

## **ABSTRACT**

The expansion of traditional concepts of security in the early 1980s has contributed to debates on the nature and meanings of security giving rise to new ways of understanding security issues, hence, widening the conceptual perimeters of what constitutes security. By examining the issue of illegal migration to Hong Kong, this paper will consider the utility of widening security agendas and how the inclusion ‘newer’ issues into an expanded security framework can contribute towards the resolution of such problems.

Based on empirical evidence this paper will explore one contemporary source of illegal migration in Hong Kong and offer insights derived from a cultural economy perspective that aims at informing policies for better management of ‘low-skill’ labour migration; or what is known as mode-4 of the World Trade Organisation’s General Agreement on Trade in Services (GATS). Governmental roles and responses will be examined and show how the bureaucratisation of recruitment processes from Indonesia through absorbing private sector agencies into the management of labour export compromises governmental functions of regulating them. This examination will reveal that the lack of political engagement between the Hong Kong and Indonesian government regarding this labour supply chain undermines solutions for illegal migration in Hong Kong.

The apprehension and deportation of illegal immigrants in Hong Kong has been highly bureaucratised. A central argument is that while efficient bureaucratisation is one means, it presents a unilateral approach that without a parallel policy framework cannot provide effective solutions to problems emerging from transnational processes that meet the needs of Hong Kong’s structural labour shortage.

This paper concludes that a wider definition of security is key in providing new tools in the face of new threats, given that the usual responses, largely reactive in nature, are yielding diminishing returns. The utility of the an expanded security framework to address illegal migration in Hong Kong reveals a gap in the over-bureaucratisation and under-policisation of an issue that requires a novel, comprehensively proactive framework of engagement. It concludes that without the politicisation of dialogue towards a unity of purpose between governments, the potential for the resolution of transnational problems is severely curtailed.

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# **The Cultural Economy of Illegal Migration: Migrant Workers Who Overstay in Hong Kong**

## **INTRODUCTION**

Buzan *et al.*'s (1998: 23) conception of "security" as a "special kind of politics or as above politics" "that takes politics beyond the established rules of the game" is useful in the analysis of illegal migration because, in addition to the traditional notion of militarization it provides the tools of bureaucratisation and politicisation to cope with non-traditional transnational threats. The question of whether illegal migration is a 'real' threat is not an issue that can be dealt with at length here. Rather, the perspective employed here is on how illegal migration is perceived as a threat to the government's ability to secure its borders and safeguard the interests of Hong Kong's residents and how this is addressed in Hong Kong, as a major destination for such flows in East Asia.

In a post Cold War world where nations mostly, no longer have enemies, but instead face risks and dangers (Giddens: 2002: xiii), illegal migration poses risks for governmental credibility in maintaining border security and economic security as a basis for political stability and the right to rule. Studies on economic security show that it is integral to political order as economic health often provides the mandate of a government's moral right to govern. Both historically and more recently ruing the Asian Financial Crisis, failure to deliver economic security to the governed has been pivotal to outbreaks of collective resistance and the toppling of governments in different parts of the world. At the same time, unfulfilled economic needs have led to forced and voluntary flows of human populations escaping hardship and seeking better living standards.

Illegal migration is a modern problem that originated with the creation of modern nation states, i.e. discrete geographical entities with prescribed membership predicated on the territorial rooted-ness of largely non-mobile populations and the sovereign rights of the state to control the crossing of geographical boundaries. Historically, most analysts would agree that before E G Ravenstein's work on migrants from Ireland at the end of the 19<sup>th</sup> century, there was no context for the formal identification of illegal migration.<sup>1</sup> Others would suggest the Chinese exclusion laws of the United States after 1882 that employed terms like "clandestine entry" and "unlawfully resident". However, even if illegal border crossings began way before then, it was possibly the work of the Chicago School of Sociology two decades later that pioneered the creation of this category, strictly associated with the presence of illegal foreigners in the United States.

This paper employs a cultural economy perspective in examining the causes of illegal migration characterised by socio-economic relations specific to affluent centres in East Asia and those of less developed sending nations. In particular, this paper focuses on an emerging pattern of illegal overstaying by Indonesian women migrants who enter Hong Kong as domestic workers

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<sup>1</sup> Ravenstein, E.G. 1889; 1885; 1876.

via transnational labour networks. While these networks are essential for the movement of large numbers of migrants, they are, to a large extent, responsible for systemic practices that produce increasing numbers of illegal immigrants at points of destination.

### **Migration and transnational labour networks**

Markets and organisations are commonly understood to be economic entities, objective, materialistic, and independent of the value-laden sphere of human culture and society, while cultural and societal activity are the result of *a priori* economic relations. However, it is the interpenetration of culture and economy in dialogical and dialectical ways that underwrite the relations between perceived social-economic structures and the practices of human agents. The ‘cultural economy’ of illegal migration, hence, draws together, the discursive processes and practices that constitute it. In this economy of people, markets, networks and organisations, cultural practices are reproduced, influencing economic processes while being shaped by them.

At the heart of this cultural economy of migration are transnational labour networks, forming heterogenous complexes that involve private organizations, individuals and governmental organs at both sending and receiving ends. The idea of heterogenous complexes abandons the assumption that security complexes are composed of specific forms of interaction among similar types of units, e.g. military units of different states. It is based on the logic that different types of actors can interact across two or more sectors (e.g. states + nations + firms + federations, interacting across the political, economic and societal sectors).<sup>2</sup> By examining the anatomy of labour networks in this way, it becomes possible to deconstruct the roles that public and private actors play in the management of labour export. This research aims to address the paucity of information on foreign women’s illegal migration in Hong Kong, to inform policy making, and to increase understanding of why illegal migration becomes attractive an option as a result of current practices.

### **The Facts of Illegal Migration in East Asia**

The rise of illegal migration is of increasing concern in many parts of the economically developed world where destinations of such flows are located. One emerging source of illegal migration and settlement in East Asia, stems from migrant worker populations, and in this chapter I will examine the situation among Indonesian women migrants in Hong Kong. Almost all Indonesian migrants in Hong Kong are female who enter as domestics on short-term contracts. They enter Hong Kong, like other East Asian destinations—namely, Japan, Korea and Taiwan—through legal channels with proper entry papers distinct from migrants who gain entry through forged documents<sup>3</sup>.

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<sup>2</sup> Buzan *et al.* 1998: 17.

<sup>3</sup> Indonesian domestic workers’ travel documents are sometimes doctored by recruitment agencies for various reasons, e.g. to fit ideal types desired by would be employers, by increasing/reducing their ages, changing their marital status, etc. However, these degrees of falsifications are not commonly understood by the migrant workers to constitute forgery. Another reason that is often cited for the necessity of changing personal details lies in the

This phenomenon where legal entrants overstay and acquire illegal status is not peculiar of Hong Kong but symptomatic of the sending networks that connect and fall between nation states. The trend in Indonesian short-term migration is significant in generating the highest rates of illegal overstayers in East Asia compared to other groups.

70% of Indonesian migrants are women--65% head for Asian destinations and 35% to the Middle East<sup>4</sup>. Over the last decade, the numbers of 'illegal' Indonesian women migrants has been on the rise. For example:

- In Japan, there were 6,378 legal Indonesian female migrants versus 1,757 who were undocumented in 2002. That is a quarter of all Indonesian women migrants who entered Japan became illegal. In 2003, this number rose to 1,806. From 1990 to 2003, illegal Indonesian women in Japan increased 1,450%.<sup>5</sup> In terms of both male and female illegal Indonesians in Japan, the numbers rose by more than 2000% in the same period.<sup>6</sup>
- In South Korea, there were 3,117 illegal Indonesian women workers compared to 1,646 who had valid documents, i.e. 189.3% more illegal than legal workers in 2002. In 1999, there were 267 illegal Indonesian women migrants or 8.4% of the legal Indonesian female migrant population of 3,176.<sup>7</sup> While the legal population had halved in three years, illegal migration had grown by more than 10 times. The number of illegal female and male Indonesians increased 807% from 1,865 in 1999 to 15,054 in 2002, the highest among all migrant groups in the country.<sup>8</sup>
- In Taiwan, 4.7% of Indonesian female workforce or 3,809 out of 81,490 were illegal in 2002.<sup>9</sup> Compared to 477 illegal Indonesian female migrants in 1993, this represents an expansion of nearly 800% among those with irregular status in a decade. The rate of runaways among Indonesian migrant workers jumped from 156 to 3,809 or 2,400% in eight years. Between 1993 to 1997 Indonesian female overstayers in Taiwan outnumbered males by 1,168 to 371 or 3:1.<sup>10</sup> By 2000, this population grew to 2,082, comprising of 1,633 women to 449 men or nearly 4:1.

