

# CHALLENGING THE NORMS: RE-EVALUATING SITUATIONS FACED BY FOREIGN DOMESTIC HELPERS IN ASIA

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## I. INTRODUCTION

In a city of over seven million people, approximately nine percent of all households in Hong Kong, China employ foreign domestic helpers (“FDHs”).<sup>1</sup> In homes with young children, approximately one-third employ at least one foreign FDH.<sup>2</sup> Such figures are astounding yet, not unique to Hong Kong.<sup>3</sup> Other countries in both Southeast Asia and the Middle East also employ thousands of international labor migrants each year, most of whom are Filipino and Indonesian women.<sup>4</sup> For the majority of these female FDHs, overseas employment is seen as a necessary sacrifice to support their families in countries where jobs are inadequate.<sup>5</sup> However, this sacrifice can also be filled with suffering and turmoil.<sup>6</sup>

This Article will first address the struggles faced by many Filipino and Indonesian FDHs who come to Hong Kong for employment opportunities.<sup>7</sup> It will then discuss the complicated economic and social relationship that exists between FDHs, their

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<sup>1</sup> EMILYZEN IGNACIO & YESENIA MEJIA, MANAGING LABOUR MIGRATION: THE CASE OF THE FILIPINO AND INDONESIAN DOMESTIC HELPER MARKET IN HONG KONG 11(March 2009), [hereinafter 2009 ILO Report], available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_101824.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_101824.pdf). According to Hong Kong’s Census and Statistics Department, nearly two-thirds of Hong Kong’s non-Chinese population in 2006 was FDHs. *Id.* (noting how foreign domestic helpers and foreign domestic workers are synonymous).

<sup>2</sup> PATRICIA CORTES & JESSICA Y. PAN, OUTSOURCING HOUSEHOLD PRODUCTION: FOREIGN DOMESTIC HELPERS AND NATIVE LABOR SUPPLY IN HONG KONG 2 (2009), available at [http://www.frbatlanta.org/filelegacydocs/seminars/seminar\\_cortes\\_090909.pdf](http://www.frbatlanta.org/filelegacydocs/seminars/seminar_cortes_090909.pdf)

<sup>3</sup> See SHIRLENA HUANG, BRENDA S. A. YEOH & MARJA M. ASIS, FILIPINO DOMESTIC WORKERS IN SINGAPORE: IMPACTS ON FAMILY WELL-BEING AND GENDER RELATIONS 1 (August 14, 2003). [hereinafter 2003 ESCAP Report], available at <http://www.unescap.org/esid/psis/meetings/migrationaug2003/Phil.pdf>. (noting that approximately 40 million migrants are legal labor migrants and that there has been an increase in labor migration in Asia since the 1980s).

<sup>4</sup> *Id.* at 2. (stating 70 percent of all Filipino international migrant workers in 2002 were female).

<sup>5</sup> See *Id.* at 3 (noting that remittances have become a key component of origin economies).

<sup>6</sup> *Id.*

<sup>7</sup> See *infra* notes 9-37 and accompanying text.

families, the receiving and sending countries.<sup>8</sup> Finally, this Article will point to the current employment system in Hong Kong and how loopholes in the legal system allow for employers and private recruitment agencies to exploit the system.<sup>9</sup> This Article argues for the elimination of private recruitment agencies, increased governmental support, and a facilitation to take place between the different stakeholders, which will result in achieving a mutually beneficial solution to the current, complex problem.<sup>10</sup>

## II. BACKGROUND

Since 1974, Hong Kong has opened its doors to thousands of FDHs from different Southeast Asian countries.<sup>11</sup> As the number of Western expatriates has grown with Hong Kong's flourishing global economy, fewer local women have been willing to take low-paying and low-status employment.<sup>12</sup> Today, Hong Kong's FDHs are predominantly female and non-Chinese.<sup>13</sup> Recent immigration records showed that almost two-thirds of Hong Kong's non-Chinese population was comprised of FDHs.<sup>14</sup> While the majority of these domestic helpers have historically been Filipino, Indonesians now rival Filipinos because Indonesian women typically have limited education and work for lower wages.<sup>15</sup>

Hong Kong is not the only place taking in large numbers of FDHs.<sup>16</sup> Countries like Singapore, Malaysia, Saudi Arabia, and other Middle Eastern countries have also become popular destinations for Southeast Asian FDHs in recent years.<sup>17</sup> However, Hong Kong continues to be a popular, neutral destination for Filipino and Indonesian FDHs because of its labor laws and established migration infrastructure.<sup>18</sup>

In Hong Kong, FDHs are entitled to the same protections and benefits as other workers under the Employment Ordinance and the

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<sup>8</sup> See *infra* notes 48-116 and accompanying text.

<sup>9</sup> See *infra* notes 144-152 and accompanying text.

<sup>10</sup> See *infra* notes 153-168 and accompanying text.

<sup>11</sup> 2009 ILO Report, *supra* note 1, at 11.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 12.

