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Topic:

The Government Policies towards Foreign Domestic Helpers in Hong Kong – “Balancing Human Rights and Public Interest?”

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1. Introduction

The right of abode (ROA) issue has created a huge controversy since 1997. However, most of the public debates were mainly focused on the issue about the persons of Chinese nationality. The public seems overlooking the ROA issue which related to the persons not of Chinese nationality, especially the foreign domestic helpers (FDHs) in Hong Kong. Did Government impose any hurdles to prevent the FDHs to claim their ROA?

The other issue is that the Chief Executive in Executive Council meeting approved the “Labour Importation Scheme” and making the employers of FDHs liable from 1 October 2003 to pay a levy to Government of $400 per month in respect of each helper employed. This $400 is exactly the same amount which the Chief Executive in Council ordered to reduce the minimum allowable wage (MAW) of FDHs with effect from 1 April 2003. Both decisions were made on the same day at the Executive Council meeting on 25 February 2003. It is a coincidence or the Government intends to impose a form of discriminatory levy on FDHs?

This research paper attempts to evaluate the above two issues with the scope of whether the Government policies towards to the FDHs on the above issues could strike a balance between the public interests of the Hong Kong citizens and the human rights of the FDHs.

The structure of this paper is as follows:

This paper will first examine whether any statutory provisions in Hong Kong and the international normative human rights frameworks which could safeguard the human rights of the FDHs in respect of the above two issues.

By applying the domestic and international legal frameworks into the issue of ROA and the imposition of levy, we could examine whether the Government policies could strike a balance between the public policy and the human rights of the FDHs.

After examining the situation in Hong Kong, our focus will shift to the practices of the other common law jurisdictions. The comparative study could enable us to see whether the existing Hong Kong Government policies create any unfair treatment.

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towards to the FDH in relations to the other countries.

The above analysis would enable us to get the comprehensive view regarding to the Government policies towards FDHs in Hong Kong which are balancing the interest of public and human rights of FDHs or the Government prefers to take the broad public interest into account by sacrificing the human rights of FDHs.

2. The Legal Frameworks Safeguard the Human Rights of FDHs

In this section, we will examine about the legal frameworks which could protect the human rights of FDHs regarding to the issue of the ROA and the issue of the MAW and levy. The legal frameworks in Hong Kong will first be examined, then the scope will shift to the international human rights frameworks.

2.1 Legal Frameworks in Hong Kong

2.1.1 Basic Law

Basic Law considers as the mini-constitution in Hong Kong and the highest law in this region. It is important to examine how this “mini-constitution” could safeguard the human rights of FDHs in the first place. If the Basic Law could provide the protection to the FDHs, then no other domestic law could deprive the human rights of FDHs. As Article 11 of the Basic Law provides that “….No law enacted by the legislature of the HKSAR shall contravene this Law,”

Article 4 of the Basic Law provides that “The HKSAR shall safeguard the rights and freedoms of the residents of the HKSAR and of other persons in the Region in accordance with law.” By virtue of this article, the “other persons” should be included the FDHs in Hong Kong. As such, their rights and freedom should be protected. Further, Article 25 also provides that “All Hong Kong residents shall be equal before the law.” The Article 24 has specified that “Residents of the HKSAR shall include permanent residents and non-permanent residents.” In view of the above articles, the FDHs could enjoy the non-discriminatory rights as the residents in Hong Kong.

3 Article 11, The Basic Law of the HKSAR.
4 Article 4, The Basic Law of the HKSAR.
5 Article 25, The Basic Law of the HKSAR.
6 Article 24, The Basic Law of the HKSAR.
Further, under Article 39 of the Basic Law\(^7\), “The provisions of the International Covenant on Civil and Political Rights (ICCPR)\(^8\), the International Covenant on Economic, Social and Cultural Rights (ICESCR)\(^9\) and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.” This article implies that while the Hong Kong Government formulates any policies, they should not solely consider the public interest but the rights which protected by the international human rights instruments should also be considered as well. The details of the international human rights frameworks will be addressed in section 2.2.

2.1.2 Bill of Rights Ordinance

In 1991, the Bill of Rights Ordinance (BORO) which incorporated into Hong Kong law the provisions of the ICCPR as applied to Hong Kong, proscribes all form of discrimination on the part of the Government and public bodies. As in the Section 7 of BORO, it provides that “this Ordinance binds the Government and all public authorities; and any person acting on behalf of the Government or a public authority.”\(^{10}\) Therefore, the Government policy should not contravene the provisions of BORO. Further, Article 22 of the BORO provides that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”\(^{11}\) (corresponding to Art. 26 of ICCPR). By virtue of this provision, the rights of FDHs should not be discriminated by the Government policy; otherwise it will contravene the aforesaid provision in BORO.

One of the shortfalls of the BORO is that the ICESCR did not incorporate into the BORO to become the domestic law in Hong Kong as the ICCPR. In fact, the rights proclaimed by the ICESCR are concerned with the fundamental human rights as well; some articles are relevant to the human rights of the FDHs.

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\(^7\) Article 39, The Basic Law of the HKSAR.


\(^10\) Section 7, Bill of Rights Ordinance (Cap. 383)

\(^11\) Article 22, Bill of Rights Ordinance (Cap. 383).
2.1.3 Labour Legislations

The Hong Kong employment law and regulations are mainly administered by the Labour Department. Referring to the *Practical Guide for Employment of Foreign Domestic Helpers*[^12^], FDHs are entitled to the same benefits and protection as the local workers under the Employment Ordinance (Cap. 57). Is it FDHs could really enjoy the non-discriminatory treatment under the Employment Ordinance?

To some extent, the FDHs could enjoy various economic, social and cultural rights unconditionally. The rights of FDHs are specified in the standard employment contract (ID 407),[^13^] it provides that the FDHs could enjoy the MAW (Clause 5 (a)), food allowance (Clause 5 (b)), free accommodation (Clause 5(b)) and free medical treatment (Clause 9 (a)), etc. All these human rights are corresponding to the ICESCR, such as the right to enjoy the just and favourable conditions of work (Article 7), the right to enjoy an adequate standard of living and free from hunger (Article 11 (1) and (2)) and the right to enjoy the highest attainable standard of physical and mental health (Article 12), etc.^[14^]

The existing labour legislations could provide a comprehensive protection to the human rights of FDHs. But the issues of the ROA and the reduction of MAW are still unsolved by relying on the Employment ordinance and the Labour Department’s guidelines.