Labour migrants who entered legally become 'undocumented' or invisible to authorities through running away from their employers, and/or overstaying their visas. In 1996 and 1997, there were 15,554 and 14,342 prosecutions of overstayers in Hong Kong; 17,681 prosecutions of

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Javanese system of naming where people have just one name. For the preparation of their passports, they require a 'family' name and this addition to their legal documents is quite common.

<sup>4</sup> CARAM International *et al.* 2002: 7. See Table 3.

<sup>5</sup> Ministry of Justice (Japan), cited in AMC & MFA 2002-3:173.

<sup>6</sup> AMY 2002-3: 173.

<sup>7</sup> Ministry of Justice Immigration Office (Korea), cited in AMY 2002-3:187.

<sup>8</sup> AMY 2000: 231; AMY 2002-3: 187.

<sup>9</sup> National Police Administration of Taiwan, cited in AMY 2002-3: 261.

<sup>10</sup> AMY 1999: 195; AMY 2002-3: 260.

‘overstayers’, and 26,045 deportation orders were issued in 1998.<sup>11</sup> The numbers of overstayers from other countries cited in this study are derived from governmental sources determined by matching immigration arrival cards to departure cards and valid working visas. One limitation to this study is an absence of data as both Hong Kong’s Departments of Statistics and Immigration reveal that a breakdown in numbers of illegal migrants by nationality and occupation is not available. The Indonesian Consulate in Hong Kong was also unable to provide any estimates on the number of Indonesian migrants deported. While Chiu (1999) confirms that the number of illegal workers from outside Hong Kong is unknown, Skeldon (1995) estimated their number at about 20,000.

Recent figures available in Hong Kong show that there had been 1,981 prosecutions for breaching conditions of stay for 2002, and 2,757 in 2003.<sup>12</sup> Given that Indonesian women migrants in Hong Kong are moved through the same labour networks that have produced large illegal migrant communities in other destinations, it is the author’s hypothesis that a significant number of these are Indonesian women migrants.<sup>13</sup>

Notwithstanding these concerns, illegal migration does not merely pose threats to recipient states and their populations but also to the welfare of illegal migrants themselves. Governments of recipient countries have responded by a variety of means including outright apprehension and deportation, imprisonment, corporal punishment and granting of amnesties to regularize illegal populations. Very often, in recipient states’ drive to deter illegal migration and settlement, the elimination of abuse to illegal migrants is overlooked.

A major challenge in this paper lies in assessing the approaches employed by states and the role of transnational networks in labour migration through the lenses of the new security framework as set out by Buzan *et al.* (1998). Another relates to the use of micro-perspectives to understand why such measures often fail in terms of their deterrent-value and how, in fact, they can contribute to the perpetuation of illegality. The primary data is based on empirical research in Hong Kong with fourteen illegal Indonesian women migrants carried out over two years using snowballing techniques. The total length of illegal residence amongst the respondents amounted to 17 years and the average length of illegal residence ranged from several weeks to five years. Secondary data is drawn from governmental sources, academic publications, NGO reports and from both print and online newspaper publications.

### ***Hong Kong & the notion of non-traditional security issues***

The notion of non-traditional security issues emerged from dissatisfaction with the limitations of traditionalist definitions of security in the early 1980s for identifying threats after the end of the Cold War, which could take into account threats that go beyond arguments of state primacy and

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<sup>11</sup> Hong Kong Immigration Department, cited in AMY 1999: 112. See <http://www.info.gov.hk/immnd/english/facts.htm> cited in Chiu 1999.

<sup>12</sup> SCMP August 27, 2004.

<sup>13</sup> One long-term volunteer who works twice a week with a non-governmental organisation (NGO) helping migrant workers, reports that she meets three to four ‘new’ Indonesian illegal migrant worker every month.

military security. This is pertinent to Hong Kong where political risks and threats arise from non-traditional sources, e.g. economic, societal and environmental. Under Britain and recently, the PRC, Hong Kong has never been a state in the true sense of being an autonomous, discrete 'nation' with sovereign authority, over all internal and external relations. However, Hong Kong will be regarded as a state in this paper because where it relates to the immigration of foreigners, the Hong Kong SAR Government retains full autonomy on immigration control matters even after reunification with the PRC on 1 July 1997.<sup>14</sup>

The process of securitisation is one of collective recognition of threats that justifies the acceleration into an emergency mode, of responses to this category of threats. Amidst increasing global dependencies, there is also growing global consensus that security can no longer be viewed as primarily, national or confined to military engagement, even for the most powerful states in the world.<sup>15</sup> This is so where most phenomena is characterised by at least two dimensions, domestic and trans-national, and where real solutions can come about only from global responses that are coordinated and unified by purpose with pre-agreed goals. This paper problematises the absence of securitization with regards to illegal migration and show that a view of security excluding non-military issues eliminates means with which important social phenomena, can be addressed. Of the three modes of securitisation, namely, militarization, bureaucratization and politicization, it is the latter that holds potential for providing solutions to the trans-national issue of illegal migration. In short, this paper renders support for 'wideners' inclined towards expanding applications of the security framework.<sup>16</sup>

The intention here is not to idealize security but to disaggregate its components on a continuum of responses from being non-securitized, to varying degrees of bureaucratization, politicization and militarization. While desecuritization is the optimal long-range option, moving issues out of the threat-defense sequence and into the ordinary public sphere,<sup>17</sup> improvements in managing illegal migration can be found only if the issue is moved first, from being non-politicized towards being a politicized process. That is, with engagement between the Hong Kong and Indonesian governments in setting out common objectives and policies for the management of transnational human flows.

The referent objects of such a securitisation move are the Hong Kong government and its people, who can claim to be existentially threatened by the presence of illegal immigrants and to have a legitimate claim to survival. As illegal migrants, Indonesian migrants who overstayed constitute functional actors on one level, but on another level, heterogenous complexes of transnational

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<sup>14</sup> As a Special Administrative Region, Hong Kong does not have sovereignty over citizenship and by definition under the Hong Kong law, "immigrants" define persons who are not permanent residents in Hong Kong, thereby excluding the application of its rules to PRC citizens. See, Joint Declaration of the Government of the United Kingdom and the People's Republic of China on the Question of Hong Kong 1984, Annex I: Elaboration by the Government of the PRC of its Basic Policies regarding Hong Kong, s XIV.

<sup>15</sup> Giddens 2002: xviii.

<sup>16</sup> For more on this debate, see Lebow 1988, Chipman 1992; Gray 1992, Walt 1991 for traditionalist arguments & Jahn *et al.* 1987 and Ayoob 1995 who hold the political sector/state as the primary focal point for widening perspectives.

<sup>17</sup> Buzan *et al.* 1998:29.

labour networks that contribute to illegality constitute functional actors as well. Who should be the securitizing agents to effect the necessary ‘speech act’ and actions in the act of securitization? In the first instance, the necessary ‘speech act’ need not be made by the state.<sup>18</sup> To secure support and recognition in situations that require the breaking of normal rules or procedures, securitization in liberal-democratic societies is not imposed and arguments have to be advanced about the priority and urgency of existential threats. It is in the inter-subjective staging and recognition of such threats that the ‘speech act’ publicly marks and declares the threat as such. Central to such recognition, is the social capital of the enunciator, i.e. one of acceptable authority, and in Hong Kong’s case, would be effective from one or a combination of public, civil society, business and media sources. The process of political securitization would, invariably, involve a governmental task force, drawing from the relevant Departments, such as Trade, Immigration, etc.

### ***The paradox of growth: Economic growth, labour shortages and labour import policies***

Fueled mainly by immigration from Mainland China Hong Kong’s population increased rapidly from the mid 19<sup>th</sup> century. By the 1970s, unofficial flows were increasingly checked at the border with two waves of illegal migration from Mainland China and Vietnam. The nature of illegal migration discussed in this paper excludes these groups and more recently, the ‘right of abode’.<sup>19</sup>

Proximity to a China, in self-enforced isolation, was key to the emergence of a capitalistic and modern Hong Kong that saw improvements in domestic production, housing, education, women’s labour participation, health, etc. paving the way to its success as a trading, manufacturing and financial centre. By 1961 women’s participation rates in the labour force was at 40% and this continued to rise into the late 1980s.<sup>20</sup> Tight labour market conditions worsened with the impending handover of Hong Kong to Chinese rule when the emigration of Hong Kong’s elite and middle classes intensified in the early 1990s. Hong Kong like other global cities welcomed the arrival of foreign professionals to work and live there but like elsewhere, this stopped at foreigners who were deemed unskilled, performing menial and low-waged work.