<sup>16</sup> See 2003 ESCAP Report, *supra* note 3, at 2 (noting that Singapore, Malaysia, and Thailand are also labor receiving countries).

<sup>17</sup> See *id.* (noting that Singapore, Malaysia, and Thailand are also labor receiving countries); Katherine Scully, *Blocking Exit, Stopping Violence: How Exclusion from Labor Protection Puts Domestic Workers at Risk in Saudi Arabia Around the World*, 41 COLUM. HUM. RTS. L. REV. 825, 827 (2010).

<sup>18</sup> 2009 ILO Report, *supra* note 1, at 9.

standard employment contract.<sup>19</sup> The standard employment contract provides a “Schedule of Accommodations and Domestic Duties” for FDHs, which specifies expectations for both employer and employee.<sup>20</sup> For instance, the minimum allowable wage to be paid to a FDH is HK\$3,740 per month.<sup>21</sup> Every FDH is also entitled to one rest day of at least twenty-four continuous hours in every seven days.<sup>22</sup> However, if there is an unforeseen emergency an employer may have their helper work on a rest day.<sup>23</sup> It is also common for some FDHs not to receive any rest days early in their employment.<sup>24</sup> By not having rest days, FDHs have less opportunity to meet other FDHs to compare salaries and work conditions.<sup>25</sup> Furthermore, there is less opportunity for FDHs to seek aid from counseling and advice centers.<sup>26</sup>

Since FDHs from the Philippines and Indonesia come from poor economies, they are more likely to work at less than minimum wage.<sup>27</sup> This in turn makes it more common for FDHs to be taken advantage of by their employers.<sup>28</sup> Many times FDHs are not informed of Hong Kong’s minimum wage nor is it defined in their contracts.<sup>29</sup> It is also common for employers to withhold wages; therefore, if a domestic helper does discover she is being mistreated, there is a necessity to continue working because the helper likely does not have funds to leave.<sup>30</sup> Under the Employment Ordinance and the standard employment contract, FDHs are arguably treated better than other Hong Kong workers at the same wage level.<sup>31</sup> Yet far too many FDHs do not have the safe employment experiences that Hong Kong’s laws intend to provide.<sup>32</sup>

Since FDHs do not work with fellow co-workers, they are susceptible to abuse behind the closed doors of their employers’ homes.<sup>33</sup> FDHs cannot escape from their employers because Hong

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<sup>19</sup> THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION LABOUR DEPARTMENT, PRACTICAL GUIDE FOR EMPLOYMENT OF FOREIGN DOMESTIC HELPERS – WHAT FDHS AND THEIR EMPLOYERS SHOULD KNOW 3-4 (2011), available at <http://www.labour.gov.hk/eng/public/wcp/FDHguide.pdf> (providing quick reference of employer and foreign domestic helpers’ rights and obligations).

<sup>20</sup> *Id.* at 6.

<sup>21</sup> *Id.* at 8. (HK\$3,740 is approximately US\$480).

<sup>22</sup> *Id.* at 11.

<sup>23</sup> *Id.* at 11.

<sup>24</sup> Carol G S Tan, *Why Rights are not Enjoyed: The Case of Foreign Domestic Helpers*, 30 Hong Kong Law Journal 354, 356 (2000).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 355.

<sup>28</sup> *Id.* at 356 (noting how some Indonesian FDHs sign contracts without an explanation of what it says).

<sup>29</sup> *Id.* at 355.

<sup>30</sup> *Id.* at 356.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> INTERNATIONAL LABOUR ORGANIZATION & ASIAN DEVELOPMENT BANK, WOMEN AND LABOUR MARKETS IN ASIA: REBALANCING FOR GENDER EQUALITY 15

Kong's standard employment contract does not permit FDHs to live independently because employers are to provide for them.<sup>34</sup> Given that FDHs are not seen, legislatures do not always specifically address FDHs' problems.<sup>35</sup> Consequently, many female FDHs are exposed to discrimination and abuse.<sup>36</sup> This is because many of the young female domestic helpers are vulnerable, uneducated, and desperate to help their struggling families at home.<sup>37</sup>

In a 2009 International Labour Organization report for Asia and the Pacific, a survey of Filipino and Indonesian FDHs working in Hong Kong showed the kinds of abuse suffered.<sup>38</sup> Of those surveyed, forty-nine Indonesians reported verbal abuse compared to just three Filipinos and sixteen Indonesians reported physical abuse compared to two Filipinos.<sup>39</sup> In addition to verbal and physical abuse, both Filipino and Indonesian FDHs reported abuse in the forms of sexual harassment and insufficient food and sleep.<sup>40</sup>

Surveys conducted for age and education show that Filipinos are typically older and more highly educated than their Indonesian counterparts.<sup>41</sup> While Filipinos had a greater age span, over two-thirds of Indonesian FDHs were under the age of thirty.<sup>42</sup> Furthermore, half of the Filipinos had a college degree or higher while none of the Indonesians surveyed had completed any higher education.<sup>43</sup> According to that International Labour Organization report, Filipinos had a greater awareness of applicable Hong Kong laws.<sup>44</sup>

The Philippine government, unlike Indonesia's government, has a highly regulated labor migration program.<sup>45</sup> There are national organizations that help regulate overseas employment and employee

(2011), [hereinafter 2011 ILO Report], *available at* [http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms\\_154846.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms_154846.pdf).

