

Kartika case verdict - reflecting the unfree labour behind Hong Kong's 'free economy'

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A sensational story in the news about an abused Indonesian domestic worker has given Hong Kong society a chance to see the reality underlying Hong Kong's free economy and the simultaneous high female participation rate (48%) of our Hong Kong labour force - the unfree labour of female migrant domestic workers.

On 18 September at Wanchai District Court, the two Hong Kong employers who had been charged with physical and other abuses of an Indonesian domestic worker named Kartika, were finally found guilty of most of the charges and sentenced to jail terms. Aside from the case details revealed in the hearings, which included tying up the worker each night to sleep in the toilet and repeated occasions of beating the worker with shoes, a bike chain or hot iron, the verdict of the judge also reflects the general attitude of the government, which places domestic workers like Kartika in such vulnerable situations through its policies.

The female employer who was found to be more directly responsible for the acts was sentenced to five years and six months in jail, while the male employer, who had been less involved in the acts, was sentenced to three years and three months in jail.

Was justice served? Were the abusers' jail terms sufficient?

We should think more deeply, however, to answer the question of whether justice was really served. Did the cruel employers get what they deserved?

What does the verdict and the judge's reasoning tell us about the true condition and position of foreign domestic workers in our society?

Upon first hearing the sentence, one may feel that the sentences of the defendants were not really very heavy. They should be relieved to face only 3 to 5 and a half years of jail time. The sentence seems 'token.' Some of the sentences, of nine months to four years individually, were instructed by the judge to be carried out simultaneously instead of consecutively. Thus the jail time was not the maximum that could have been imposed. Could it be that only her torture until mental insanity or even death, would have led the judge to impose a heavier sentence?

See no evil, hear no evil: feigning blindness to the power inequality

When considering the weight of penalty to impose on the guilty employers, how much did the judge consider the particularly high level of responsibility that the employers had - as employer and also as provider of everything needed for life in Hong Kong - accommodation, food, communication, wages and work visa? Hong Kong society in many ways denies or pretends that the worker enters a contract as a free work, from a position of free choice and 'contract equality' (the exchange of wages for service is agreed in the labour market and on its own terms is 'fair'). In a sense, this judge employed the same - false - premise.

That premise well deserves to be questioned. In Singapore since 1998, for example, the government

has had a policy that employers who commit abuses against their foreign domestic workers must bear penalties that are 1.5 times of what ordinary citizens abusing other citizens would bear. Thus it recognizes the particular responsibility of employers and the vulnerability of the migrant domestic workers. However the system of domestic worker in Hong Kong to a large extent denies that workers are vulnerable, and instead presumes that they are as free as employers are, to leave a situation they are unsatisfied with. In fact courts know that the workers are not on an even footing with employers in legal cases. One can hear judges in the Labour Tribunal openly say "You stay, you pay" - meaning that, due to the rule that foreign domestic workers cannot legally work while they are waiting for their cases to be heard in court and the government also does not support their living costs or even visa costs while waiting in Hong Kong - they effectively must pay out of their own pocket (or rely on a charity organization) just to proceed with their lawsuit and gain justice at all. These rules add to the already high burdens of language barrier and fear of job termination, which lead the workers to keep quiet in the face of abuses rather than bring lawsuits against employers.

Psychological effects - invisible but destructive

Furthermore, Kartika had not simply been the victim of a few instances of violence that happened to leave some marks and otherwise left her fine. It would be more accurate to say that she was a victim of deliberate humiliation and torture - and erasure of her dignity and sense of self - beginning with the dumping of all her personal clothes and repeated forced hair-cutting, which left her with almost no hair left.

The judge based his sentencing on the clear evidence of 45 wounds made to the domestic worker - visible evidence backed by photos and medical expert advice. Yet how much did he consider the effects on the worker's mental state of being bound day after day, for years - each night after working, and often in the daytime when both employers were absent? The cumulative effects of being threatened with death, of being cut or beaten with instruments when the employers were angered, of being isolated from others and uncertain that any neighbor or police would believe and help her?

If one day of tying up and beating a person who is not only an employee but a human being whose life is fully in one's hands is criminal and immoral and deserving of punishment, should there be no increase in penalty for continuing to do so for days, weeks and years, without the slightest shame or remorse?

Disbelief is a blow to the worker and to all who bear invisible bonds and abuses

The judge had ruled not guilty to two of the charges of Kartika. His reason for ruling not guilty was that the testimony of the Indonesian worker was not credible in some aspects. He thought it was not credible that the employers would leave the worker alone for five days while they traveled. He thought it was not credible that the female employer forced the domestic worker to do housework while wearing excessively small clothes or plastic bags, in front of the male employer. He also did not believe that she had no chances to escape - and rather believed that she had many chances to escape but failed to do so.