2.2 Major International Human Rights Instruments

There are couples of major International Human Rights Treaties dealing with the Human Rights issues in general, such as the ICCPR, ICESCR, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[^15^] and International Labour Convention, etc. Some principles of these instruments are applicable to the situation of ROA issues and the discriminatory levy of FDHs.


[^14^]: ICESCR (n 9 above), Article 7, Article 11 (1) & (2) and Article 12.

2.2.1 ICCPR

ICCPR has been given a special status in Hong Kong by virtue of Article 39 of the Basic Law. It has been incorporated into the BORO and became part of the domestic law. In Article 26, it provides that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law…”\textsuperscript{16} It creates a solid ground for FDHs to claim their rights on the ROA and the levy’s issues if the Government policies undermine their human rights. In addition, in the Article 8, it provides sufficient protection to the FDHs to enjoy the favourable working conditions in Hong Kong. It provides that “No one shall be held in slavery, slavery and the slave-trade in all their forms shall be prohibited…. No one shall be held in servitude….No one shall be required to perform forced or compulsory labour.” Though this provision is not directly addressed the issue of ROA and levy’s issue, to some extent, it still could safeguard the human rights of the FDHs in other aspects.

2.2.2 ICESCR

Hong Kong Government has not yet enacted the ICESCR as the ICCPR, however, by virtue of the Article 39 of the Basic Law stressed that the ICESCR “should remain in force and shall be implemented through the laws of the HKSAR.”\textsuperscript{17} To some extent, the ICESCR should able to apply in Hong Kong and to provide the protection to the FDHs regarding to the economic, social and cultural rights. Article 7 is relevant to the levy’s issue of the FDHs, it provides that “the States Parties …..recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular…remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind…..”\textsuperscript{18} As such, this provision should be able to bind the Government not to implement any unjust policy towards to the remunerations of the FDHs.

The major concern regarding to this human rights instrument is that it may allow the State Party to realize the rights progressively. In Article 2, it provides that “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights….particularly the adoption of legislative measures.” Does it create a grey area that allowing the State Party to delay the implementing process of

\textsuperscript{16} ICCPR (n. 8 above), Article 26.
\textsuperscript{17} Supra n. 7.
\textsuperscript{18} ICESCR (n. 9 above), Article 7.
the ICESCR? For instance, if the policy of imposing levy violates the economic rights of FDHs, the Hong Kong Government may rely on the Article 2 to amend the discriminatory policy progressively, not immediately. In interpreting this article, the Committee on Economic, Social and Cultural Rights (Committee) has commented that “while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the covenant’s entry into force for the States concerned.” By virtue of this comment, the Hong Kong Government should incorporate the ICESCR into the statutory provisions, the progressive nature of the Government’s obligations relates only to the realization of rights. As the Committee’s comment in further, it stated that “in many instance legislation is highly desirable and in some cases may even be indispensable.”

2.2.3 The Conventions of International Labour Organization

In accordance with the Basic Law, Article 39 states that “the international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.” HKSAR participates some of the International Labour Conventions set by the International Labour Organization (ILO). As at the end of 2005, there are 41 ILO Conventions applied to the HKSAR (refer to Appendix 1). The Convention No. 97 “Migration for Employment (Revised 1949) is one of the Conventions applied in Hong Kong which is relevant to the issue of imposition of the levy to FDHs. Article 6 states that “Each member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters: (a) ….., (b)……., (c) employment taxes, dues or contributions payable in respect of the person employed…..” By virtue of this Convention, the State Party should not impose any discriminatory taxes to the migrant workers.

2.2.4 ICERD

ICERD was extended to HKSAR by the China Government notified the United Nations Secretary-General that the Convention would continue to apply to the HKSAR with effect from 1 July 1997. However, ICERD has the same fate as the
ICESCR, the HKSAR Government has failed to incorporate it into the domestic law till today. Does it imply that the racial discrimination is not an issue in Hong Kong? In fact, the FDH is the majority of the ethnic minorities in Hong Kong. Their rights should not be deprived owing to their races and colors.

According to the Census and Statistic Department, the numbers of FDHs have increased substantially from 141,000 in 1994 to 220,000 in 2004 (refer to Appendix 2). It shows that the demand for this group of workforce is increasing in the past decade due to they could effectively providing the assistance to the working women to manage their households. Comprising 3% of the Hong Kong population, the FDH community considers as one of the most significant minority groups in Hong Kong. As such, their human rights should not be underrated. In Article 2, it provides that “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a)…, (b)……, (c) Each State Party shall take effective measures to review Governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists…..” If the ICERD is applying in Hong Kong, the Government should review their policies towards to the FDHs accordingly.

3. Right Of Abode Issue

To some extent, the human rights of FDHs could be protected by the above domestic statutory scheme and the international human rights regime. However, concerning the ROA issue, FDHs may unable to rely on the statutory scheme to claim their rights. In this section, we will first examine whether the FDHs could possibly obtain the ROA by the virtue of the Article 24 (2) (4) of Basic Law. Further, we will examine whether the Government policies could strike the balance between the public interest and the human rights of FDHs. Did the Government impose any discriminatory measures prevent the FDHs to obtain the ROA?

3.1 The Application for Permanent Resident Status

Referring to the Article 24 (2) (4) & Article 24 (3) of the Basic Law, the persons of non-Chinese nationality may rely on these provisions to claim their ROA. This

23 Appendix 2 – the data is adapted from P.32 of Hong Kong Annual Digest of Statistics 2005, Census and Statistics Department, HKSAR.
24 ICERD (n. 15 above) Article 2.
article provides that:

“The permanent residents of the Hong Kong Special Administrative Region shall be:
(1) .....;
(2) .....;
(3) .....;
(4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;”

The above mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region .....”

By virtue of the above articles, the non-Chinese person seems able to obtain the ROA if they could fulfill three requirements. As Mr. Justice Ribeiro PJ stated in the Prem Singh v The Director of Immigration, the three requirements are

1. have entered Hong Kong with valid travel documents (“the entry requirement”);
2. have ordinarily resided in Hong Kong for a continuous period of not less than seven years (“the seven year requirement”); and
3. have taken Hong Kong as their place of permanent residence (“the permanence requirement”).