With one of the lowest rates of natural increase at 0.1%<sup>21</sup> and a sizeable middle class, one in five families today employ Foreign Domestic Workers (FDWs). Originally admitted as domestics for expatriate professionals,<sup>22</sup> the local Chinese population of Hong Kong today constitutes the largest group among employers of FDWs. The importation of FDWs was based on legislated minimum wages set high enough to avoid threatening local domestics. Racially distinct migrant workers were also preferred by the authorities to prevent locals with families in the PRC from

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<sup>18</sup> Buzan 1998: 24.

<sup>19</sup> ‘Right of abode’ debates were mainly concerned with the rights of residence of Mainland children born to Hong Kong residents.

<sup>20</sup> Constable 1997:24, 26.

<sup>21</sup> Population Reference Bureau 2004:10.

<sup>22</sup> Tam 1999:264.

bringing in members of their own families.<sup>23</sup> As wages among Hong Kong residents rose, so did demand for FDWs whose ‘high’ minimum wage had become affordable for many during the 1980s and 90s. Hired domestic help not only became indispensable to Hong Kong’s middle class lifestyle but also, a status marker amongst them.<sup>24</sup> The population of FDWs in Hong Kong, mostly Filipinas and Indonesians reached 240,000 in 2002 (See Table 1), and despite two reductions to the minimum wage since 1999, the monthly wage of HK\$3,270 (approximately US\$420) compares favorably with other destinations, e.g. Malaysia and Singapore.<sup>25</sup>

The hire of FDWs is governed by a standard two-year contract by the Department of Immigration that stipulates employer eligibility, remuneration, etc. The process of hiring a FDWs in Hong Kong begins when a prospective employer picks out a candidate from an employment agency’s database and a fee is paid for the application of the worker’s visa. Most FDWs come to Hong Kong hired for the first time in this way and this remains largely the route by which Indonesian women migrants go to Hong Kong<sup>26</sup>. Only when their visas are approved are they allowed to enter Hong Kong.

One of the main complaints by NGOs representing FDW interests in Hong Kong resides in the inflexibility of FDW employment contracts, where FDWs are not allowed sectoral mobility to change their employment to other types of work. During the course of the contracted two-year employment, any change of an employer within the same sector of domestic work, too, is forbidden except under extraordinary conditions, when an employer dies, is in financial difficulty, emigrates or in instances of physical abuse.

Apart from these exceptional conditions, FDWs are required to return to their countries of origin and begin the process of re-application if they want to seek re-employment in Hong Kong. Illegal overstaying in Hong Kong by FDWs results from transgressing the New Conditions of Stay or what is commonly known as the “two week rule”. This a policy not passed through the legislative process but decided by the Governor in Council in April 1987 and followed by the Labour and Immigration Departments permitting FDWs, a period of two weeks stay in Hong Kong when they come to their end of their employment.<sup>27</sup> While this remains a rule, it carries the force of law as any breach carries the penalty of prosecution, imprisonment and deportation. A period of two weeks is usually insufficient for the worker to find a new employer and failing which she has to return to her country to start the long and costly process of re-deployment from there. If she is able to find a new employer within the given two weeks, she would be able to return to Hong Kong in the time required to process a new working visa, usually about six weeks.

Being able to find a new employer in Hong Kong before she leaves also means that the fees incurred would be considerably lower than if she had to return home. In theory, the Hong Kong

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<sup>23</sup> Chiu 1999: 92.

<sup>24</sup> See, for example, Constable 1997.

<sup>25</sup> Sim, 2003.

<sup>26</sup> Filipino domestic workers are increasing using direct hire through recommendations and can proceed with their applications without the services of employment agencies. See Lowe 2000.

<sup>27</sup> Constable 1997: 149.

law limits employment agencies' fees to 10% of a month's wage (HK\$360) for finding new employment for FDWs in Hong Kong. But in practice, charges range from HK\$3,000-13,000 (US\$384-1,667); which at HK\$13,000 is still a fraction of the cost coming from their home country. Given the sense of urgency in securing a new job within two weeks, FDWs often succumb to illegal rates charged by employment agencies and for this reason, are not forthcoming as witnesses in state prosecutions of employment agencies.

If Filipina domestic workers were able to find employers on their own, as in 'direct hire', it would save them agency fees amounting to months of wages. In such cases, Filipina domestic workers approach their consulate in Hong Kong on their own where they get their passports endorsed and proceed directly to the Immigration Department to process their visa application for less than HK\$500 (US\$65) each. This system of hire is, however, unavailable to Indonesian domestics in Hong Kong, who according to the rules laid down by the Indonesian government are compelled to use intermediaries, namely appointed employment agencies, to carry out this simple procedure.

Illegal migration by migrant workers is symptomatic of the obstacles to seeking employment that migrants wish to avoid. In the individual's bid for access to market opportunities, there is a correlation between the burden of regulation on the one hand and the emergence of illegality on the other. This is by no means an anarchist's argument for the elimination of regulations altogether, but one that calls for the examination of the nature of such regulations to assess where their burden falls, on whom and what the wider repercussions may be.

Hong Kong's management of illegal migration is heavily bureaucratized—from apprehension to deportation, from the police to the courts, to jail and to the airport—under the jurisdiction of the Departments of Immigration, Labour and Justice. Whether it is merely a result of institutional inertia or to the legacy of a strong civil service culture, Hong Kong's exclusive dependence on this method is questionable as prison records reveal. (See Tables 5, 5a and 6).

***Foreign women and domestic work in Hong Kong***

FDW population peaked in 2002 at 237,104, the same year that the numbers of Filipina domestics started to show decline for the first time since 1970s.<sup>28</sup> (See Table 1). While the numbers of other FDWs, e.g. from Thailand, India, Sri Lanka, remained stable or declined over the last decade. Indonesian domestic workers increased at 28-29% in the late 1990s overtaking the 3% annual increases among Filipinos. From a mere 1,000 in 1990 to 82,307 in 2004, they form the second largest group of foreign workers in Hong Kong rising by 8,000% between 1990 to 2004.

Table 1: Filipina and Indonesian domestic workers in Hong Kong, 1990-2004<sup>29</sup>

Year	Filipina	Indonesian
1990/12	63,600	1,000

<sup>28</sup> For other factors that account for a reduction in numbers of Filipino domestics, see, Wee & Sim "Hong Kong as a Destination for Migrant Domestic Workers", in press.

<sup>29</sup> Hong Kong Immigration Department, Government statistics 2004.

1991/12	75,700	1,800
1992/12	89,104	6,718
1993/12	105,410	6,148
1994/12	121,178	10,716
1995/12	131,176	16,357
1996/12	134,713	20,960
1997/12	138,085	24,706
1998/12	140,357	31,762
1999/12	143,206	41,397
2000/12	151,485	55,174
2001/12	155,445	68,880
2002/12	148,389	78,165
2003/12	125,557	81,030
2004/3	124,921	82,307

As noted by earlier research, the acceptance of this large foreign component taking up lowly paid jobs in a dominantly Chinese society has not been without problems.<sup>30</sup> However, these do not appear to contribute directly to increased illegal overstaying among migrant workers.

### ***Introducing transnational labour networks as heterogenous complexes***

Like the Philippines, Indonesia, had embarked on a policy of labour export in response to an inability to create sufficient employment for up to 12 million new entrants into the domestic economy each year. Indonesia's 5-year national development plan for 1994-99 included a target of exporting 2.5 million labour migrants.<sup>31</sup> Labour export has become increasingly important to Indonesia's national economic development goals.

While Indonesian socio-economic indicators today show improvements to levels before the Asian Financial Crisis in 1997, economic recovery have not been able to match the socio-demographic structural demand for jobs. The deficit in job creation is estimated at one million annually.<sup>32</sup> For the generation of Indonesians who grew up under Suharto's 'New Order' regime over the last three decades, options for returning to subsistence or agricultural life are limited or no longer available. Although unemployment of 45 million out of a population of 220 million was an all time high after the 1997 crisis and despite widespread poverty, it has been suggested

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<sup>30</sup> Constable (1997), French (1986) and Lowe (2000) examined issues of ontological security<sup>30</sup> relating to identity and community, and social conflicts between local residents and foreign domestic workers. Asato (2002) examined the fissures between local and foreign domestic workers.