<sup>34</sup> *Practical Guide For Employment of Foreign Domestic Helpers*, *supra* note 20, at 5-6.

<sup>35</sup> 2011 ILO Report, *supra* note 34, at 15.

<sup>36</sup> Rebecca J. Calzado, *Labour Migration and Development Goals: The Philippine Experience*, Department of Labor and Employment Philippines, 10 (Oct. 8, 2007), [hereinafter *The Philippine Experience*], *available at* [http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/global\\_labour\\_mobility\\_0809102007/presentations/paper\\_calzado.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/global_labour_mobility_0809102007/presentations/paper_calzado.pdf) (last visited Jan. 8, 2012).

<sup>37</sup> 2011 ILO Report, *supra* note 34, at 17.

<sup>38</sup> See 2009 ILO Report, *supra* note 1, at 28 (listing types of abuses experienced by FDHs at training centers reflecting common experiences that could occur when they work in Hong Kong).

<sup>39</sup> *Id.* (The exact reason why Filipino and Indonesian FDHs are treated differently by their employers is uncertain).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 23-24.

<sup>42</sup> *Id.* at 24.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 27.

<sup>45</sup> 2009 ILO Report, *supra* note 1, at 14, 15.

welfare.<sup>46</sup> Through those organizations, Filipinos in Hong Kong receive counseling, a twenty-four hour shelter, and assistance in settling disputes when employer relations deteriorate.<sup>47</sup> In comparison, the Indonesian government has been slow to enact government programs and those that have been enacted are not like those in the Philippines.<sup>48</sup> Perhaps the biggest reason for the disparities between Filipino and Indonesian FDHs are the private recruiting agencies of Indonesia that do not provide the array of services that the Philippines government is beginning to offer.<sup>49</sup>

The rising need for FDHs in Southeast Asia correlates with high employment growth for Asian women, specifically women as compared to men.<sup>50</sup> Asian markets are leading the world in economic recovery.<sup>51</sup> However, overall economic growth does not correlate with labor market recovery, which means continued high unemployment rates and financial uncertainty.<sup>52</sup> A joint report by the International Labour Organization and Asian Development Bank suggests the disparities between labor growth for women in Asia and the continuing low unemployment rate suggests a phenomenon that is unique to the rest of the world.<sup>53</sup> The report suggests the reason for such disparity is because Asia is successful in creating labor opportunities for women in export-oriented industries.<sup>54</sup> In a 2009 labor force participation analysis, less than a third of workers, both male and female, had either regular wage or salaried employment.<sup>55</sup> Of the South-East Asian women employed, nearly forty-two percent work in the service or non-agricultural informal employment sector, which includes work as FDHs.<sup>56</sup> In looking at Indonesia and the Philippines, about seventy percent of Indonesians and nearly fifty-eight percent of Filipinos worked in this type of employment.<sup>57</sup>

The burden on women has increased as FDHs look for alternatives to poverty.<sup>58</sup> For Filipinos, a FDH abroad can earn anywhere from US\$407 to US\$1,063 per month compared to just

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<sup>46</sup> *Id.* at 14.

<sup>47</sup> *Id.* at 15.

<sup>48</sup> *See id.* at 15, 16 (stating how Indonesia is concerned about the FDHs' welfare, but the government struggles to enforce employment standards because of external issues like private recruitment agencies).

<sup>49</sup> *See id.* at 14–5, 16 (noting how the Philippines' government heavily regulates FDH migration through three agencies that provide assistance in job verification, contract processing, training, and other welfare assistance programs in foreign countries).

<sup>50</sup> *See* 2011 ILO Report, *supra* note 34, at 1 (stating that domestic work is an important source of informal employment that continues to grow).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 5.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 6.

<sup>56</sup> *Id.* at 8, 9.

<sup>57</sup> *Id.* at 11.

<sup>58</sup> *Id.* at 26.