Applying these requirements to FDHs, they will only be able to fulfill the entry requirement due to they need to apply the working permit from the Immigration Department to enter into Hong Kong. However, their abilities to meet the second and third requirements are in dispute.

3.2 The Government Policy Towards to the FDHs

From the above discussion, the Basic Law did provide the mechanism to enable the persons of non-Chinese nationality to obtain the ROA in Hong Kong, however, if we read this article with the related statutes, it will be an entirely different scenario.

Under paragraph 2(d) of Schedule 1 of the Immigration Ordinance, it is in

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25 Article 24 (2) (4), The Basic Law of the HKSAR.
26 Article 24 (3), The Basic Law of the HKSAR.
identical terms with Article (2)(4) of the Basic Law. However, there are two critical requirements of this statutory scheme may create a barrier for the FDH to obtain the ROA by relying on the Article 24 (4). These requirements are the “ordinarily resided in Hong Kong” and “continuous period of not less than seven years and has taken Hong Kong as his place of permanent residence”.

3.2.1 Ordinarily Resident in Hong Kong

FDHs, like other migrant workers, come to Hong Kong for the purpose of taking up employment. However, when compared with other groups of migrant workers, they are apparently being treated in a less favourable way regarding to the obtaining of ROA in Hong Kong. It could be depicted on the requirement of “ordinarily resided in Hong Kong”. The Section 2(4)(a)(vi) of the Immigration Ordinance provides that

“For the purposes of this Ordinance, a person shall not be treated as ordinarily resident in Hong Kong – ……

(vi) while employed as a domestic helper who is from outside Hong Kong; ..”

It signifies that the FDHs are being excluded from the category of the Article 24 (2)(4) of the Basic Law. What is the ground for the Government to exclude the FDHs from the eligible list of the Article 24 (2) (4) of the Basic Law? Does this policy contain any discriminatory elements?

a.) Now and Before

Before 1997, the Sect. 2 (4)(a)(vi) of the Immigration Ordinance had not yet been enacted. It implied that the domestic helper had not yet been categorized as the non-ordinarily resident during that time. The unreported case of Attorney General v. The Registration of Persons Tribunal and Tan Helen could explain how was the change of the immigration law creating the new hurdle to the FDH to claim the ROA. Though the Basic Law had not yet been applied in Hong Kong at that time, the requirement for the person of non-Chinese nationality to reside in Hong Kong for 7 years was remained the same. In this case, the Philippines domestic helper Helen Tan stayed in Hong Kong for 7 years and she was successfully claimed the ROA due to the court held that she had satisfied the requirement of ordinarily resided in Hong Kong for a continuous period of 7 years. If the Helen Tan’s case is adjudicated today, we could probably assume that her application will be declined. It is because the

28 Section 2 (4)(a) (vi), Immigration Ordinance (Cap 115).
29 Attorney General v. The Registration of Persons Tribunal and Tan Helen. No. AL5 of 1997 (this unreported case was cited by the appellant counsel in Sun Jie v. Registration of Persons Tribunal and others [2004] HKCFI 700.
Sect. 2 (4)(a)(vi) has already been enacted and categorized the FDH will not be considered as an ordinarily resident. It suggests that the new amendment of the Immigration Ordinance in 1997 really created the hurdle to the FDH to apply the ROA. It becomes the first check point to prevent the FDH to make any claims over the ROA.

It leads to the other question that why the Government excluded the FDH as an ordinarily resident since 1997. Arguably, is it this amendment of the Immigration Ordinance was the way to implement the Article 24 (4) of Basic Law or to implement the Government policy towards to the FDH? Referring to the case of The Commissioner for Registration v. Fateh Muhammad and others, the Judge Mayo VP came across the definition of ordinarily resident. He stated that “I agree with Lord Denning M.R. that in their natural and ordinary meaning the words mean that the person must be habitually and normally resident here, apart from temporary or occasional absences of long or short duration. The significance of the adverb “habitually” is that it recalls two necessary features mentioned by Viscount Sumner in Lysaght’s case, namely residence adopted voluntarily and for settled purposes.”

By applying the above definition, the FDH should be able to fulfill the requirement as the ordinarily resident. However, the Government categorized them as non-ordinarily resident in Hong Kong as stated in the Sect.2 (4) of the Immigration Ordinance. Does it imply that the Government prefers to take the broad public interest into account by sacrificing the human rights of FDHs?

b.) The Rationale of the Government Policies

In my opinion, the Government adopts the similar approach to formulate the policy towards to the FDHs as in the ROA dispute of the mainland children in 1999. Referring to the speech of Secretary for Security in Legco on ROA issue, Mrs. Regina Ip stated clear about the Government policy towards to the ROA’s issue. She said “Today, the population of Hong Kong is almost 7 million and our economic structure has already changed from labour-intensive to service-oriented and knowledge-based. We are now actively developing high technology and high value-added industries to seek economic revival, which, in the long run, can improve our living standard. In face of keen competition from our neighbors in Asia, the Government’s fiscal restraints and the economic downturn, it is very difficult for us to absorb a large number of persons with ROA. The provision of adequate social services and facilities for these people….requires not only money but also vast land and human resources for the construction of public housing, hospitals and schools……A large

number of job opportunities is also needed so that the arrival of these people will not worsen our employment problem and cause a heavy burden to the Comprehensive Social Security Assistance Scheme.”

From the above speech, it suggests that the Government is reluctant to offer the ROA to a large number of low-skilled populations from abroad. It is because if the FDHs grant the ROA in Hong Kong, the Government would anticipate that the FDHs will no longer work as the FDHs and to look for the job with better remuneration. Further, their families will also immigrate to Hong Kong from hometown. The influx of the low-skilled immigrants and their families will entail a tremendous pressure to the Government’s budget. As such, the Government tends to take the broad public interest into account and to impose the stringent measures on the FDH. It is because those measures could prevent the influx of the low-skilled immigrant and to prevent the floodgate of the lawsuits about the ROA of FDH who have stayed in Hong Kong for 7 years. The other question is that whether the Government polices are against the human rights of FDHs? This question will be addressed in the section 3.3.- Contravention of the Basic Law and the International Human Rights Regime.