<sup>31</sup> AMY 2000: 156.

that, in terms of the concentration of wealth and poverty, as measured by the Gini ratio, Indonesians are no worse off than a century ago.<sup>33</sup> However, the way in which Indonesians respond to a sudden drop in economic opportunities recently, show that a number of factors, including, perceptions of wealth and wellbeing among Indonesians, increase in population and lack of options for ‘returning to the land’ contributed to pressures that fuel labour migration

According to estimates, there were about 4 million Indonesian overseas contract workers in 2002. More than 70% of these were women whose remittances in 1999 amounted to US\$2 billion.<sup>34</sup>

Table 2: Number of Indonesian migrant workers by gender, 1974-2002<sup>35</sup>

Year	Female	Male	Total
1974-79	3,817	12,235	16,042
1979-84	55,000	41,410	96,410
1984-89	198,735	93,527	292,262
1989-94	442,310	208,962	651,272
1994-1997	503,980	310,372	814,352
1999-2002	972,198	383,496	1,355,694

The feminisation of labour migration from Indonesia was evident from as early as 1993-1994 when the recorded sex ratio of Indonesian workers dispatched was 36 males per hundred females.<sup>36</sup> This is consistent with development policies recognising women as “human resources” for national development.<sup>37</sup> On the other hand, this perspective of women is premised on assumptions that low-skilled women migrants require the protection of the state.

The number of Indonesian migrant workers in East Asian destinations, are as follows:

Table 3: Numbers of Indonesians in East Asia

Destination	Numbers
Taiwan	93,212
Hong Kong	85,240
Japan	28,064

<sup>32</sup> KOPBUMI 2000 Report cited in AMY 2001: 68-9.

<sup>33</sup> Eng, 2001.

<sup>34</sup> Indonesian Ministry of Manpower and Transmigration cited in AMY 2002-3:164; Evaluation & Report Section, Labor and Manpower Department (AMC & MFA 2000: 155).

<sup>35</sup> Ministry of Manpower and Transmigration cited in AMY 2002-3: 164 (1998 figures are not available).

<sup>36</sup> See, Hugo 1995: 284.

<sup>37</sup> According to the Evaluation & Report Section, Labor and Manpower Department, Indonesian migrants were in 22 countries in the Asia Pacific and 13 countries in the Americas (AMC & MFA 2000: 155).

South Korea	24,117
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Source: AMY 2002-3: 159 citing official figures of documented migrant workers, June 2001.

The export of migrant labour from Indonesia is mediated by institutionalised systems involving commercial agencies and government departments, which constitute transnational labour networks or in Buzan *et al.*'s term, 'heterogenous complexes' (1998).<sup>38</sup> These formal systems are distinct from informal networks among friends, relatives and people from the same sending villages, towns and provinces, assisting with the chain migration of newcomers to the recipient countries.<sup>39</sup> These formal networks form an infrastructural backbone that enables the millions of women workers to move back and forth from sending countries to receiving countries, and from one receiving country to another receiving country. They are *transnational* networks that cross national boundaries and serve as organisational linkages between co-dependent economies in the region—that is, between the relatively developed economies of receiving countries and the developing economies of sending countries. Beyond passively providing services to meet workers' demands for employment, these networks shape and mobilise labour migration, based on the strategic interests of participants in such networks. The role of transnational labour networks in female labour migration is of particular significance, because prevailing gender hierarchies in the sending countries tend to render women more reliant on the services of recruitment networks than men. Gender-biased reliance also makes women more vulnerable to abuses that stem from the services provided by these networks.<sup>40</sup> Some of the services provided include:

- Recruitment, training, finding employment, arranging passage, transfers, and loans, processing of employment contracts, passports and visas, meeting and sending, arranging for medical checks and repatriation, etc.

The role of the Indonesian government in managing labour migration is limited to formulation of rules related to labour export, including the licensing of recruitment agencies and the oversight of this industry through the requisition of monitoring reports from these agencies. The formulation of rules in labour export falls under the Manpower and Transmigration Department<sup>41</sup> in Jakarta and once established, have the force of laws as they are consistently implemented in practice.

The recruitment fees that private recruitment agencies charge migrant workers are regulated by the same Department, and these include charges for:

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<sup>38</sup> For a discussion of the role of NGOs which assist and organise migrant workers in sending and receiving countries, see, Sim 2003, 2003a; on transnational labour networks, see Wee & Sim in "Transnational labour networks in female labour migration: mediating between Southeast Asian women workers and international labour markets" In press.

<sup>39</sup> See, for example, Leahy 1990 and Lowe 2000.

<sup>40</sup> See, Lim and Oishi 1996: 102.

<sup>41</sup> This used to be known as the Labor and Manpower Department (Depnaker). See AMC 2000: 159.

- Passport processing, medical tests, visa application, training, transport, employment agency fees, etc.<sup>42</sup>

Table 4: Official recruitment fees for Indonesian migrant workers according to destination<sup>43</sup>

Destination	Recruitment fees (US\$)
Taiwan	5,184 <sup>44</sup>
Hong Kong	2,288
Kuwait	1,987
South Korea	1,650
United Arab Emirates	700
Bahrain	700
Qatar	700
Oman	700
Brunei	700
Saudi Arabia	627
Malaysia	526

The cost of government-set recruitment fees is equivalent to seven months' wages for Indonesian women working as domestics in Hong Kong, and in Taiwan, this represents 20 months of wages. The table above shows a positive correlation between rising illegal populations in East Asian destinations with the levels of fees payable. While figures for Japan are not available, three of the top four in recruitment fees—Hong Kong, Taiwan and South Korea—are experiencing high rates of illegal overstaying by Indonesian workers and thus provides grounds for the hypothesis that such a correlation exists.

Rather than protecting migrant workers, the licensing of recruitment agencies in Indonesia leads to the cordoning off of a profitable market segment from cost-lowering capitalistic competition. Among the 500 or so recruitment agencies, protectionist tendencies among them are evidenced by the rise of strong lobbies of employment agencies in Indonesia that work against the interests of migrant workers.

Indonesian women embarking on overseas domestic employment in East Asia generally pay their fees during their employment. The advantage that this mode of payment has for poor women without access to capital is that they are able to pay their way on an accrual basis when they are employed. A drawback of this system of repayment lies in the assumption that migrant workers can work uninterrupted, complete their contracts, be able to pay off their debts incurred pre-

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<sup>42</sup> AMY, 2000:158

<sup>43</sup> ILO, 2003.

<sup>44</sup> Wee & Sim, 2004.

migration and earn sufficient income to justify the personal investments of time and labour in the process. The assumption is flawed as it is based on ideal situations that may not be realised when, for example:

- Pre-migration conditions in training centres subject potential migrants to inhumane regimes of existence
- They are terminated prematurely during employment
- They face abusive employers which prevent the completion of their contractual obligations

### ***Conditions that lead to illegal migration***

#### **Misinformation**

Indonesian migrant workers are often exposed to misinformation by official and unofficial agencies with regards to terms and conditions of employment. For those coming to Hong Kong, official misinformation usually relates to remuneration and off days that foreign domestic workers are entitled to. They are told that their wages are less than Filipino domestics because the latter are better trained and acculturated, sometimes as low as half the legislated minimum wage. From minor misrepresentations of the law in Hong Kong to outright withholding of information with intent to deceive migrant workers are widely reported.

Through means of misinformation and techniques of intimidation, Indonesian domestics on arrival in Hong Kong are not only unaware of their rights as workers but they would not know that anything is amiss with their employment ‘package’. They would have signed contracts that they cannot read and of which they are not given a personal copy. While these ‘accusations’ by Indonesian domestics in Hong Kong may appear far-fetched and incredulous, similar accounts run through numerous interviews and documentaries. In one particular case, a government official from the Department of Labour and Transmigration warned migrant women during a group pre-departure briefing at government offices in Surabaya that they should collaborate in lying to the authorities and not attempt to report the terms of their employment to the police or be arrested and deported. This points to the prevalence of such practices not as isolated cases but as systemic in perpetuating ignorance and fear.

Reports like these contradict the official position espoused by ranking Indonesian officials that “Many workers have been mistreated and underpaid because they are employed illegally. Troubles have developed with their employers because they have been placed and employed without any job training in Indonesia.”<sup>45</sup> While situations like these do occur, most Indonesian women headed for Hong Kong have been willfully misinformed. Indonesian workers in Hong Kong reportedly avoid their Consulate because the latter discourages them from ‘causing trouble’, i.e. taking legal action employers who either mistreat or underpay them.<sup>46</sup>

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45 Jakarta Post 3 March, 2004.