US\$191 to US\$320 per month in the Philippines.<sup>59</sup> Furthermore, the home countries are reaping the economic benefits of remittances that flow into the countries from FDHs.<sup>60</sup> According to the Philippines Department of Labor and Employment, the Philippines is one of the largest remittance recipient-countries in the world next to China and Mexico.<sup>61</sup> According to the 2006 records of the Central Bank of the Philippines, which is the nation's central monetary authority, over US\$13 billion was remitted and that number was expected to increase annually.<sup>62</sup> Overall, ten percent of the Philippines Gross National Product in the 2000s came from remittance and local currency.<sup>63</sup>

A Philippines study concluded that a deflation would have occurred in the country's economy by 0.72 percentage point annually if not for remittances.<sup>64</sup> These numbers alone indicate the significant contribution of overseas employment, which includes FDHs, has on the Philippines economy when they send money home to their families who then spend it on the local economy.<sup>65</sup> In 2000, the region of the Philippines with the lowest poverty rate also had the greatest assistance from family members who worked abroad.<sup>66</sup> The opposite could be said for regions with the highest poverty rate, as they in turn had the lowest amount of families relying on foreign workers.<sup>67</sup>

In recent years, relationships have been created between foreign banks and remittance agencies in which Filipino FDHs can transfer money home for reasonable fees in safe and formal manners.<sup>68</sup> In Hong Kong for instance, FDHs enjoy very low charge rates for money transfers to the Philippines.<sup>69</sup> In 2004, Hong Kong had the lowest charge rates at only US\$2.60 while Japan had the highest at US\$18.00.<sup>70</sup> For FDHs who only have one day off a week, convenience and ease are very important and that is why in Hong Kong, the Philippine National Bank and Citibank partnered together with convenience stores to make remittances quicker and more convenient.<sup>71</sup>

As the economic benefits of being a FDH entice more and more women, there is a growing concern of its social costs.<sup>72</sup> Especially since women play such an important role in the traditional

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<sup>59</sup> The Philippine Experience, *supra* note 37, at 6.

<sup>60</sup> *Id.* at 5.

<sup>61</sup> *Id.*

<sup>62</sup> *See id.* (discussing the forecast from 2006 to 2007).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 6.

<sup>65</sup> *Id.* at 5.

<sup>66</sup> *Id.* at 7.

<sup>67</sup> *Id.*

<sup>68</sup> *See generally id.* at 7-8 (describing newer methods to ease the process of sending remittances back to the Philippines).

<sup>69</sup> *Id.* at 8.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> 2003 ESCAP Report, *supra* note 3, at 3.

Asian family.<sup>73</sup> Today there is an increasing debate on what is considered good for the nation versus what is beneficial for the family.<sup>74</sup> Even some of the middle and upper classes of Indonesia and the Philippines are embarrassed because they feel other countries look down at them as nations of housemaids.<sup>75</sup> The dilemma may be best summarized by the following observation made by Patricia Sto. Thomas, in 2003, the Secretary of the Department of Labour and Employment for the Philippines:<sup>76</sup>

I guess the price paid for overseas employment is sometimes high – it separates families, it breaks them up sometimes and people can get maltreated. In fact, some have died already ... we cannot close our eyes to that but we cannot close our eyes either to the fact that if one million people come back to this country and could not find jobs, we'd all be in trouble.

Mothers are considered to be vital to the family unit.<sup>77</sup> Consequently, the migration of FDHs causes psychological difficulties for many families left behind, especially the children in these families.<sup>78</sup> As mothers become the primary breadwinners, there is often a reversal of gender roles as males attempt to care for the children at home.<sup>79</sup> The emotional toll created by the mother's absence, and the associated by-products of this absence, places great strain on the family.<sup>80</sup> This absence can cause struggles in the marriage and potentially result in divorce.<sup>81</sup>

Families of FDHs, especially children, are largely unaware of the trials and hardships faced by their mothers.<sup>82</sup> Most FDHs do not want their families to worry about their well being; therefore, children grow-up believing their mothers are living a life of luxury as they see pictures of them in lavish homes and expensive cities.<sup>83</sup> One Filipino migrant worker in Hong Kong said she did not tell her children about her problems because "they will not be able to help me anyway. Besides I do not want them to worry about my situation here."<sup>84</sup> When a Filipino child was asked why she did not tell her

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<sup>73</sup> *Id.* at 6.

<sup>74</sup> *Id.* at 4.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 4-5. (noting that Thomas was Head of the Philippines Overseas Employment Administration from 1982-1987).

<sup>77</sup> *See id.* at 11 (discussing how Filipino mothers are regarded as the *ilaw ng tahana*, meaning the *light of the home* in Tagalog).

<sup>78</sup> Estrella Mai Dizon-Anonuevo, *Addressing the Social Cost of Migration in the Philippines: The Atikha Experience* 1 (Sep. 25, 2008), available at

[http://www.icgmd.info/sessions/session\\_1\\_2/pdf\\_estrella\\_anonuevo.pdf](http://www.icgmd.info/sessions/session_1_2/pdf_estrella_anonuevo.pdf) (last visited Jan. 8, 2012).

<sup>79</sup> 2003 ESCAP Report, *supra* note 3, at 11-12.

<sup>80</sup> *Id.* at 13.

<sup>81</sup> *Id.* at 13.