3.2.2 Seven Years Requirement

Regarding to the requirement of the “continuous period of not less than seven years and has taken Hong Kong as his place of permanent residence”, there are couples of Government’s provisions and policies which hinder the FDHs to comply with the seven years requirement, such as the Immigration Ordinance and the “two-week rule”.

a.) The Hurdles of Immigration Ordinance

In accordance with the Schedule 1 (4) (b), “for the purpose of calculating the continuous period of 7 years in which a person has ordinarily resided in Hong Kong, the period is reckoned to include a continuous period of 7 years –

(b) for a person under paragraph 2 (d), before or after the establishment of the Hong Kong Special Administrative Region but immediately before the date when the person applies to the Director for the status of a permanent resident of the Hong Kong Special Administrative Region.”

Further, the Schedule 1 (3) (1) provides the further elaboration of the

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32 Schedule 1 (4) (b), Immigration Ordinance (Cap 115)
permanence requirement to the non-Chinese nationality as follows:

“For the purposes of paragraph 2(d), the person is required –
(c) to be settled in Hong Kong at the time of the declaration.”

The requirement of the applicant be “settled in Hong Kong” is further elaborated by Schedule 1 (1) (5) in the following terms:

“A person is settled in Hong Kong if –
(a) he is ordinarily resident in Hong Kong; and
(b) he is not subject to any limit of stay in Hong Kong.”

It implies that the continuous period of 7 years should be counted from the date while they apply the ROA to the Director of Immigration Department. In addition, the non-Chinese nationality should be ordinary reside in Hong Kong and is not subject to any limit of stay in Hong Kong.

b.) Two-Week Rule

Does the FDH could fulfill the 7 years requirement under the current contractual restriction which administered by the Immigration Department? The answer is negative. It is owing to the “two-week rule” which introduced by the Hong Kong Government in 1987. According to the Immigration Department, “at the end of the two-year contract the Helper will be required to return to his/her place of origin for vacation and family reunion. An application for change of employment by the helper at the end of the two-year contract may be made in the HKSAR in the same manner as contract renewal with the same employer…” If the FDHs need to renew their contracts in every two years under the existing regulation, even she has been working for the same employer for 4 consecutive contracts with total 8 years, she is still unable to fulfill the “continuous period of seven years” requirement due to she needs to go back to her hometown in every two years.

In fact, the purpose of its introduction was the prevention of “job-hopping” by FDHs. As the consultation paper mentioned, “if they (FDH) wish to work in Hong Kong again, they must re-apply n their home country for a new work visa. The purpose of this rule is to deter job-hopping which was a frequent problem before its introduction. It is applied with flexibility and with compassion.”

33 Schedule 1 (3) (1), Immigration Ordinance (Cap 115)
34 Schedule 1 (5), Immigration Ordinance (Cap 115)
3.3 Contravention of the Basic Law and the International Human Rights Regime

We have already examined the Government policy towards the ROA issue of FDHs. We could make a preliminary conclusion that the Government did not spend enough effort to strike a balance between the public interest and the human rights of the FDHs. In this section, we will examine whether the Government policies contravene the Basic Law and the major International Human Rights Regime.

3.3.1 Administrative Discretion Vs Constitutional Rights

The Article 24 (4) of the Basic Law grants a constitutional Right to the non-Chinese nationality to claim the ROA when they have been working in Hong Kong for 7 years. However, referring to the Schedule 1 (3)(1)(c) and the Schedule 1 (1)(5)(b), these provisions impose the other hurdles – “limit of stay requirement” to them for claiming the ROA. In fact, these additional requirements did not state in the Basic Law. As such, this situation raises the issue that whether the constitutional right is dependent upon by ordinary law and Government’s policy? Further, does it imply that those provisions contravene to the Article 24 (4) of the Basic Law? The following two opposing views over this issue could give us some insight about how the opinion of the Government and the court towards to this issue.

Referring to the speech by Mrs. Regina Ip (ex-Secretary for Security), she stated that “should the Basic Law have spelt out all the details regarding the acquisition of the right of abode in Hong Kong as set out in Schedule 1 to the Immigration Ordinance? Should it be changed to put beyond doubt the true legislative intent of the right of abode provisions? I do not believe it ought to be. The Basic law is a constitutional document…. Constitutional documents cannot be expected to have the degree of detail appropriate to a legal code, and in deducing its meaning regard should be had to the objects, that is to say, the legislative intent…. It would be quite inappropriate to amend the relevant provisions of the Basic Law on right of abode to turn them into something approximating our Immigration Ordinance.37 It seems that the Government tends to use the ordinary law as a tool to interpret the meaning of the Basic Law in order to achieve the Government policy. In fact, the Government could amend the statutes any time. It implies that the way to interpret the meaning of the Basic Law could change in line with the changing of the Government policy?

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In the case of *Ng Ka-ling & Others v Director of Immigration*, the Chief justice conveyed the similar message as Mrs. Regina Ip. He stated that “it is generally accepted that in the interpretation of a constitution such as the Basic Law a purposive approach is to be applied. The adoption of a purposive approach is necessary because a constitution states general principles and expresses purposes without condescending to particularity and definition of terms…..So, in ascertaining the true meaning of the instrument, the courts much consider the purpose of the instrument and its relevant provisions as well as the language of its text in the light of the context, context being of particular importance in the interpretation of a constitutional instrument.” 38

The above two explanations suggested that the Basic Law is a constitutional document, it would only provides the broader scope of the law. The functions of the statutory provisions are to fill the gap and to interpret the actual meanings of the articles of Basic Law. However, the following court ruling suggests the opposing view.

In the case of *Prem Singh v The Director of Immigration*, the Justice Bokhary PJ commented about the Schedule 1(3)(1)(c) and the Schedule 1(1)(5)(b) of the Immigration Ordinance as follow: “can ordinary law make a constitutional status or right dependent upon a favourable exercise of an administrative discretion or, failing that, a successful administrative appeal or failing even that, a successful judicial review challenge? In my view, such a state of affairs would be unconstitutional.” 39

In this case, the Court of Final Appeal reached an unanimous decision that “paragraph 3(1)(c) of Schedule 1 to the Immigration Ordinance contravenes Article 24(2)(4) of the Basic Law and is unconstitutional to the extent that such paragraph, in combination with paragraph 1(5)(b) of the said schedule, requires a person not to be subject to any limit of stay in Hong Kong at the time of making the declaration referred to in paragraph 3(1)(b) of the said Schedule or at the time of such person’s application for verification of his status as a permanent resident of the Hong Kong Special Administrative Region within Article 24(2)(4) of the Basic Law.” 40

In view of the above analysis, I do not agree that the existing immigration laws of the ROA are against the Basic Law. I would incline to the ideas of the Regina Ip and the ratio of Ng Ka Ling’s case. The article 24(2)(4) of the Basic Law only provides the major direction of the law, it requires the explanation and the details of

40 Supra n. 6.
the relevant provisions. If the applicants only rely on the concise wording of the Basic Law, it will probably create a floodgate of the lawsuits from the FDH to apply the ROA. I think the Government should provide further details on the Schedule 1 (3)(1)(c) and the Schedule 1 (1)(5)(b) of the Immigration Ordinance, such as the clear definition on the “settled in Hong Kong” and the “limit of stay” issues. Then it could resolve the dispute that the administrative discretion prevails over the article 24(2)(4) of the Basic Law. Although the Government policy did not contravene the Basic Law, it does not mean that it does oblige to the human rights regime. This issue will be discussed in the following section.