46 Constable 1997.

## The role of training centers

Typically in a migration cycle, the inductee leaves her family to live in a ‘training’ facility provided by recruitment agencies until a job is found for her at the destination country. A large part of the recruitment fee is purportedly spent on training and housing the migrant during this period when she is supposedly learning skills and language relevant to her overseas employment. The fee for Hong Kong set out by the Indonesian government is equivalent to 34 months of average wages in Indonesia.<sup>47</sup> This is necessary even for those who have been trained and returned with overseas experience, seeking new employment from Indonesia. The usual stay is between four and twelve months with some staying as long as two years. Calculated on a full time basis of a forty hour week, most estimate that about a month of training was received. The rest of the time spent in the training centres amounted to incarceration as ‘labour stock’. Various explanations have been put forth to explain this necessity and some of these are:

- For the protection of the recruiting agent—migrant workers have to stay in the centres to ensure that they are available when an employer is found.
- For the learning of skills and language relevant to the destination country.
- To ensure that women migrants sent overseas are not pregnant.

Substantial evidence exist of the extreme conditions of crowding, shortage of food and bathing facilities, abuses and exploitation, etc. in these labour camps. They often slept in tight rows on small bunks or on the floor, in cramped sleeping quarters where they spent months sleeping skin-to-skin with the next person. Baths were taken together with one bucket of water each, enduring long months of poor and insufficient food. The following report was made to the United Nations Commission on Human Rights:<sup>48</sup>

“Though the Indonesian labour department has set minimal standards to regulate certain practices within these camps, these are rarely enforced. Restrictions are placed on migrants’ freedom of movement, and conditions in the camps are poor, often leading to health problems for which there is little medical care.”

Moreover, research conducted on a hundred such training camps found that incidents of physical and sexual abuse were rampant. In addition, 41% had been compelled by agents to use false ages and addresses and 3% had provided false names.

For the rare few fortunate enough to have families living nearby, they get to see their family members on weekend visits and receive provisions of basic toiletries—such as soap and shampoo—which the incarcerated women would otherwise have to do without, as they are not allowed to leave the camps’ premises. Most whose families live hours away by bus may not see their families for years. The cost of transportation over long distances is beyond the affordability

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<sup>47</sup> See Table 4. 1 IDR = 0.000110963 USD; US\$2,288 = 20.62 million Indonesian Rupiahs divided by an average monthly wage of 600,000 Indonesian Rupiahs.

<sup>48</sup> Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Contemporary Forms of Slavery, 28th Session, Geneva 16 - 20 June 2003 on “Forced labour and exploitation of Indonesian migrant workers”.

of most families where the average take home wage is Rp300-600,000 (HK\$300-600/US\$31-62) a month.

The passage from a rural home, usually by car to the training centre is part of the journey that is often overlooked in causing trauma and a heightened sense of vulnerability among women migrants. One common experience related by a 19 year old told of how the overnight ride in the passenger seat with her recruiter's car on the way to the training centre became a nightmare. The recruiter was driving and despite the presence of three other passengers in the back seat, he relentlessly molested her until she threatened to throw herself out of the moving car in a suicide attempt. She was moved to the back and another woman took her seat in the front. In the event that she did hurt herself, he would have inadvertently compromised the quality of the 'export goods' he was delivering. It is in the alien processes and unfamiliar environments that a woman migrant finds, perhaps, for the first time in her life that she is but a digit in the cold business of labor export.

### **The system for the repayment recruitment fees**

As shown above, the assumptions inherent in the repayment system are premised on a migrant woman successfully coping with pre-migration conditions, having 'good' employers and not getting her contracts summarily terminated. In reality, much of this is beyond her control.<sup>49</sup> It was shown in another study that four-fifths of early terminations of contract are initiated by employers and in fact, the fear of such premature termination is often used as a tool of discipline ensuring that workers put up with inhuman work regimes, violations of contracts, unreasonable and even criminal behavior of their employers.

Early contract termination in Hong Kong would be disastrous for the migrant if her debt to the recruitment agency has not been discharged. It would mean that the months of waiting in the training centre in Indonesia and labour with her new employer would be in vain, leaving her penniless for her efforts, indebted and unable to go home empty-handed to her family. Because recruitment agencies depend on a high turnover in matching employers to workers to generate higher income, reports from my field work are emerging showing that they have a role in instigating such terminations where employers terminate their workers just at the point when the debt to the agency is fully paid, i.e. just before the worker receives her first full salary. If this is true, it reflects a deeper, more insidious aspect of the collaborative intensity of heterogenous complexes in labour migration.

### **Migrants' perceptions: The Indonesian government and its consulate in Hong Kong**

Indonesian domestic workers in Hong Kong have coalesced in vocal opposition to Indonesian governmental policies governing women's migration. The impetus for solidarity comes from migrants' mistrust of their government in representing their interests, but to act instead, in

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<sup>49</sup> See, for examples, Jakarta Post, 13 May 2004, 5 June 2004.

benefitting powerful private interests.<sup>50</sup> Reflecting the sentiments of Indonesian migrant women, one representative said,

“There is a high level of corruption in the Indonesian Consulate and they work with the Association of Employment Agencies in mistreating and cheating the Indonesian domestic workers. The Indonesian Consulate has a system of licensing for employment agencies in Hong Kong and because the only agencies that can process Indonesian domestic helpers contracts have licenses from the Indonesian Consulate. And in a recent survey which was conducted by our organisation, over 89% of Indonesian domestic helpers are overcharged by these agencies.”<sup>51</sup>

Unemployed Indonesian domestic workers who have left their employers and who are awaiting the processing of their claims, prefer not to live in the shelter provided by the Indonesian Consulate. The Consulate is in the process of closing down their shelter due to its lack of popularity while homeless Indonesian women queue for accommodation with privately-run and overcrowded shelters provided by NGOs. The fact that the Indonesian Consulate in Hong Kong is closed on Sunday, the one day in a week that its migrant workers can visit it, is taken as further proof of institutional insensitivity to their needs.

Press releases issued by Indonesian groups in Hong Kong show a moral indignation in their “protest against alleged exploitation by employers, recruitment agencies and the Indonesian government”. In a statement issued by the Association of Indonesian Migrant Workers, the ‘verdict’ is damning. “The majority of the 59,000 Indonesian migrant workers in Hong Kong face exploitation and abuse at the hands of their money-grabbing employment agencies, fraudulent employers and corrupt consulate”.<sup>52</sup>

Distrust and cynicism of their Consulate in Hong Kong have taken a dramatic public twist with enactments of encounters in which the Consulate staff are parodied and denigrated publicly in humorous skits. The public space in Hong Kong provides a forum for collective resistance in ways that goes against decorum of Javanese etiquette valued in Indonesia. In one such public dialogue organised by the KOTKIHO in 2003, the Consul General was humiliated by the public challenge and decided that neither he nor his staff would ever attend such public events again.<sup>53</sup>

The purpose of this section is not to repeat ‘rumours’ and malicious half/untruths that may or may not be proven but to draw out the reality of mistrust of authority in which Indonesian migrant women enact their livelihood strategies. Their perceptions of authority inform and shape individual action. In contrast, the Hong Kong government is held in higher regard as large numbers of underpaid Indonesian domestics report contractual abuses through the Hong Kong Labour Tribunal, an indication that they trust the law to work for them.<sup>54</sup>

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<sup>50</sup> See, for example, Tirtosudarmo 2002; Hadiz, 1997.

<sup>51</sup> ATV 2001.

<sup>52</sup> Agence France Presse, July 20 2001.

<sup>53</sup> Interview with the Consul General, Mr O’Conroy Doloksaribu.

<sup>54</sup> See, Sim 2003a.

## **Problems with labour import and export policies**

At HK\$17,845 (US\$2,288) the cost of employment remains a major source of Indonesian discontent in Hong Kong. There have been demands that Indonesian government regulations be relaxed to allow potential migrants to bypass the recruitment system and find employment directly with foreign employers as in ‘direct hire’ practiced by Filipina domestics in Hong Kong. Indonesian migrants are barred from such practice and continue to pay the stipulated government rates of HK\$17,845 (US\$2,288) even when they find the employers through their own networks.