<sup>82</sup> Dizon-Anonuevo, *supra* note 78, at 2.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 3.

mother about her problems she said “she is so far away and will not be able to understand me.”<sup>85</sup>

Consequently, many children grow up feeling abandoned by their mothers who seem to be enjoying a much better life abroad; the communication between both mother and child is often weakened.<sup>86</sup> Feelings of abandonment often lead to children rebelling against their families.<sup>87</sup> In a recent study, young children in families where the mother was absent showed poorer performance in school as compared to children whose mothers were not absent.<sup>88</sup> The children whose mothers were absent also showed greater difficulty in social relationships.<sup>89</sup> Ironically, studies show the children of overseas workers do not attain higher rates of education compared to the children of parents who do not leave, even though a child’s education is a huge expense and motivating factor for why the mothers sought overseas employment in the first place.<sup>90</sup>

Since the overwhelming majority of FDHs are female, their own daughters have the responsibility of caring for the family left behind in the employee’s home country.<sup>91</sup> Research has shown that this household burden falls to the younger females of the family because of traditional gender roles in Filipino families.<sup>92</sup> Furthermore, in countries like the Philippines there is often a superiority complex among males, with many husbands and sons refusing to do household chores, which places the burden on young girls.<sup>93</sup> One Filipino daughter said, “I am the only girl in the family and I do all the household chores. My brothers are not helping me at all. I do not even have time to rest.”<sup>94</sup> This frustration among daughters causes them to confide with their friends and peers rather than their own families.<sup>95</sup> As communication in the family deteriorates, social problems for children begin to develop.<sup>96</sup>

As families are separated, many migrant mothers feel loneliness and guilt, which they often deal with by trying to parent or be involved with their children from far away.<sup>97</sup> For example, mothers

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 2-3.

<sup>87</sup> *Id.* at 2.

<sup>88</sup> 2003 ESCAP Report, *supra* note 3, at 12.

<sup>89</sup> *Id.*

<sup>90</sup> Dizon-Anonuevo, *supra* note 78, at 5.

<sup>91</sup> 2009 ILO Report, *supra* note 1, at 11; Dizon-Anonuevo, *supra* note 81, at 6.

<sup>92</sup> 2003 ESCAP Report, *supra* note 3, at 9.

<sup>93</sup> Dizon-Anonuevo, *supra* note 78, at 6.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 7.

<sup>96</sup> *Id.* at 3; 2003 ESCAP Report, *supra* note 81, at 5.

<sup>97</sup> Dizon-Anonuevo, *supra* note 81, at 4 “It was so painful when I left my children. I miss them so much. So, whenever I have days off, I am usually inside shops, going around, and buying clothes, toys and things which I think they would like. It eases my loneliness and longing for them,” (as related by a Hong Kong FDH). *Id.*

will usually buy their families and children lavish, material gifts.<sup>98</sup> However, then children begin to associate their relationship with material goods, and their mother's love is seen in terms of gifts and money.<sup>99</sup> As children get older, the gifts become more lavish and expensive.<sup>100</sup> Children become dependent on these gifts and expect their mothers to pay for their education or even their own children once they are married.<sup>101</sup> The oxymoron of this relationship is that FDHs have to stay longer in their overseas employment to support their family's lavish lifestyle, even though the whole purpose of working overseas was to make enough money to ensure their families futures.<sup>102</sup> The overseas work which was only meant to be for three to five years often turns into fifteen to twenty years as the families become dependent on a lavish lifestyle and fail to save money.<sup>103</sup>

Although there are definite social concerns, initial studies in Indonesia and the Philippines suggest families are, overall, adjusting to their migrant mothers.<sup>104</sup> This is largely because extended family has stepped in to help fill the void of absent mothers.<sup>105</sup> However, infidelity, emotional estrangement, and children dropping out of school continue.<sup>106</sup>

The boom of FDHs is also a mixed blessing for receiving countries or even a necessary evil.<sup>107</sup> FDHs in Hong Kong provide cheap labor in areas where the rising middle and upper classes are unwilling to take the same low paying jobs.<sup>108</sup> At the same time, Hong Kong is concerned with broader social issues like the gathering of thousands of FDHs, called weekend enclaves, at Hong Kong's Statue Square, where thousands of FDHs will camp in the park.<sup>109</sup> There is also growing concern of the social effects FDHs have on the families they serve.<sup>110</sup> For instance in Singapore, a high-receiving country like Hong Kong, there are great concerns of the impact FDHs have on the employer's children and the male members of the employer's family.<sup>111</sup> As more Singapore women join the workforce, there are concerns of leaving their families in the hands of FDHs who may impose unwanted influences on their family values.<sup>112</sup> In Hong Kong, approximately fifty percent of working mothers with young children under the age of four rely on FDHs as care providers.<sup>113</sup> In contrast

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<sup>98</sup> *Id.* (describing these gifts as an expression of the mother's love).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 5.

<sup>103</sup> *Id.* at 4-6.

<sup>104</sup> 2003 ESCAP Report, *supra* note 3, at 14.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 5.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 15.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 17.