3.3.2 Government Policies Vs Human Rights

As we discussed in the section 3.21, it is obvious that the S.2 (4)(a)(vi) of the Immigration Ordinance distinguishes from FDHs to the other migrant workers and treats the FDHs less favorably. The Government’s rationale is to minimize the low-skilled workers to immigrate to Hong Kong. From the public interest viewpoint, this policy could win the applause from the public. However, the Government fails to recognize the discriminatory nature of this policy. By virtue of the Article 26 of the ICCPR, it provides that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law...”\(^{41}\) The Government included the FDHs as a non-ordinarily resident in Hong Kong, but not the other migrant workers. Apparently, this policy contravenes the ICCPR as the above mentioned.

Further, the difference in treatment also violates the ICERD. Article 1 (1) defines the racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”\(^{42}\) In fact, most of the FDHs are coming from the developing countries, their ethnic origins and job natures have long been stereotyped by the public that the FDHs did not deserve with better treatment as the other expatriates from the developed countries. However, the Government did nothing to promote the concept of equality and to correct this fallacy. According to the HKSAR response to the Committee on Economic, Social and Cultural Rights, the HKSAR spent over HKD2 million on publicity campaigns to foster public acceptance of people with disabilities, but nothing to do with the racial

\(^{41}\) Supra n. 16.
\(^{42}\) ICERD (n. 15 above) Article 1.
equality. As such, the Government also violates the Article 2 (1) of ICERD, which provides that “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races,…..”

The racial discrimination of FDHs could only be improved while the Government really enacts the legislation against racial discrimination.

In 2005, the UN Committee on Economic, Social and Cultural Rights expressed disappointment over the Government’s failure to rescind the “two-week rule” imposed upon foreign domestic workers. The rule requires foreign domestic workers to find employment or to leave Hong Kong within two weeks of the termination of their employment contract.

In fact, the policies of the two-week rule and excluding the FDHs as the ordinarily resident are contravened the Article 2 of ICESCR. This article shares the same non-discriminatory assertion as the Article 1 of ICERD and Article 26 of ICCPR.

In respect of the ILO, the Government’s two-week rule contravenes the Article 8 of the ILO Convention No. 143. It provides that “on condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit.” In fact, if the FDHs did not leave Hong Kong within two weeks of the termination of their employment contract, they will be treated as staying in Hong Kong illegally and will face immediate deportation. However, according to the Appendix 1, this ILO Convention is not applied to HKSAR unless China will ratify this Convention in future.

4. The Issue of MAW and the Imposition of Levy

The controversy of these two issues were caused by the coincidental decision which made by the Chief Executive in Executive Council meeting on 25 February

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43 Supra n. 24.  

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In this meeting, Chief Executive approved the “Labour Importation Scheme” which led to the FDHs’ employers liable to pay a levy to Government of $400 per month from 1 October 2003. At the same day, Chief Executive made an order to reduce the MAW of FDHs with effect from 1 April 2003. This coincidence would create an image that both policies are a colourable device enabling Government to impose the discriminatory tax upon them. In this section, it is necessary to examine whether the Government did deliberately to impose such discriminatory policies to FDHs in order to take the public interest with heavier weight. First, the Government policy towards to the FDHs on both issues will be addressed. Next, whether the implementation of both policies is mere coincidence or is a colourable device. Then, human rights regime will be applied to these issues in order to examine whether the Government has forgone the human rights of FDHs.

4.1 The Government Policy towards to the FDHs

4.1.1 Minimum Allowable Wages

The rationale for the Government to establish the MAW to the FDHs is “to safeguard FDHs against exploitation, on the one hand, and protects local workers from cheap overseas competition on the other.” By virtue of this policy, it seems that the Government did strike the balance between the human rights of FDHs and the interest of local workers. It is true that if the Government did not regulate the MAW for the FDHs, so many FDHs from the deprived area may accept the lower wages in order to find a job in Hong Kong. Then the employers may take an advantage from this legislative loophole to exploit the FDHs. On the contrary, if the Government allows the FDHs salary deciding by the market, the FDHs may able to get better remuneration package. It is because the demand for the FDHs keep increasing since 1994 (refer to Appendix 2). Further, many domestic workers are reluctant to take up the household job. It is arguably about this MAW policy is good or bad for the FDHs.

However, it is important to note that Government implements the contradicting policy to the local workers on the MAW issue. The Government did not support to establish the MAW for the local worker, the rationale of this policy could be found from the assertion of the Education and Manpower Bureau. The Bureau stated that “it would be inappropriate …. to set up any form of minimum wage in Hong

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46 Supra n. 1.
Kong ....a market-driven wage mechanism in an efficient and responsive labour market is one of the factors underpinning the success of Hong Kong as a world-renowned free market economy....”

Why the Government implements different treatment to the FDHs and the local workers? Did the Government believe that the FDHs only deserve to have HK$3,400? Did the Government concern more about the burden of the employers if the FDHs could negotiate for better salary? All these issues will be examined from the scope of human rights instruments in Section 4.3.

