

Hong Kong's refusal to scrap the domestic worker 'live-in rule' perpetuates racism and sexism

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On Sept 21, Hong Kong's Court of Appeal ruled against Filipino domestic worker Nancy Almorin Lubiano, who sought to overturn the rule that forces the women workers to live in the same home as their employer.

While domestic workers and labour rights activists have repeatedly contended that this rule puts migrant women at risk of exploitation and abuse, the three justices dismissed their claims. Rather, they reaffirmed the ruling handed down in 2018 by the Court of First Instance, which cited local labour competition as the reason to uphold the policy.

This latest ruling makes clear the sexist and racist logic that undergirds the domestic worker labour structure in Hong Kong. At the core of this case is the mistreatment and dehumanisation of migrant women, who were imported as economic tools to fill Hong Kong's need for domestic labour.

While the ruling claims to protect local Hong Kong workers, particularly women who perform the majority of care work, it in fact perpetuates existing gender inequity even among mainstream Hongkongers.

The attorneys who represented Lubiano argued that the live-in policy heightened the risk of labour exploitation because employers may ask migrant women to perform domestic work on their mandatory rest day. The three justices at the Court of Appeal rejected this argument based on what they said was a lack of evidence. There is, in fact, ample testimony from migrant domestic workers detailing how, during the pandemic, they were forced to work on their weekly rest day because they had nowhere else to go.

While the justices noted that migrant workers are free to leave their employer's home, they have not considered the harsh economic reality under Covid-19. As social distancing policies tightened, migrant domestic workers could not freely gather in public on the weekends. Those who tried have received HK\$2,000 fines from the police, which amount to approximately half of their minimum monthly pay check.

In April, the Migrants Solidarity Committee under progressive advocacy group Autonomous 8a interviewed three domestic workers on their experiences during the pandemic. In addition to losing their one day of rest, they lamented the additional workload and pressure they faced.

Given all these narratives from migrant workers, there was never a gap in evidence as the justices posited. Rather, they have refused to acknowledge the migrant workers' stories and experiences as valid claims and evidence of their exploitation.

The ruling from the Court of Appeal affirmed the judgment penned by Judge Anderson Chow in 2018. Chow argued that abuse of migrant domestic workers stemmed not from the mandatory live-in

policy, but from the cruelty and misjudgments of individual employers.

By individualising well-documented systemic abuse and labour exploitation, the court conveniently shifted responsibility away from the government's policy to outsource undervalued care work to migrant women.

Because care work is undervalued and there is not enough public support for domestic labour, many woman employers come to think of the relationship they have with their migrant domestic worker in zero-sum terms: they understand that they will have to shoulder more domestic duties if the domestic worker is allowed more rest time. Ill-treatment of domestic workers, hence, is not an individual issue. Rather, it is a problem that calls for a structural solution and analysis.

The Hong Kong government began importing migrant domestic workers in the 1970s to perform work such as household chores and caregiving that bolsters the productive workforce. It wanted to motivate educated Hong Kong women to join the workforce to bolster the economic boom.

Migrant women from poorer Southeast Asian countries, in other words, were meant to serve as replacements for the gendered labour that Hong Kong women would typically perform.

Once in Hong Kong, migrant women faced and continue to face racist stereotypes. Caregiving and domestic labour, in other words, become both gendered and racialised. Sexism and racism, in turn, prompt mainstream society and the government to relegate and devalue such important labour. If there is more publicly funded infrastructure for caregiving – especially child and elderly care – there will be less demand to hire domestic workers with the expectation that they could provide round-the-clock care.

While the mandatory live-in policy may on the surface benefit local Hong Kong women, it in fact generates an immense emotional and mental burden on some of them. Journalist Mei-Chee So interviewed several employers in her book *Migrant Domestic Workers: Strangers at Home*. These employers struggled emotionally as they tried to navigate their relationship with their live-in domestic worker.

The relational complexity and unease was palpable: the worker was initially a complete stranger who shared their small home and performed very intimate labour that would render them almost a family member, but not quite because of their immigration and labour status.

Sociologist Annie Hau-Nung Chan posited in her interview with So that Hong Kong woman employers, especially, bear a heavier emotional and mental burden as they are expected to manage the migrant worker's performance. In other words, even though importing migrant women was supposed to alleviate the workload of local Hong Kong women, due to gender roles Hong Kong women are still shouldering more domestic responsibilities than men.

Hong Kong woman employers also face conflicting feelings and jealousy about the intimacy between the migrant domestic worker and their children and spouse. Because of these complex dynamics, neither migrant women nor their Hong Kong employer can truly relax in their home.

Hence, the latest ruling that upholds the mandatory live-in policy does not only harm migrant domestic workers, it also reinforces existing gender dynamics that entrap local Hong Kong women. Allowing migrant women to exercise their autonomy and privacy would be the first step in dismantling an economic system that expects women – both local and migrant – to bear the brunt of essential domestic labour without fair compensation for their work.

P.S.

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