<sup>113</sup> Cortes & Pan, *supra* note 2, at 9-10.

only about thirty percent of working mothers have a family member take care of their child.<sup>114</sup> In comparison to Taiwan, a nation with similar traditional Chinese family values, only approximately eight percent of children under the age of three are taken care of by nannies, including FDHs.<sup>115</sup> Therefore, over ninety percent of young Taiwanese children are cared for by family members.<sup>116</sup>

In Singapore, there is a concern that young children are influenced by FDHs who practically raise them and take care of all the household needs.<sup>117</sup> In addition to the impact live-in FDHs may have on children, there is also concern of the role FDHs may have in fracturing the family.<sup>118</sup> For example, there may be inappropriate sexual relations or even molestation between FDHs and male family members.<sup>119</sup> Although FDHs have helped to improve Singapore's economic stability, such concerns have caused added stress on families and uncertainty for their children's future.<sup>120</sup>

### III. ARGUMENT

#### A. MANY FDHS' SUFFER ABUSE FOR ECONOMIC GAIN

There is growing awareness of the abuse foreign domestic helpers ("FDHs") face while working in Southeast Asia, but abuse continues even in places like Hong Kong where labor laws for foreign workers have been enacted.<sup>121</sup> Although Hong Kong has well-developed labor and immigration laws on the surface, loopholes in the system and ambiguity in enforcing them has left many FDHs vulnerable to their employers.<sup>122</sup> Consequently, the equality of FDHs in Hong Kong is not always a reality and cases of abuse can be common.<sup>123</sup>

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<sup>114</sup> *Id.* at 10.

<sup>115</sup> *Id.* at 9.

<sup>116</sup> *Id.*

<sup>117</sup> 2003 ESCAP Report, *supra* note 3, at 17 (addressing what a generation of children raised by maids will turn out as, Singapore Minister of Labor, Lee Boon Yang, first raised this concern in 1988 and is known as the "maid dependency syndrome").<sup>117</sup>

<sup>118</sup> *Id.* at 18 (describing how one employer found her 23-year-old FDH parading around the living room at midnight in front of her husband wearing nothing but a negligee with little on underneath. The employer gave birth just two weeks before).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 19.

<sup>121</sup> *See generally* 2009 ILO Report, *supra* note 1, at 37 (describing C97 Migration for employment convention). *See also* *C97 Migration for Employment Convention (revised)*, (1949), available at <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C097> (last visited Jan. 8, 2012) (stating as a commonwealth of the United Kingdom, Hong Kong ratified C97 of the International Labor Organization Migration for Employment Convention. C97, which focuses on equal treatment for workers).

<sup>122</sup> 2009 ILO Report, *supra* note 1, at 37.

<sup>123</sup> *See generally* *HKSAR v. Leung Yee Kwan*, [2002] CACC 382/2011 (H.K.), available at 2002 WL 1341594 (describing a specific case of abuse of an FDH in Hong Kong).

For example, in 2001 an Indonesian FDH was assaulted five times within the first forty-five days of her Hong Kong employment.<sup>124</sup> The employer actually forced this female FDH to kneel or lay on the floor before each beating.<sup>125</sup> The last assault was so severe, the FDH collapsed on the platform of a commuter train on her way to receive medical treatment for her injuries.<sup>126</sup> A CT scan later showed numerous bruises across the FDH's body, including a fractured rib, ruptured liver, and internal bleeding.<sup>127</sup> After being taken to the hospital by emergency personnel, the FDH's employer threatened to "[have] someone kill the [victim's] husband and children" if she ever told anyone the source of her injuries.<sup>128</sup>

There are many cases where FDHs receive serious and dramatic abuse.<sup>129</sup> In part, this is because FDHs feel too desperate to report labor violations because they are in debt to the employment agencies that helped get them to Hong Kong in the first place.<sup>130</sup> Furthermore, as the labor market for FDHs in Hong Kong becomes more competitive, there becomes a greater need to retain employment as job security decreases.<sup>131</sup>

From a macroeconomics perspective, FDHs have also largely benefited the economies of their countries of origin.<sup>132</sup> In the Philippines, FDHs have been given honorary distinction for their role in supporting the national economy through remittances.<sup>133</sup> The Philippines has created incentive programs, which encourage FDHs to send money back home to stimulate the economy.<sup>134</sup> Between the pressures of paying back the debt to private agencies, helping their national economies, and supporting their families back home, FDHs feel the need to stay employed after making it to Hong Kong.<sup>135</sup>

It appears the Philippines wants to be a labor sending country because of the number of FDHs abroad.<sup>136</sup> Ten percent of the Philippines Gross National Product is based on annual remittances.<sup>137</sup> For many Indonesians and Filipinos, working as FDHs is the only way that they can financially support their

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<sup>124</sup> *Id.* at ¶¶ 1, 3, 7.

<sup>125</sup> *Id.* at ¶ 7.

<sup>126</sup> *Id.* at ¶ 8.

<sup>127</sup> *Id.* at ¶ 9.

