because it was not framed as a human rights issue, because the window cleaning clause was not a project of one side of the political spectrum. But while the FDW-advocates' account of the problems did not always *show* human rights, human rights were influencing them in the background.

The network circumstances did not only produce a situation in which actors adapted their terminology to what was desired, they also consisted of very dissimilar interpretations of the problems regarding FDWs. Beyond the window cleaning clause, the Administration and the FDW-advocates problematised the situation of FDWs in very different ways. The Administration was occupied with practical interests related to population control and the economy. They perceived of FDWs as workers, as a temporary population that is not in Hong Kong to stay. The regulations facilitated this. Human rights concerns that would involve changes in the immigration system were not considered, because FDWs were not supposed to become Hong Kong residents. Though it was not just a matter of perceiving FDWs as non-citizens, the practical considerations were also connected to the lack of urban space. Hong Kong is a city with limited space and pressing housing shortages. Different inhabitants 'compete' over urban space. Dodging some of the human rights concerns (the live-in and two-week rule) was also a form of population control. In this sense, the treatment of FDWs competed with interests in the economy and the regulation of urban space.

Lastly, the actor network, including its unfavourable regulations for FDWs, was kept in place also because the subjects of the regulations were economically dependent. They were dependent on the income and therefore accepted the terms and conditions.

3.4 Conclusion

Initially, the case of Hong Kong appeared to present a disconnected story. Human rights had a prominent and visible role in moment one, at the international stage, while human rights were not often explicitly and visibly discussed in Hong Kong's urban affairs. Though actually, the two moments are complementary.

The UN reporting procedures were utilised, by the Hong Kong government, to present and monitor their carefully constructed image as 'Asia's World City'. More specifically, it was an image that set Hong Kong apart from other Chinese cities, as a global, business-oriented city with a secure legal system. The Hong Kong government put forward a commitment to human rights during the UN reporting procedures, and presented the work they had undertaken to strengthen access to rights for FDWs. But the Hong Kong government's actions beyond the meeting rooms of the UN often showed something different. The Hong Kong government introduced action plans and other clever 'administrative measures', rather than introducing new international legal norms. Moreover, they were only willing to address FDW-related concerns that did not involve their own (immigration) regulations. Instead, the Hong Kong government solely focused on the behaviour of employment agencies and employers.

The reasoning behind these choices remained quite obscure. The case of the window cleaning clause, however, perfectly complements this vagueness. It illustrates that *some* concerns were not acted upon, and that other concerns were addressed by administrative manoeuvres, because of the complicating network circumstances at play: the sensitive dynamics of urban politics, the urban economy, constraints of urban space, the organisation of the Hong Kong's government and the role of civil society organisations.

Firstly, human rights were extremely politicised, and associated with one side of the political spectrum. An invocation of human rights, therefore, was directly linked to a particular political project: that of the pro-democracy group. In this situation, one did not find common ground through human rights and the introduction of new international legal norms had become very complicated, if not unrealistic, in Hong Kong's pro-Beijing oriented government. An action plan, in this sense, was easier to realise than a new law, or the application of an international human rights instrument.

Secondly, the recommendations about the live-in rule, two-week rule and the minimum wage of FDWs were not accepted by the Hong Kong government, notwithstanding the 'human rights image' building efforts during the UN reporting procedures. The case of the window cleaning clause demonstrates that human rights concerns competed with other interests. The three most crucial concerns of the FDW-advocates and the UN committees were not seriously considered by the Administration because interests in population control prevailed. While Hong Kong is not a typical city in terms of organisation, it is challenged by typical urban issues such as density

in population, exorbitant housing prices and overcrowded public space. These physical factors were also interacting with the type of human rights concerns that were taken on board by the Administration. The live-in rule and two-week rule would not be repealed because Hong Kong lacks the urban space, and because the Administration did not want FDWs to become part of the Hong Kong population.

Concurrently, the Hong Kong government was evidently making sure their choices were economically clever. This had consequences for the types of 'human rights concerns' that were considered, and which were not. FDWs needed to remain cheap, for them to be affordable for Hong Kong's middle-income households. The Hong Kong government consequently did not consider applying the Wage Ordinance to FDWs. At the same time, during the UPR, economic considerations made the Hong Kong government, both the pro-democracy and the pro-Beijing group, care about its human rights image. Trade relations are dependent on Hong Kong's image as a city that upholds the rule of law and protects human rights. Hence, the urban economy played a 'double role': economic considerations constrained which human rights concerns were addressed, but they also facilitated that the Hong Kong government cared about its international human rights image.

Lastly, the preference for addressing human rights concerns that do not interfere with the immigration system and the performance of Hong Kong's government was kept in place through the municipal apparatus. Even though some Administration officials may have sympathised with the FDWs, and even though some pro-democracy legislators spoke out on behalf of FDWs, this has resulted in little change. Administration officials were disciplined to not speak out on an individual basis, and LegCo had become very constrained in its ability to actually introduce new legislation. Furthermore, it had become an established practice of the Hong Kong government to 'deal with the easy issues before the difficult ones', which created little space to address the more difficult issues related to the treatment of FDWs: their human rights beyond 'occupational safety'. Thus, the apparatus of the Hong Kong government made it very difficult to change the status quo for FDWs.

In Hong Kong's urban affairs, the Hong Kong government had more control over the type of language that was being used than it had during the UPR. Evidently, human rights were not the preferred language. But this did not mean that FDW-advocates dropped their 'human rights projects'. In urban debates, human rights did not function visibly, they did so under the radar. The legal and moral standards of human rights defined actors' stances and actions. Human rights standards were guiding them, but the norms were concealed on websites, during conversations and in policy documents. While human rights did not function as a language that incited collaboration between Administration officials and civil society, human rights were binding FDW-advocates to a common cause. The cause, then, was not to make the Administration adapt to their human rights terminology, but to cleverly advocate for a human rights motivated goal, without actually using human rights.

Hence, human rights did not function straightforward and visibly, but were present in the background of many lobbying tactics. As one of the interviewees put it: 'it is leveraging it into different buckets for it to produce the outcome you want'. The FDW-advocates and shadow-reporters were lobbying for changes in the regulations concerning FDWs, so that the

Administration would respect human rights standards, in many ways at the same time. In some of these ways, human rights were used explicitly, because it was strategic in such space. The reporting obligation of international human rights instruments opened the door for conversation among civil society and the Hong Kong government about the city's human rights performance. In other instances, it was avoided (e.g. a personal meeting with an Administration official). It was simply a matter of strategy: working around potential friction by not referring to human rights in order to reach a human rights motivated goal. And, this strategy occasionally provoked minor wins for the FDW-advocates, such as the window cleaning clause.

To conclude, the relation between Hong Kong and FDWs is one of mutual dependency. Hong Kong is dependent on cheap labour, and the FDWs are dependent on the relatively high wages. Though, the FDW-advocates had a disadvantage because there exists competition among FDW-sending countries. These sending countries compete over providing cheap FDWs, and FDWs are happy to work in Hong Kong, which weakened the 'lobbying position' of the FDW-advocates. While human rights were able to do considerable work under the radar, as a motivation for civil society and the shared values of (new) coalitions, they did not stand a chance when invoked in confrontation with demands for population control and cheap labour.



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