Yet it is curious that, after accepting the overwhelming evidence of the employers' exceptional cruelty and disregard for the workers' dignity, the judge would still hold the employers to 'normal' standards of 'common sense' for the employers, and fail to accept the possibility of the worker's other claims being completely true. Instead, the judge narrowly focused on 'hard' physical evidence. He failed completely to acknowledge the intangible forces - threats, psychological pressures, weakness due to maltreatment and hunger/thirst, and isolation - which made it extremely difficult for the worker to escape.

Instead, the judge held the worker to the standard of a normal healthy person who could decide at will to leave an abusive situation. The implication is that he thus pushed the responsibility for her suffering back on herself: she must be stupid, failing to leave and instead continuing to be tortured, when she had so many chances to escape. She must be exaggerating to gain attention, in claiming that the employers did many other bizarre things besides tying her up each night and beating her like a farm animal when displeased. The result is that publicly, the message is reinforced that abuses without physical scars are invalid and domestic workers or others who are abused within the home are not likely to receive a sympathetic audience. For domestic workers, who as a group report thousands of cases each year of abuses ranging from underpayment to physical and sexual abuse, this is a great blow. They already face deep social exclusion and stigma, and such a public denial of her charges based on her 'exaggeration' only make it easier for the public to dismiss her tragic sufferings as well as other complaints of domestic workers regarding their abuses. In fact, such disbelief and disregard by the court and other government authorities including the police is a frequent problem faced by women who are abused by partners. "Family values" which are reinforced by some groups in society only tend to reinforce female dependence on male breadwinners and facilitate capital's exploitation of their unpaid work in the home.

Judge's remarks reveal the chief concern - harm to the reputation of the city

The judge condemned the criminals for ruining the reputation of Hong Kong as a safe place to work. In sum, migrant domestic workers might believe Hong Kong unsafe and choose not to work here - negatively impacting the city's ability to attract needed cheap and docile workers. In sum - the value that the judge is upholding is the capitalist 'value' of competitiveness. This is absolutely consistent with the government's focus on economic growth for the city and obsession with staying globally competitive - concerns that it places above that of the welfare of all its citizens and workers, as the record-breaking high poverty rate reflects.

The judge did not say that Hong Kong was or should be a place where all workers are well-protected, where all workers can work in decent, humane conditions.

Indeed, even while this court case was still being heard, the Immigration Department announced that it would 'fortify the assessment of visa applications of domestic workers who change employers frequently' - in order to further deter 'job-hopping.'^[i] This essentially deepens the harm of other existing policies that restrict workers' ability to escape from abusive employers, such as the 'live-in rule' and the 'two-week rule.' The effect would be to make a case like that of Kartika more, rather than less likely.

In the UK, as explained in this article in The New Internationalist,^[ii] when a relatively egalitarian migrant domestic worker visa regime granting full employment rights was replaced with a more restrictive one, similar to that of Hong Kong, abuses increased drastically. Under those new arrangements, introduced on 6 April 2012, the 'tied visa' was reintroduced; it has a maximum duration of six months and ties the worker to the employer who brought them to Britain. According to statistics gathered by a campaign group Kalayaan, 62 per cent of workers are paid nothing at all, compared to 14 per cent under the previous system. All workers on the tied visa were paid less than US\$152 a week compared to 60 per cent on the original visa. Eighty-five per cent did not have their own room, so slept with the children or in the kitchen or lounge, compared to 31 per cent on the original visa.

Unfree labour - the engine that keeps capitalism running

Human freedom and the utilization of human labour for private profit - they are at odds with each other. 45 physical marks on a domestic worker's body are the tip of the iceberg, the signal to us of

unimaginably greater numbers of minor and major abuses that we as a society commit against fellow workers here. The claim of Hong Kong as a model society, a decent society that can be a model for 'uncouth' mainland Chinese – these are utterly hollow as long as we keep the pretense that invisible bonds on our workers do not matter. The reality is brutal: our society depends for its 'order' and smooth operation on the silent acceptance by workers of violations of their legal, labour and human rights, and authorities will make repeated and systematic attempts to make the public believe that the abuses are not significant nor systematic.

We must not let the lessons from Kartika's case pass us by, but make serious collective efforts to remove all possibility of such silent and systematic abuses from happening anywhere ever again. There are policies that must be changed, such as the two-week rule and the live-in rule, as well as realities to be exposed. As we remove the blinds of racism and gender stereotypes that place migrant domestic workers in a separate and lower class from the rest of society, we would be gaining due social value and status to the domestic work and social labour which women do, and an end to their invisible unpaid and low-paid exploitation under the cover of 'family values.'

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[i] <http://www.info.gov.hk/gia/general/201308/30/P201308300759.htm>

[ii] <http://newint.org/features/web-exclusive/2013/07/02/domestic-worker-visa-britain/>

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* Mon, 09/30/2013 - 05:40 — wkf: <http://www.worldlabour.org/eng/node/617>