At the same time, the Hong Kong immigration law permits foreign domestic workers to renew their employment contract and visa by themselves at the end of a two-year contract. This otherwise simple procedure requires the relevant consulate’s endorsement of their passports giving the requisite permission for renewal in Hong Kong to take place before the Immigration Department can renew such visas for another two years. Filipina domestics using this route pay less than HK\$500 (US\$65) while Indonesian domestics, for whom their consulate has made mandatory, the use of employment agencies as intermediaries for this procedure, pay between HK\$3,000 to HK\$13,000—6 to 26 times more for the same procedure (US\$384-1,667).<sup>55</sup> While the Indonesian authorities may protest that they, too, allow a limited form of self-renewal of contracts/visas, the conditions governing this are so cumbersome that rules this out as a real option.

Furthermore, apart from direct hire and renewal of contracts, the Hong Kong law caps agencies’ fees for finding new employment at 10% of a FDW’s monthly wages, or HK\$367 (US\$47). Indonesian domestics again feel excluded as the agencies licensed by their Consulate in Hong Kong to undertake this task tend to grossly overcharge.<sup>56</sup>

Several attempts had been made to align the procedures and costs for Indonesian migrants with the Hong Kong law. In November 2000, a new policy was announced in Jakarta that allowed Indonesian domestic workers to renew their own employment contracts, without going through employment agencies in Hong Kong and hence, avoiding exorbitant charges.<sup>57</sup> This worked out for less than two months with Indonesian workers getting their passports endorsed by their Consulate on their own and processing their own renewals at the Hong Kong Immigration Department. In December 2000, the Director General of the Department of Labour and Manpower arrived in Hong Kong with an entourage of owners and representatives of employment agencies from Jakarta for discussions in the Consulate. In the following month, the earlier policy was revoked without explanation and all Indonesian workers’ contract/visa renewals had again to be conducted through a list of appointed agents in Hong Kong, in theory, at no more than HK\$367 (US\$47). By February 2001, the Consulate’s position hardened forbidding Indonesian domestic workers from changing their employment agents, for the administrative convenience of the Consulate. With employment agencies imposing arbitrary rates, Indonesian domestic workers in Hong Kong were forbidden to shop for the best rates among the agencies that flout the legal recommended charges. The Consulate’s insistence on the

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<sup>55</sup> For a fuller discussion on this point, see Wee and Sim 2002.

<sup>56</sup> Interview with Nurul Qoiral of Asian Migrants Centre.

use of agents was costing Indonesian workers anywhere from one to nearly seven months of wages for a twenty-four months contract.

In the event where an Indonesian worker in Hong Kong complains to the Consulate's officer of the high fees charged by her agent for her visa extension, no exceptions are entertained and she is warned not 'cause trouble' if she wants to work. However, in the rare event where a member of the international NGO community intercedes to call on the same officer in the Consulate, the latter has, in such instances, found the worker another agency that charged the legal stipulated rate.<sup>58</sup>

In another attempt to standardize some of these disparate practices, the Ministerial decree of 4 June 2002 issued in Indonesia,<sup>59</sup> explicitly allowed all Indonesian domestic workers (Article 69), working overseas to renew their own employment contracts with the respective Immigration Departments, without going through an employment agency.<sup>60</sup> This proved to be another short-lived attempt because on 3 November 2002, a Consulate spokesperson announced that Article 69 did not apply to Hong Kong in particular.

What is clear, is that the Indonesian government's enthusiasm in promoting labour migration has not been matched by a parallel increase in capacity to effectively administer such migration. This has resulted in a delegation of duties to private agencies which cannot, under prevailing capitalist logic, be realistically expected to monitor themselves in ways that accord with official discipline, nor be expected to bear risks with the objective of earning a smaller profits.

The Deputy Chairman Anthon Sihombing of the Labor Recruitment Agencies Association (PJTKI) in Indonesia said, "It is the government's fault for licensing almost 500 labour export companies and for failing to closely monitor the business." He added that the revamping of labour export should begin with the government, especially at the manpower ministry, the police and the military, and finally labor exporters.<sup>61</sup> Representative of views in Hong Kong, the spokesperson of Association of Indonesian Migrant Workers (ATKI) concurs that the Indonesian government should take a more active role in managing migration rather than "monitoring agency reports" from the sidelines.

Extracts from a letter of complaint from an employer shows how the systemic illogic perpetuated by poorly coordinated priorities in governance benefits neither worker nor employer by putting obstacles in the way of Indonesian migrants' contract renewals *sans* employment agencies.

As an employer of an Indonesian domestic helper in Hong Kong, I decided to renew the existing employment contract, which was about to expire. What I had thought would be a simple procedure...became a nightmare.

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<sup>57</sup> South China Morning Post, 7 January 2001.

<sup>58</sup> Interview with Nurul Qoirol of Asian Migrant Centre.

<sup>59</sup> Ministry decision number 104A/MEN/2002, dated 4 June 2002.

<sup>60</sup> Article 69 of 104A/MEN/2002, dated 4 June 2002.

<sup>61</sup> Jakarta Post March 3, 2004.

When my domestic helper and I approached the Indonesian Consulate, we were told that we needed to follow procedures and prepare a number of documents before we could make an appointment for such an application. The clerk gave us a list--‘Document required for contract processing without agency for the same employment (sic)’--of the thirteen documents required.

Some these include:

--A medical report

--A ‘statement letter from parent/guardian or husband (for married status) containing no objection to the domestic helper to extend employment contract without agency (attached with her parent/guardian or husband’s copy of Indonesian ID Card and Family Card which is legalized by Village/ District Head)’ (sic)

--A letter to the Indonesian agency giving notice that she is renewing her contract bypassing the agency and attach the ‘proof of letter posting’

--An ‘Employer’s guarantee statement has to be made at and before the notary public in Hong Kong’. The employer’s guarantee statement contained another list of twelve separate items.

The runaround did not stop there. When I called a doctor to determine the cost of the required medical check-up, I was required to specify the nature of the medical examination. Going back to the Indonesian Consulate, I was told me that the medical check-up consisted of blood, urine and chest cavity tests. This information proved useless because the doctor had to know what the various tests were checking for. By that time, I had nearly given up because the runaround and communication on the phone between the doctor and myself, and the Consulate and I took a good part of my day. It seems to me that the Indonesian Consulate was totally unclear of what they were asking for and such medical procedures had never been thought out because they served to deter rather than facilitate contract renewals *sans* employment agencies. Time had been wasted and nothing had been accomplished. On the other hand, I was looking at spending several hundreds of dollars on medical tests that had no specific objectives.

The domestic helper is an individual adult and it is her human right as a worker in Hong Kong to undertake decisions concerning her employment and contract renewal. It is outrageous to require an adult to obtain a so-called ‘no objection letter’ from a parent or guardian. This is evidence of the inconvenience that workers face unless they pay huge fees to employment agencies.

The employment contract is a standard document, witnessed and signed by both employer and employee, approved by the Indonesian Consulate and the Hong Kong Immigration Department. It includes all the twelve items listed in the so-called the employer’s guarantee statement required by the consulate. What can be more redundant and outrageous than

requiring the employer to re-enact a perfectly valid document in the presence of a solicitor and paying a high legal cost to boot?<sup>62</sup>

The Ministry of Manpower and Transmigration in Indonesia has recently revoked the licenses of twenty recruitment agencies in Indonesia<sup>63</sup> and established ‘advocacy teams’ for protection of migrant workers.<sup>64</sup> Whether such moves will produce real change remains to be seen but transnational grievances stemming from poor governance show the gaps between transnational policy regimes and points to the leverage that a recipient government like Hong Kong’s can have in catalyzing structural changes.

### ***Locating illegality in Hong Kong***

14 case studies form the basis for a limited study of how illegality is constructed in Hong Kong. 11 became illegal through overstaying their permitted residence and one was illegal through the use of forged papers. Others were ‘illegal’ because of conducting work or activities that transgressed the conditions of their visa status as domestic workers. As soon as a migrant worker overstays, any activity that she engages in is rendered illegal by her illegal residence status. When apprehended, she is liable to a fine of up to HK\$50,000 (US\$6,410) plus two years imprisonment and employers of overstayers can be fined a maximum of HK\$350,000 (US\$44,871) and face three years imprisonment.<sup>65</sup> Sentencing offending employers is not popular and seldom enforced.