The ground for the Government to reduce the wage by HK$400 from HK$3,670 to HK$3,270 with effect from 1 April 2003 is controversial. Some people may consider that the Government intends to create a colourable device by which a hidden tax was imposed on FDHs. The Government tries to use the mean of reducing the MAW to subsidize the levy of the Hong Kong employer. This belief was attributed by two coincidences, one is the amount of MAW reduction is exactly the same as the new levy imposing on the FDH’s employers; the other is that both policies were decided at the same day of the same meeting. According to the Economic Development and Labour Bureau, the wage of FDHs is subject to annual review, a process that takes account of Hong Kong’s overall economic and employment situation against a basket of economic indicators. Regarding to the reduction of MAW in 2003, “the level of reduction reflected, inter alia –

- a drop of 17% in the median monthly income of households that employ foreign domestic helpers;
- a fall in the median monthly employment earnings of workers in elementary occupations by about 16%; and
- a rise in the seasonally adjusted unemployment rate from 6.3% to 7.2% between February 1999 (when the wage was last adjusted) and end-2002.”

It seems that the Government created the other contradictory policy again. In view of the above market indicators, the Government tends to use the objective market situation as a ground to adjust the MAW of FDHs. Why the Government just simply abolishes the MAW of FDHs as the Government policy towards to the local workers? Why the Government shifts the burden to the FDHs when the Hong Kong

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48 HKSAR, Education and Manpower Bureau, Administration’s View on the “Proposal on Minimum Wage in Hong Kong” put forward by the Hong Kong Social Security Society (October 1998).
economy is in downturn? It seems that the Government really prefers to take the public interest into account.

4.1.2 Imposition of Levy

“The key objective of Hong Kong’s population policy is to secure and nurture a population which sustains our development as a knowledge-based economy.” If the Government would accomplish this goal, one of the measures is to provide a training to the low-skilled domestic workers in order to enable them to meet the societal change. Since the 1990’s, under the Section 14 of the Employees Retraining Ordinance, the employers of workers imported under the “Labour Importation Scheme” are required to pay an “Employees Retraining Levy.” The rationale of imposing this levy had been stated by the Government in Legislative Council in February 2003 – “the imposition of a levy on FDH employers will place the employment of FDHs on the same basis as other imported employees. By directing the levy income so collected to the training and retraining of local workers, it will meet the objective of re-equipping and enhancing the skills of local workers amidst the current economic restructuring and high unemployment of Hong Kong.”

According to the Employees Retraining Board’s program, domestic helper training is one of the major schemes for the domestic low-skilled workers. It is arguably that the Government is trying to use the retraining program to upgrade the low-skilled domestic workers to become a skillful labour force, or the Government intends to train them to replace the FDHs. If the rationale of the Government is the later one, it is obvious that the Government policy inclines to the public interest. This policy will constitute the discriminated treatment to the FDHs indirectly. In fact, the Government did worry about the competition of FDHs will boost the unemployment rate of the low-skilled domestic workers. It could be shown from the Government view that “at present, the local labour market already faces an excess supply of low-skilled workers, which will take some time to by fully absorbed. The additional labour supply stemming from inflow of low-skilled new arrivals aggravates the situation. Local workers, particularly those at the lower end of the labour market, can thus be expected to face greater competition for jobs and pressures for lower wages. This will bring about other social and welfare ramifications.” It is really unreasonable for the Government to blame the low wage’s FDHs creating the pressure to the domestic workers. If the Government would mitigate this situation, the

51 Section 14, Employees Retraining Ordinance (Cap. 423).
52 [2005] HKCFI 1, para 58.
53 Supra n. 50 (p. 53)
Government could simply let the market to determine how much they want to pay for the household helper and who they want to employ. In respect of this policy, the Government seems unable to strike a balance between the public interest and the rights of the FDHs.

4.2 Mere Coincidence or Colourable Device

In view of the above government policies, it provides substantial evidence that these two policies are mere coincidence, not a colourable device.

In respect of the reduction of MAW, the Government has implemented the policy to review the MAW of FDHs for almost three decades. In the past three decades, the wage was adjusted 18 times.\(^{54}\) One of the highest increases was in 1983 when it was increased by some 22%....in 1999, the minimum allowable wage was decreased by 4.9%.\(^{55}\) Therefore, the MAW review on 2003 is just the normal practice of the Government. As Hartmann J stated in *Julita F. Raza and others v Chief Executive in Council and others*\(^{56}\), “as for the reduction in the minimum allowable wage, this has been subject to annual review by the relevant Bureau as an administrative scheme since 1973 and has, when deemed appropriate, been adjusted by means of an established set of principles. There is no evidence that these principles were changed for the 2003 assessment or “massaged” in some way so as to achieve a desired but artificial result.”

Regarding to the imposition of levy, as we mentioned before, this policy has been implemented since 1990’s, once the scheme for importing FDHs was designated a Labour Importation Scheme, it is justifiable that the employer of FDHs to pay the levy. If the Government just launched this policy in 2003 together with the policy of reduction of MAW, we may argue that the implementing of both policies had amounted to a colourable device. In fact, these two policies were created in different era, it has no evidence to show the connection of these two policies. As such, it seems that both policies decided on the same day with the same amount which is a mere coincidence. From the other aspect, the Government may consider that the levy issue will attract a strong criticism from the Hong Kong public. Therefore, the Government announced both policies at the same day in order to mitigate the opposing voice. Again, we could see that the Hong Kong Government concerned more about the public opinion of the local resident than the voice of the minority.

\(^{54}\) Supra n. 49 (para. 88, p. 40).
\(^{55}\) Supra n. 52 (para. 28).
\(^{56}\) Ibid. (para. 68).
4.3 Contravention of the International Human Rights Regime

Regarding to the issues of reduction of MAW and the imposition of levy, has the HKSAR Government taken any measures to ensure that government policies and domestic laws will be compatible with Hong Kong’s international obligations under various human rights treaties. By applying the international human rights regime, these policies may contravene the human rights of FDHs in three aspects. First, whether both policies constitute an unfair levy upon the FDHs; second, whether establishing the MAW solely to FDHs will constitute any differentiation or discriminatory treatments; the last one is that whether the remuneration package (MAW) could be qualified as the just and favorable conditions of work to the FDHs.

4.3.1 Unfair Levy

First, the HKSAR should oblige the Article 6 (1) (c) of ILO, it provides that “Each member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters: (a) …., (b)……, (c) employment taxes, dues or contributions payable in respect of the person employed…..”57 If the above policies constitute a colourable device, the Government will contravene to the aforesaid article. However, the Court of Appeal in Julita’s case had approved the decision of the lower court and ruled out the assertion of a colourable device on these issues. As Hartmann J said “That report (task force report) states quite clearly why the levy was recommended and why the reduction in the minimum allowable wage was recommended. The reasons are in each instance distinct and flow out of entirely different imperatives. Nothing in the report suggests linking the two recommendations in the manner alleged by the applicants…”58 Thus the Government policies did not contravene the Article 6 (1) (c) of the ILO and the Government policy did not impose the discriminatory levy to the FDHs.

