



ASYLUM SEEKERS AND OVERSTAYERS

SOCIAL CHANGE IN EAST ASIA
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VALUE OF TIME IN HONG KONG FOR OVERSTAYERS

- Time allows:
 - Coming to terms with becoming a single mother who must return to her country of origin
 - Time to save money for an eventual return
 - Time to be with a partner and for children to have a father
 - Time to seek creative solutions to remain longer or (for a few) to go somewhere else
- Hong Kong provides things that cannot be duplicated at home (think agency):
 - Good money
 - Entertainment
 - Independence
 - Relationship

HOW TO OVERSTAY

- Forget to leave
- Deliberately overstaying has no time limit unless you are caught
 - To avoid agency fees for reemployment
 - Overstay when job ends and find new work, or come on temporary visa to find work and overstay
 - To switch to more remunerative work
- Filing an asylum claim
 - Right to stay during adjudication, some support and health care, but must eventually leave
 - A way to avoid imprisonment (Hong Kong has a high rate of female incarceration) since women will be incarcerated if they turn themselves in for overstaying (or get caught)

UN CONVENTIONS THAT HONG KONG ACKNOWLEDGES

- United Nations Convention Relating to the Status of Refugees
 - Any person with well-founded fear of being persecuted for reasons of race, religion, nationality, or political opinion who is outside his/her country and unable to safely go back
 - Refugees should not be penalized for illegal entry or stay, or expelled against their will
 - Does not apply directly to Hong Kong so adjudicated by local office of UNHCR (United Nations High Commissioner for Refugees)
- United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - Ratified by UK and extended to Hong Kong in 1992 (and the PRC notified the UN that the convention would continue to apply after 1997)
 - When severe pain is inflicted on someone with the acquiescence of a public official for coercion or intimidation
 - Cannot send a person back to a place where he/she has well-founded expectation of torture

2004 FINAL COURT OF APPEAL RULING

- Hong Kong Government must make a separate assessment of torture claims
- 2007-11 more than 10,000 torture claims (many from South Asia)
 - Prohibited from working in 2010
- Even though the chance of winning either asylum or torture is miniscule, going through the two processes takes times and allows people to remain in Hong Kong
- Indonesian women may fear violence from their family for out-of-wedlock birth, or ethnically mixed children, or from loan sharks, but none of these meet the UN definition
- Who in Hong Kong benefits?
 - Landlords, social workers, local employers (who pay them little because they are working illegally)

TEMPORARY MARRIAGE

- Few asylum-seeking men stick around with FDW women because they are seeking Hong Kong permanent residents for marriage, or they are earning money for families they already have back home
 - Almost none are willing to contemplate going to the Philippines or Indonesia
 - Bethany and Christophe were an exception to this generalization
- If can prove paternity of a Hong Kong permanent residence, then the child will be granted permanent residence and the mother may avoid deportation

THE MIGRATORY CYCLE OF ATONEMENT

- Returning home with babies “is not an easy or logical solution, nor does it provide the anticipated closure or happy ending” p218
 - In Indonesia the shame of unwed motherhood is strong (stronger than the Philippines), so returning children are often fostered by parents or others
 - Families often have a hard time supporting another child, and social ostracism and recriminations pile up unless the women bring money in
 - Earning money and educating children is harder “at home” than in Hong Kong—which is why they had migrated in the first place
- Having the children fostered and re-migration to earn money is often the logical solution

HEARTLESS POLICIES, HEART-FILLED LIVES?

- Constable's argument
 - The two-week rule, live-in requirement, and recruitment agency charges harm all migrant workers and render them vulnerable to abuse, and unintentionally promote overstaying and illegal work p228
 - Excluding FDWs from right of abode, charging them for visas, and prohibiting work while they pursue cases against their employer's ties to Hong Kong "inequality paired with exclusionary lifeboat mentality"
 - Ironically, Hong Kong is better than many other Asian destinations
- Constable's remedy
 - Treat FDWs the same as skilled foreign workers with competitive wages and routes to becoming permanent residents
- Work to do
 - Find out reasons returning unwed mothers find it so hard

LURE OF HONG KONG

- Figures of Hong Kong Desire
 - Wealthy, beautiful, modern, cosmopolitan Hong Kong where migrants can earn money
 - “If all goes well, in Hong Kong they can take on new and modern identities as wage earners, consumers, and investors in their families’ futures.” p 230
 - Freedom, independence, and new gendered and sexual roles away from surveillance at home (agency?)
 - If things don’t go well
 - Poor work conditions, underpaid, prematurely terminated contracts lead to debt
 - Women with children cannot return (especially to Indonesia) and that leads to remigration