Justice Frank Stock reiterated his concern about individual justice in cases of people running small businesses...‘We are not talking about a true criminal here. There is something about sending somebody like the poultry shop owner to prison even for the first offence that worries me’.<sup>66</sup>

This leniency does not extend to workers who are deemed in need of stiff deterrents. Illegal employment arise from contravening the prohibitions stipulated by Hong Kong’s standard contract,<sup>67</sup> some of which are that FDWs:

- May not change employers unless there are exceptional conditions.<sup>68</sup>
- May not stay on for longer than 14 days after the end of a contract if her contract is not renewed by her former employer and if she cannot find a new employer.

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<sup>62</sup> From personal interviews and published letter at <http://www.asianlabour.org/archives/002538.php>, 10 September 2004.

<sup>63</sup> Jakarta Post March 3, 2004.

<sup>64</sup> Jakarta Post, 7 January; 8 January 2004; Jakarta Post, March 17, 2004.

<sup>65</sup> SCMP, August 27, 2004; Xinhua News Service, May 12, 2004.

<sup>66</sup> SCMP, August 27, 2004.

<sup>67</sup> This contract is governed by Hong Kong laws, in particular, the Employment Ordinance (Chapter 57), the Immigration Ordinance (Chapter 115) and the Employees’ Compensation Ordinance (Chapter 282).

<sup>68</sup> Specified as death, emigration or bankruptcy of employer, or for reasons of abuse.

- May not work part time or undertake any work that is not defined as domestic work.
- May not work for more than one family under one contract.

### **Ignorance, love and money**

The state of being illegal removes the last vestiges of defense that a migrant woman has under the law and exposes her to other forms of abuse and maltreatment. Labour migration can be made safer for women when the causes of illegal migration are addressed. Some of the motivations that result in foreign domestics' overstaying and illegal employment will be examined here.

Hesti ran away from her employer after she had been working for four years without salary. Her Hong Kong identity card, bank passbook and passport had been confiscated by her employer. During her employment, she suffered physical abuse and received no allowances for buying food. She was given week old discards containing pork to eat. As a Muslim she did not eat pork. She escaped with the only identification she had, her Hong Kong immigration Arrival Card.

In the next case, Kasad was verbally and physically assaulted by her employer. Traumatized by the extended abuse she became mentally unstable and attempted suicide before running away. Evidence of abuse among those who run away is a common theme. For Rina who was paid Hk\$1,800 a month or half the minimum wage, physical abuse also caused her to run away. Her employer would pull her hair, drag her on the floor by the hair to the room where she would hit her, punch her, bite her on her breasts, etc., for minor infractions. She had to clean two houses which contravened her employment contract, slept on the kitchen floor, and was commanded to eat food discards. When she ran away, Rina was covered with bruises but she did not become an illegal overstayer. She received assistance from an NGO and took legal action against her employer but while waiting out the legal proceedings, Rina began working illegally for several employers on a part time basis. When her case was settled, Rina found a part time employer who was willing to sign her employment contract so that she could stay in Hong Kong. This new arrangement means that Rina continues as a 'legal' migrant worker in Hong Kong undertaking illegal work.

As a newcomer paying off her agency fees, she had not collected a single month of wage before the abuse began. Cognizant of the risks of punishment, she could not contemplate going back empty-handed after having invested months in the process, with an undischarged debt to her agency and the fact that she would have to undergo the entire process again in a labour camp if she were to return to Indonesia. Furthermore, like many, her lack of information regarding the laws and procedures to take when abuse occurs ensured that she endured their nightmare in isolation. This ignorance regarding workers' welfare and rights in Hong Kong is a glaring indictment of the so-called 'training' they had received in Indonesia.

Sofi's account combines elements of ignorance and debt bondage. She had been working in Hong Kong for twelve years with one employer but in the last two years, her stay had been illegal. In the tenth year of work, she came under familial pressure to remit a large sum of money to Indonesia, which she borrowed from a financing company using her passport as collateral. When it came time for her contract renewal and visa extension, the debt remained unpaid, and Sofi could not redeem her passport for processing, thus becoming illegal. This would not have

happened had she known that she could have reported her passport lost and had a new one issued in Hong Kong.

The following is a case of forced illegal work, which if apprehended does not exempt the migrant worker from punishment and deportation. Foreign domestic workers employed by working class families or small business owners are frequently required to undertake extra-domestic chores related to these businesses or they are farmed out as part-time cleaners to extended/other families. In Selvi's case, she was both an illegal worker in her employer's hawking business and later, in the employment agency's informal domestic services business. This case reveals the complicity of employment agencies in perpetuating certain categories of illegality.

Selvi<sup>69</sup> was working at HK\$2,000 per month from 7am to 1am with no rest days. After her domestic chores, her second job began at 5pm to 1 am when she would go hawking with her employer. Whenever, they encountered the police on the streets, she was required to hide. After fourteen months, she asked the employment agency for a change in employers. The agency sent her to a destination in Mainland China, a 9-hour bus ride away from Hong Kong, for two months awaiting the processing of her visa in Hong Kong. When she returned, she worked for four months in various houses, received no salary and slept at her agency's premises. She ran away and became illegal in Hong Kong.

As shown above, poorly-informed migrants subject to maltreatment are likely candidates for becoming unwitting transgressors. However, the lack of information and *not* maltreatment seems to be the underlying cause of overstaying among those who did *not* harbour intentions of breaching their conditions of stay, but all the same, ignorance and misinformation result in the same conditions of criminality, that lead to further investments in deception.

Bian was discharged by her employer on 5 April 2004. Applying the two-week rule meant that she could stay until 19 April 2004 to look for a new employer. Her passport was held by her agent and she recalled that her visa allowed her to stay until 1 May 2004. When she contacted her agent on 24 April, she was told that she had overstayed. She collected her passport and at the Immigration Department she was told that she could indeed stay until 1 May, i.e. the end of her official visa because her employer had not sent a notification of her termination to the Immigration Department. In reality, her ex-employer had written to the Immigration Department when she terminated Bian's contract but due to an oversight by the officer, Bian had been misinformed. She was deported immediately and with that, it was unlikely that she could return to Hong Kong with her own papers.

On false paper, Yeti was stopped from entering Hong Kong with a falsified passport. She was fined HK\$17,000 while her potential employer was fined HK\$36,000. Indonesian migrants, like Yeti, are convinced by their recruitment agencies to travel with fake documents for a variety of reasons. A common reason for doctoring workers' profiles lies in fitting existing 'labour stock' held in Indonesia to employers' ideas of the ideal type of worker at points of destination.

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<sup>69</sup> All names in case studies have been changed except in for Selvi who expressly requested that her real name be used.

Other reasons for doctoring documents can be found in employment agencies' desire for control over migrant workers as a form of insurance from future legal action. If workers' travel and work as 'someone else', their 'fake' identities automatically prevents them from lodging claims or complaints against these agencies, because if they did so, they would be blowing their own cover and become equally liable for punishment.<sup>70</sup> This strategy has proven effective in silencing complaints from those who had assumed identities that either belong to someone else or do not exist. For many first-time migrants who are ignorant of the implications involving the falsification of their documents, they are generally, given to believe what they are told and just as often, they are not asked.

As shown above, privatising the management of labour export from Indonesia has ensured a powerful role for private agencies as a key pillar of the industry. In an interview, the Indonesian Consul General had said that despite shortcomings involving the use of private agencies, they remain indispensable. This is because "Indonesian women need protection" and the agencies, "are part of us, doing our work". When pressed on what constitutes 'protection', he explained that being less educated, they need agencies to register them, monitor their whereabouts and to perform the task of interviewing employers to ensure that Indonesian women are not being re-deployed in other capacities, such as being sex workers. Clearly, the absorption of private sector companies to manage and submit reports for official monitoring is flawed by inherent contradictions in public and private sector objectives, and any protection that this system can offer resides, surely, in the fantasies of officialdom.

Employment agencies have become powerful extensions of state bureaucracy that suggests an inter-penetration of public and private interests. The function of the employment agency is ultimately to match potential employers to workers. It is in the profit interest of employment agencies to match as many employers to workers as possible and this process is hardly the weeding function that the Indonesian government imagines it to be. The desire to avoid the power of organised labour networks remains the biggest cause of illegal migration among Indonesian women migrants in Hong Kong. The follow will show how easily conditions for overstaying can materialize in the lives of young women.

Susan, 21, stayed beyond the permitted two weeks after her contract ended because she was in love with a Pakistani resident in Hong Kong. Marriage was out of the question because, at 19, she was under the age of consent and because of parental objections. After 14 months as an illegal she was ready to surrender to the authorities because she wanted to marry and could not do so as an overstayer. She was more willing to go back as she had become confident that her boyfriend would 'wait' for her if she should be imprisoned, or undergo long months of waiting to return to Hong Kong. In the meantime, she had come of age and no longer needed her parents' approval to marry.