4.3.2 Differentiation Vs Discrimination

Second, the Government only establishes the MAW to the FDHs, not to any other migrant workers and the domestic workers. Positively, it does prevent the exploitative wages treatment to FDHs, however, this policy may create the discriminatory treatment to the FDHs. It will limit the chance of the FDHs to negotiate with the employers. Although the Labour Department stressed that it is just the minimum wages level, the employers are allowed to pay more than the MAW.

57 Supra n. 22.
58 [2006] HKCA 244.
According to the research of the Asian Migrant Centre in 2001, over 80% of the FDHs were receiving the MAW.\(^{59}\) It shows that the Government is over-optimistic about the generosity of the employers. As such, this policy creates a form of discrimination to the FDHs. By referring to the Article 26 of ICCPR and the Article 2 of ICERD, both human rights articles proclaim the significance of the equality. They also stressed that the States Parties should make sure their policies are against discrimination. The difference of race, job nature and social origin should not amount to the FDHs to receive the discriminatory treatment on the MAW policy.

Contrary to the above assertion, the judgment in *R v Man Wai Keung (No.2)*\(^{60}\) provides the test regarding to the relations between the differentiation of treatment and discrimination. Bokhary J stated that “Clearly, there is no requirement of literal equality in the sense of unrelentingly identical treatment always … in certain circumstances, a departure from literal equality would be a legitimate course and, indeed, the only legitimate course. But the starting point is identical treatment. And any departure therefrom must be justified. To justify such a departure it must be shown one, that sensible and fair-minded people would recognize a genuine need for some difference of treatment; two, that the difference embodied in the particular departure selected to meet that need is itself rational; and, three, that such departure is proportionate to such need.”\(^{61}\) Relying on the above test, the MAW policy has not been applied to any domestic workers and the other migrant workers but the FDHs, therefore, the starting point is not identical treatment. Further, the MAW set at such a low level which is insufficient to justify the need of this policy. As such, only regulates the MAW to the FDHs should be considered as the discriminatory policy.

4.3.3 The right to just and favourable conditions of work

The current applicable MAW of FDHs is $3,400 per month. This amount is at the level of the poverty line in Hong Kong, therefore this policy contravenes the Article 7 of ICESCR which provides that “the States Parties … recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular… remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind…..”\(^{62}\)

The Government has long been refused to establish the official poverty line due to the Government claims that an official poverty line is too rigid and an inadequate

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59 Asian Migrant Centre, “2001 Baseline Research on FDHs in Hong Kong.” p.28
60 [1992] 2 HKCLR 207.
61 Ibid.
62 Supra n. 18.
way to define the living conditions of Hong Kong’s poor. However, by the effort of the Government’s Commission on Poverty in 2005, it came up with the 24 poverty indicators. The Commission called the “Comprehensive Social Security Assistance” level of between HK$2,150 and HK$3,885 the “de facto” poverty line.\(^{63}\) The Government only established the MAW to the FDHs and setting the amount at the poverty line level, apparently these policies are protecting the interest of the employers in Hong Kong rather than the FDHs.

5. Comparative Study

By looking at the practices of the other common law jurisdiction on both issues, it could help us to see whether the existing Hong Kong government policies are creating any unfair treatment towards to the FDH in relations to the other countries. Singapore and Canada are our targets for this study.

5.1 Right of Abode Issue

5.1.1 Singapore

In Singapore, the statutory provisions\(^{64}\) have clearly categorized different kinds foreign workers. Only the foreigners with P, Q or S work pass holders are eligible to apply the permanent residence. P and Q Pass are only eligible for foreign professionals, manager, executives and specialists with minimum fixed monthly salary of S$2,500. S Pass is only eligible for middle level skilled manpower with minimum fixed monthly salary of S$1,800. For unskilled foreign workers and the FDHs are categorized as the “R Pass”. The FDHs are excluded from the categories of foreigners who are eligible to apply the permanent residence in Singapore. Further, the work permit of the FDH in Singapore is usually issued for two years, the FDHs are required to renew the work permit in every two years. In fact, FDHs do not enjoy the same rights as professional and technical workers immigrating on work passes.

Apparently, the measure of the Singaporean government is as tough as the HKSAR to treat the ROA issue of the FDHs. With regard to migrant workers, “state


policy is conceived to ensure that all low-skilled foreign workers are no more than a transient workforce whose presence in Singapore must be strictly regulated and controlled.”

Further, the rationale of the Singapore Government treats the FDHs as little more than a short-term solution to resolving the crisis in social reproduction faced by Singapore households whose women have gone out to work. Therefore the FDHs have no hope to obtain the ROA in Singapore.

5.1.2 Canada

Canada is a paradise for the FDH who would like to obtain the ROA. Canada adopts a relax measure to treat the FDH on ROA issue. This country had the Live-In-Caregiver Program allows the FDH to work in Canada providing care for children, elderly persons or people who have disabilities. Referring to the authority of the Citizenship and Immigration Canada, it allows the live-in-caregiver (LIC) to apply the permanent residence in Canada. The requirement is that “you must complete at least two years of employment as a live-in-caregiver to apply for permanent residence in Canada. You must have completed these two years of employment within three years of your arrival in Canada.”

Comparing the practices of these two common law jurisdictions, the ways to deal with the ROA issue of the FDH are so different. To some extent, it is owing to the different economics and the population situation of these two countries. Referring to the Appendix 3, it shows that Singapore is one of the most densely populated countries in the world. On the contrary, Canada is one of most scarcely populated countries in the world. This situation could suggest that influx of the immigrant is not an issue for the Canada at all. However, owing to the limited physical size of the country, Singapore has to impose the stringent policy to the immigrant population in order to protect the interest of the local residents. It shares the same concern as the Hong Kong Government.