<sup>128</sup> *Id.* at ¶ 6.

<sup>129</sup> Tan, *supra* note 25, at 354.

<sup>130</sup> 2009 ILO Report, *supra* note 1, at 37.

<sup>131</sup> *Id.*

<sup>132</sup> 2003 ESCAP Report, *supra* note 3, at 3.

<sup>133</sup> *Id.* (describing how the honorary distinction of *mga bagong bayani*, translates into *new heroes* in Tagalog).

<sup>134</sup> The Philippines Experience, *supra* note 37, at 7.

<sup>135</sup> See generally 2011 ILO Report, *supra* note 34, at 5 (describing why the current system needs to be evaluated so as to better understand the full impact it has on the overall welfare of FDHs).

<sup>136</sup> The Philippine Experience, *supra* note 37, at 1 (noting 10 percent of the Philippines Gross National Product is based on annual remittances).

<sup>137</sup> *Id.* at 5.

struggling families.<sup>138</sup> In Hong Kong, there is a need for workers to fill the menial jobs no one else wants to take.<sup>139</sup> Thus, the demand for FDHs will only increase.<sup>140</sup> Therefore, real solutions are needed to protect the interests of the FDHs, their families, and both the sending and receiving countries.<sup>141</sup>

Hong Kong is a leader in developing strong labor laws.<sup>142</sup> However, the current laws can be improved to better protect FDHs.<sup>143</sup> Increased protection can occur through better communication and mutual understanding between sending countries and Hong Kong.<sup>144</sup> Although Hong Kong and sending countries are currently cooperating with each other, each had differing policies, which leads to confusion and loopholes in the system.<sup>145</sup> Consequently, FDHs rely heavily on the private recruitment agencies that bring these women to Hong Kong, but many of them are abusive, corrupt, and simply inadequate.<sup>146</sup>

The problems that the vast majority of FDHs face today can be significantly reduced if private recruitment agencies are eliminated.<sup>147</sup> Many of these agencies are not properly licensed and there is no uniform standard when it comes to recruitment fees and working conditions.<sup>148</sup> In Indonesia the welfare of FDHs is a major concern because recruitment agencies make it difficult to set employment standards.<sup>149</sup> The recruitment and placement of Indonesian FDHs is entirely controlled by private agencies and their Hong Kong affiliates.<sup>150</sup> For both Filipinos and Indonesians, recruitment agencies often overcharge for their services, even though Hong Kong has restrictions in place, because the penalties are insignificant as compared to the potential earnings.<sup>151</sup> It is difficult to regulate any overcharging because for those private agencies that are properly licensed, it ends up being the word of the FDH against the established agency.<sup>152</sup>

When comparing these recruitment agencies to some of the new government regulated programs of the Philippines, it is clear

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<sup>138</sup> 2011 ILO Report, *supra* note 34, at 17.

<sup>139</sup> 2009 ILO Report, *supra* note 1, at 11.

<sup>140</sup> 2011 ILO Report, *supra* note 34, at 38.

<sup>141</sup> 2009 ILO Report, *supra* note 1, at 37.

<sup>142</sup> *Id.* at 9.

<sup>143</sup> *See generally id.* at 37 (noting how FDHs are vulnerable because of loopholes in Hong Kong's labor laws).

<sup>144</sup> *See generally id.* at 38 (describing how sending and receiving countries largely operate independently of each other).

<sup>145</sup> *See generally id.* (stating how cooperation exists between sending and receiving countries, but there are no formal signed accords).

<sup>146</sup> *Id.*

<sup>147</sup> *See generally id.* (stating that sending and receiving countries should prosecute abusive agencies).

<sup>148</sup> The Philippine Experience, *supra* note 37, at 3.

<sup>149</sup> 2009 ILO Report, *supra* note 1, at 16.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 38.

<sup>152</sup> *Id.*

that when the government takes a vested interest in their FDHs, their safety and well being becomes a priority.<sup>153</sup> This is because the Philippines has made the remittances from these FDHs a priority in an effort to stimulate their national economy.<sup>154</sup> Therefore, if these private recruitment agencies were to be eliminated, and the government took an interest to ensure the safety of its FDHs, then many of the problems would be significantly reduced.<sup>155</sup>

B. GROUP FACILITATION SHOULD BE USED TO IMPROVE FDHs' WORKING CONDITIONS

Implementing such changes will be a difficult and onerous task because it requires greater government involvement; further challenges arise given that the private agencies are very powerful.<sup>156</sup> Consequently, a facilitation should (and must) take place that involves all the stakeholders so that open communication, mutual understanding, and the perspectives of each party can be developed.<sup>157</sup> Group facilitation is a process where a neutral party, acceptable to all members, intervenes by helping group members identify and solve their problems through group collaboration.<sup>158</sup> Facilitators are not responsible for the group's decision nor do they offer an opinion.<sup>159</sup> Yet, because they are involved in the process facilitators help groups contemplate effective decisions in light of their core values.<sup>160</sup>

Generally speaking, people depend on groups to accomplish what they cannot do on their own.<sup>161</sup> In the instant case, the interested stakeholders have reached a point where they can no longer act independently.<sup>162</sup> Since groups may find it difficult to openly examine their behavior, the need for a facilitator becomes very important.<sup>163</sup>

There are essentially two types of facilitation, basic and developmental.<sup>164</sup> Although each technique looks to solve the problem, the biggest difference is that basic facilitation temporarily solves the problem where developmental facilitation empowers

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<sup>153</sup> See generally The Philippine Experience, *supra* note 37, at 9-10 (describing how the Philippines government is continuously adjusting programs in order to improve overseas employment).