25 year-old Santi was in love with a Pakistani overstayer. When it became apparent that Santi was pregnant her employer terminated her contract. Things took a turn for the worse when her boyfriend was arrested and imprisoned. Before his deportation she visited him in prison and

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<sup>70</sup> I thank Ms Cynthia Abdon-Tellez for this insight.

wanting to see him, she overstayed. Going back to Indonesia would have meant that, in all likelihood, she would never see him again.

While the impulses of love often dictate the decisions that young women make, for others, the prime motive for labour migration remains a desire to earn a good living, and some have found ways to circumvent labour regimes by ‘working’ the system. In one extreme case, an illegal migrant worker said, “I don’t want to give my money to the employment agency. It is for my family and I would rather go to jail than to let them have it.” Some causes of illegal migration and settlement will remain compelling no matter what improvements are made in the labour sending system. The next case study is representative, to some extent, of those caught in between the desires and possibilities made available through migration.

Abandoned by her husband after several years in Hong Kong, Triwena decided to “make a lot of money” to prove her self-worth. She joined a pyramid selling network, recruiting new members and became quite successful. She paid an employment agency in Hong Kong HK\$5,000 (US\$640) to find an ‘employer’ to sign her employment contract so that she could work full time at her business unhindered. She paid her ‘employer’ HK\$18,000 (US\$2,300) for signing her employment contract to get a two-year visa to stay. In addition, Triwena paid the Hong Kong government’s annual levy of HK\$9,600 imposed on employers for employing FDWs.<sup>71</sup> Aware of breaking laws on immigration and employment, Triwena, nevertheless felt that she was making a rational decision in exploiting opportunities and that there was nothing morally reprehensible about her behavior. Aware too, of the penalties if apprehended, these were risks that she felt came with earning a good living. Like global capitalists everywhere, this category of illegal migrants are entrepreneurial taking calculated risks in search of economic opportunities not found at home.

### ***Hong Kong’s official response***

Hong Kong’s Immigration Department conducted raids that netted 8,322 illegal immigrants in 2001; 12,908 in 2002; and 16,548 in 2003. The number of operations increased by 60% from 3,580 to 5,739 in 2002-3. 1,078 employers were arrested for employing illegal immigrants.<sup>72</sup> Members of the public were encouraged to provide information and in 2002 and 2003, 6,508 and 10,412 complaints on illegal employment were received. According to official figures, arrests of illegal Mainlanders in Hong Kong declined from 25,651 in 1995-6 to 4,256 in 2002-3. Vietnamese migrants in detention centres fell from 30,000 to 27 in 2002. Yet, in the seven categories of offences that earned prison sentences in Hong Kong between 1993-2002, the two types of offences that could include migrant workers’ transgressions showed an increase in the number of women arrested and imprisoned by 10 to 12 times since in 1993.<sup>73</sup> The increase in the numbers of women arrested also exceeded men by 583% to 13% over the same period. As these increases cannot be wholly explained by a sudden increase in local women’s criminal behavior,

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<sup>71</sup> Wee & Sim. “Hong Kong as a Destination for Migrant Domestic Workers”. In press.

<sup>72</sup> Hong Kong Immigration Department 2003, 2004.

<sup>73</sup> Figures segregated into different nationalities and between locals and foreigners were not available.

they point to another source, which coincides with the influx of this large foreign population of migrant domestic workers.

Table 5: Number of women imprisoned for offences “Against lawful authority”<sup>74</sup>

Against lawful authority	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Male	478	465	594	461	429	521	660	604	566	714
Female	47	68	183	189	210	234	280	288	316	565

Table 5a: Number of women imprisoned for offences “Against local laws”

Against local laws	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Male	3239	3163	2453	2412	2781	3636	4064	4866	4455	4173
Female	814	1657	2524	2350	2849	2599	2666	3479	6091	8881

Table 6: Number of men and women imprisoned between 1993-2002

All offences	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Male	11644	13226	13616	13654	11949	12692	12727	12790	12904	13168
Female	1683	2727	4015	3966	4200	4052	4349	4969	7955	11198

To remedy the situation of Hong Kong’s 24 severely overcrowded jails, the government decided to build a "super jail" in 2000 to detain as many as 15,000 convicts in Hei Ling Chau.<sup>75</sup> Faced with protests and civilian objections,<sup>76</sup> the plans have been scaled down to a 7,220-inmate facility<sup>77</sup> However, the dependence on apprehension and incarceration is not the type of strategy that will contain problems related to illegal migration indefinitely. The limits to this approach comes in the form of costs incurred by this singular method of deterrence. Estimates by the Correctional Services Department puts the average stay at 7.1 months per inmate, at a cost of HK\$14,000 per month each.<sup>78</sup>

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74 Department of Correctional Services 2002: Tables 5, 5a and 6. The category, ‘Offences Against Lawful Authority’ include giving false information to the police, perjury, resisting arrest, escape and rescue, etc. The category, ‘Against Local Laws’ include ‘Serious Immigration Offences’, ‘Burglary, Theft and Handling Stolen Goods’, ‘Fraud and Forgery’, etc. See, for example, Hong Kong Police 1994: 68.

75 People’s Daily December 01, 2000.

76 See, for example, <http://www.hkci.org.hk/182.htm>, “Does Hong Kong Need a Superjail?”

77 The Standard, 14 July 2004

78 South China Morning Post, 14 July 2004.

Thus an inclusion of illegal migration in the security paradigm offers strategies beyond unilateralist approaches which cannot address causes originating from beyond state boundaries. It is not the function of bureaucracy to catalyse initiatives that aspire to solve transnational problems. A Hong Kong Immigration Department official admitted that, “dealing with the Indonesian government is difficult”.<sup>79</sup> Therefore, thoroughgoing solutions are not to be found on the level of individuals, organisations or even between government departments, unless there is an active engagement and agreement at the political level about the unity of purpose, action and objectives.

The Indonesian government can be drawn into negotiations over the identification and adoption of common goals only by a recipient government on which it depends to accept its labour migrants. This is the leverage that the Hong Kong government must exercise as a strategic response to the Indonesian Consul’s assertion that “we need to export our workers”.

### ***Conclusion***

While securitization is not “a universal good thing” (Buzan et al 1998:4), the eradication of illegal migration is deemed to benefit both recipient nations and illegal migrants. If securitization through political means can reduce this problem, the widening of security to include political solutions for illegal migration would be “a universal good thing” regardless whether state mobilization benefits other issues.

While the relative desirability of security is debatable, desecuritization can never be a good thing for those who become invisible to the ordinary mechanisms of protection provided in the rule of law. There is increasing recognition of illegal migration as a problem with global proportions. Recently, the Chinese Foreign Ministry urged developed countries to help less developed countries combat illegal migration which results from the “unfair international economic order and irrational migration policies”.<sup>80</sup>

There is also increasing recognition within East and Southeast Asian states to address issues that come from symbiotic needs for development. For example, the Berne Initiative Regional Consultations for Asia, established a platform for an inter-governmental consultative process to better manage migration. Hong Kong’s potential as a full partner in the management of such flows—unencumbered by its status as a Special Administrative Region of China—remains woefully under-developed as it perceives its role as merely an administrative centre.<sup>81</sup>

While East and Southeast Asian states are not ready for a security community in the European sense, the rationality behind migration flows dictate alternative forms of engagement, that have manifested itself in other areas. For example, Thailand’s delegate to the United Nations National Commission on Women’s Affairs, have called on the Japanese government for collaboration in

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<sup>79</sup> I thank Ms Eni Lestari for this information.

<sup>80</sup> SCMP 2 August 2004.

<sup>81</sup> Allusions of this perceived failing in governance is common in the local press, for example, South China Morning Post 17 July 2004, in which the role of governance in Hong Kong is criticised for its lack of leadership.

bringing to an end, the use of Thai women in sexual slavery in Japan. What used to be perceived as domestic concerns are increasingly recognized as serious cross-border problems.<sup>82</sup>

The Indonesian system of labour export came about from a combination of the government's inability to create jobs, adequate economic growth and a system for deploying excess labour overseas. The lack of governmental capacity and inertia in Indonesia for changing priorities in the labour export system places the onus for change on the Hong Kong authorities, who have both, the leverage and a lot to lose.

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<sup>82</sup> SCMP, 27 June 2004.

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