5.2 MAW and the Levy Issue

5.2.1 Singapore

According to the Singapore Ministry of Manpower (MOM), the salary of the

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66 Ibid.
FDHs should “reflect the scope of work agreed upon”. It means that MOM does not stipulate any MAW for the FDHs, even not for any workers in Singapore. Their wages will be determined by the market and employer-employee agreement. Positively, the FDHs could negotiate the better salary in the market. Negatively, the exploitative wages situation may happen on the FDHs. In fact, “wages often differ according to the nationality of the FDHs as employment agency guidelines scale salaries based on country of origin rather than individual education or skill level. As of 2005, Filipino domestic workers, who usually speak English, receive between S$320 to S$350 a month. Indonesian workers, who tend to be less proficient in English, get between S$210 to S$250.” In view of this policy, it has contravened the Article 7 of ICESCR.

In respect of the levy’s issue, the Government imposes a huge amount of monthly levy on employers of FDHs. Employers are required to pay S$200-S$295 to a central government fund each month, more than the wages of many domestic workers themselves. The heavy levy may jeopardize the bargaining power of the FDHs on negotiating the wages. Apparently, the Government did not strike a balance between the public interest and the human rights of the FDHs at all. As the scholar comments that “the Singapore Government refuses to accord foreign maids the same protection under the Employment Act as other employees in the country disregards both the domestic worker as a “real” employee and the realm of domestic work as “real” work.”

5.2.2 Canada

Canadian Government establishes the MAW for the LIC, but the wages level is vary widely in Canada according to provincial or territorial law. For instance, the MAW in Ontario is C$750 per month. Further, the Government stressed that the LIC have legal rights respecting fair working conditions and fair treatment under employment standards legislation in most provinces and territories. Nothing in their contract must violate these rights. As such, the LIC could be well protected by the legal regime in Canada. Besides, the employer is not required to pay any levy for employing the LIC. In general, the LIC could enjoy better protection and rights than in Hong Kong and Singapore.

68 Supra n. 64.
70 Supra n. 18.
71 Supra n. 64.
72 Supra n. 65.
73 Supra n. 67.
6. Conclusion

As seen in the preceding analysis, the Government did try to strike a balance between the public interest and the human rights of FDHs, such as the provisions of BORO and Employment Ordinance. However, about the issues of the ROA, the Government is facing the dilemma on how to balance the public interest and the rights of FDHs. The first dilemma is that the ROA is a very sensitive issue which is not solely involved the FDHs but also related to a huge number of the mainland Children whose parents are Hong Kong permanent residents. If the Government opens the door to the FDHs but not to the mainland Children, it will attract a profound criticism from the public and the China Government as well. Second, the public always keep their eyes on the Government’s budget. If any policy would give rise to the pressure of the Government budget, the public will concern whether the Government will shift the burden to them. The influx of the low-skilled population is indeed creating an enormous pressure on the Government budget. It is because the Government needs to provide the social services to the new immigrants in order to protect their rights. In respect of the above two dilemmas, the Government is really having difficulty to implement the balancing immigration policy. In all, the Government policies and administrative measures did contain certain degree of discriminatory elements towards the FDHs.

In spite of the controversy over the coincidental decision of reduction of MAW and imposition of levy, the Court of Appeal’s decision on Julita’s case resolves the dispute. This judgment confirms that 1.) the Government did not impose the discriminatory levy to the FDHs and 2.) the policies of reduction of MAW and the imposition of levy are not a colourable device. However, from the fundamental nature of the MAW policy, our analysis finds that the Government tends to take the broad public interest into account and undermines the rights of FDHs. The low level of the MAW constitutes the exploitative conditions to the FDHs. The research shows that the amount of MAW is at the de facto poverty line of Hong Kong. Apparently, the Government has a propensity to provide the cheap labour to fulfill the increasing demand of FDHs. This policy did actually undermining the FDHs’ right to enjoy the just and favourable conditions of work.

In view of the policies of other two common law jurisdictions, Canada and
Singapore are just like a heaven and hell for the FDHs respectively. Canada could strike a good balance between public interest and the human rights of FDHs. Singapore’s policies show the other extreme, it refuses to accord foreign maids the same protection under the Employment Act as other employees in the country disregards both the domestic worker as a “real” employee and the realm of domestic work as “real” work. As such, don’t even mention about the right of ROA and the rights to just and favourable conditions of work. It seems that these kinds of rights are inconceivable for the FDHs in Singapore. In terms of the toughness of the policies, the policies of the Hong Kong Government are lying between them.

In all, this research report confirms that most of the FDHs’ rights did protect by the Government policies and statutory provisions. However, the ROA issue is truly too sensitive and will lead to a profound consequence, the Government really has no more option and has to put the public interest in priority. For the levy issues, the research also confirms that the Government has no intention to impose any discriminatory levy to the FDHs. But the Government may need to consider how to adjust the MAW into a justifiable level and not to create the burden to the employers.
## Appendix 1

### List of the 41 International Labour Conventions

Applied to the Hong Kong Special Administrative Region

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<td>Labour Statistics Convention, 1985</td>
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<td>Worst Forms of Child Labour Convention, 1999</td>
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Source:
Hong Kong Government, Labour Department Annual Report 2005, Figure 7.1, available at
## Appendix 2

### Number of Foreign Domestic Helpers

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<td>Philippines</td>
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<td>155,445</td>
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<td>6,996</td>
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<td>1,406</td>
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<td>1,269</td>
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<td>746</td>
<td>883</td>
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<td>Singapore</td>
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<td>3</td>
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<tr>
<td>Others</td>
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<td>62</td>
<td>85</td>
<td>84</td>
<td>52</td>
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<tr>
<td>Total</td>
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<td>193,700</td>
<td>216,790</td>
<td>235,274</td>
<td>237,104</td>
<td>216,863</td>
<td>218,430</td>
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Note: Figure refer to those who have a valid limit of stay in Hong Kong as a foreign domestic helper as at the end of that year.

Source: Immigration Department
Appendix 3


<table>
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<tr>
<th>Rank</th>
<th>Country</th>
<th>Population (000's)</th>
<th>Area (sq km)</th>
<th>Density</th>
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<td>Monaco</td>
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<td>Singapore</td>
<td>4,426</td>
<td>692.7</td>
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<tr>
<td>-</td>
<td>Hong Kong SAR (PRC)</td>
<td>6,899</td>
<td>1,092</td>
<td>6,317</td>
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<tr>
<td>9</td>
<td>Taiwan</td>
<td>22,894</td>
<td>35,890</td>
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<td>18</td>
<td>Japan</td>
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<td>India</td>
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<td>Canada</td>
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<td>9,984,670</td>
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Sources: CIA The World Fact Book / US Census Bureau

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