<sup>154</sup> See generally *id.* at 5 (describing how FDH remittances account for a large part of the country's gross national product).

<sup>155</sup> See generally 2009 ILO Report, *supra* note 1, at 38 (describing loose regulation over private agencies).

<sup>156</sup> See generally *id.* (stating how FDHs have become dependent on private agencies for placement).

<sup>157</sup> *Id.* at 37.

<sup>158</sup> ROGER M. SCHWARZ, THE SKILLED FACILITATOR: PRACTICAL WISDOM FOR DEVELOPING EFFECTIVE GROUPS 4 (1994).

<sup>159</sup> *Id.* at 11.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 3.

<sup>162</sup> 2009 ILO Report, *supra* note 1, at 38.

<sup>163</sup> Schwarz, *supra* note 161, at 4.

<sup>164</sup> *Id.* at 6.

groups to solve future problems on their own.<sup>165</sup> Although developmental facilitation takes time, stability, and commitment, this facilitation approach is the best for the stakeholders discussed in this paper because of the complexity of the situation.<sup>166</sup>

In order for a facilitation to be effective, trust among the stakeholders must be developed because that trust enables action, commitment, and a strong working relationship.<sup>167</sup> For the stakeholders in this situation to be successful, it is imperative that an increased level of trust is developed so the parties may feel empowered to create ideas, opportunities, and solutions.<sup>168</sup> This requires members of the group to become leaders because leaders can help facilitators direct and support the efforts of the group.<sup>169</sup> If this facilitation approach is embraced, group leaders will help resolve both the current problems and any others that may develop long term.<sup>170</sup> Therefore, for the FDH situation to improve, it needs a facilitator who embraces the developmental facilitation approach and a group of stakeholders representing the interests of the FDHs, employers, and countries; this allow for leaders to emerge and direct effective solutions.<sup>171</sup>

#### IV. CONCLUSION

This Article discussed the plight of the Filipino and Indonesian FDH in Hong Kong.<sup>172</sup> It further discussed the complicated economic and social relationship that exists between the FDH, their families, and the receiving and sending countries.<sup>173</sup> The Article further pointed out that although Hong Kong has taken legal steps to protect FDHs, private recruitment agencies and loopholes in the system allow for continued abuse.<sup>174</sup> This Article suggested that private recruitment agencies should be eliminated and that stakeholders should come together to facilitate their independent problems into achieving a mutually beneficial solution.<sup>175</sup>

If Hong Kong continues to address FDH concerns in the present manner, then the problems discussed in this Article will only escalate. It is essential that the Hong Kong government works with its counterparts in Indonesia and the Philippines to develop a mutually beneficial solution for all. Hong Kong officials have a unique opportunity to establish a precedent for how labor receiving and

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<sup>165</sup> *Id.* at 7.

<sup>166</sup> *Id.* 7-9.

<sup>167</sup> MARIA BEGONA RODAS-MEEKER & LARRY MEEKER, *THE IAF HANDBOOK OF GROUP FACILITATION* 89 (Sandy Schuman ed. 2005).

<sup>168</sup> *See generally id.* at 97 (describing the effect of empowerment on business enterprises).

<sup>169</sup> *Id.*

<sup>170</sup> *See generally id.* (empowering relationships are likely to succeed as people begin to have a vested responsibility).

<sup>171</sup> *See generally* SCHWARZ, *supra* note 161, at 6 (describing the benefits of developmental facilitation).

<sup>172</sup> *See supra* notes 9-37 and accompanying text

<sup>173</sup> *See supra* notes 48-116 and accompanying text.

<sup>174</sup> *See supra* notes 144-152 and accompanying text.

<sup>175</sup> *See supra* notes 153-168 and accompanying text.

sending countries work together. If Hong Kong, as the labor receiving country, fails to take the initiative in bringing interested parties together, one of two outcomes will likely occur: (1) the international community will become disgusted at the atrocities suffered by so many FDHs and Hong Kong will be scrutinized for its lack of action; or (2) FDHs will turn to other labor receiving countries leaving a void of FDHs in Hong Kong. Either way, Hong Kong's economy and image will likely be negatively affected. Therefore, it is in Hong Kong's best interest, for both the short and long-term, to be proactive in working with Indonesia and the Philippines to address its FDH concerns.