

Rethinking the Global Governance of Migrant Domestic Workers:
The Heterodox Case of Informal Filipina Workers in China

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I. Introduction

I met Emma at a birthday party held at a Miami-style outdoor swimming pool in a metropolitan city in China; the fashionable cocktails were served at the pool and people were flirting and dancing on the side. Around twenty Filipina women occupied one end of the pool. Emma was a woman from the Philippines in her late 30s who had worked for five years as an overseas domestic worker in China, a jurisdiction that prohibits its citizens from hiring foreign domestic workers. Her tourism visa expired one month after her entry and she lost her passport to an agent who promised to sell her a long-term visa. When I met Emma, she was living with

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her mother and her toddler daughter born in China, both without a visa, in a separate apartment provided by her employer and working 8 hours a day five days a week in her employer's home a few blocks away for a monthly salary of 7.5K RMB (~1070 USD).¹

On hearing about my research, Emma asked me: “so you are a lawyer, what do you think is the best law for us?” I gave her the standard lawyer's answer that the government should provide formalization reforms, including special visa programs, to bring foreign domestic workers into legal migration regimes. She, with apparent disappointment, interrupted me: “Really? You think so? You think legal is better for us? But you see, with a legal visa, you are tied to your employer. You cannot change, even if the employer is not good. You cannot fight back when they are not good to you. Now I can change employers if I don't like them. So all of my employers have been very good to me.”²

Emma is one of the estimated 1.4 million Filipina women and more than ten million women worldwide who are working as domestic workers in a foreign country. Meanwhile, her celebration of her illegal status, her presence at this luxurious poolside party, and her migration trajectory through informality not only contradicts our common imagination of an overseas domestic worker as a docile third-country woman tied to somebody else's home, but also problematizes the prescriptions for them by international law and labor advocates.

Large waves of female labor force flow from low-income countries to take up service jobs for upper-middle-class families in affluent metropolitan cities. As the seminal book edited by Barbara Ehrenreich and Arlie Russell Hochschild *Global Woman: Nannies, Maids, and Sex*

¹ I am not claiming Emma's life arrangement is representative of Filipina domestic workers in China here. Most of them don't live with their own family members and for live-in workers, their working hours are longer. Meanwhile, Emma's monthly salary is lower than the average of Filipina workers in S City.

² Interview transcript with Emma. For confidentiality reasons, I use pseudonyms for my informants. I will refer to the informants by their pseudonyms in the following footnotes.

Workers in the New Economy observes, the gendered division of labor, once anchored in the household, is now transforming into one between North and South. The rich nations are increasingly assuming “a role like that of the old-fashioned male in the family—pampered, entitled, unable to cook, clear or find his socks,” while third-world countries have to take up what is traditionally regarded as “women’s work,” often through deploying their working-class women.³ Rhacel Salazar Parreñas describes the phenomenon as an “international division of reproductive labor.”⁴ The similar division also underwrites the more recent rise of affluent cities in Asia.⁵ As many scholars studying migrant domestic workers stress, the workers’ roles, though often hidden and underplayed, are critical to keeping afloat the culture and economy of globalization.⁶ Their remittance is especially crucial to their home countries’ economy.⁷

Despite their contribution to both societies, overseas domestic workers are often found in over-exploitative working conditions with low compensation, amounting to what many accuse as “modern-day slavery.”⁸ The global governance agenda to advance their condition, as advanced by United Nations-affiliated organizations like the International Labor Organization (ILO) and International Organization for Migration (IOM), is divided along the line of formality.⁹ On one side, they adopt a rights-centric approach, through the extension of formal labor standard and formal migration corridor to bring more workers into formality; the key legal tools are labor

³ BARBARA EHRENREICH & ARLIE RUSSELL HOCHSCHILD, *GLOBAL WOMAN: NANNIES, MAIDS, AND SEX WORKERS IN THE NEW ECONOMY* (2003), at 11.

⁴ RHACEL PARREÑAS, *SERVANTS OF GLOBALIZATION: MIGRATION AND DOMESTIC WORK*, 2ND EDITION (2015).

⁵ Aihwa Ong, *A bio-cartography: Maids, neo-slavery, and NGOs*, *MIGR. MOBILITIES* CITIZSH. BORD. GEND. 157–184 (2009).

⁶ PIERRETTE HONDAGNEU-SOTELO, *DOMÉSTICA: IMMIGRANT WORKERS CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE, WITH A NEW PREFACE* (2007); PARREÑAS, *supra* note 4; Ong, *supra* note 5.

⁷ PARREÑAS, *supra* note 4.

⁸ For example, see Anti-Slavery International, “What is Domestic Slavery,” <https://www.antislavery.org/slavery-today/domestic-work-and-slavery/>; Virginia Mantouvalou, *Temporary labour migration and modern slavery*, in *TEMPORARY LABOUR MIGRATION IN THE GLOBAL ERA : THE REGULATORY CHALLENGES* (2016).

⁹ International Labor Organization, C189 - Domestic Workers Convention No. 189 (2011); Global Compact for Safe, Orderly, and Regular Migration (2018).

contract and special legal migration programs. On the other is the association of informality solely with risk and harm, and accordingly an abolitionist agenda for informal and irregular labor migrants, through more punitive legal instruments, such as the anti-trafficking laws.¹⁰

However, the story of Emma, and an estimated 200,000 illegal Filipina domestic workers in mainland China,¹¹ struggles to fit in these orthodox narratives. As an illegal migrant worker working with neither an enforceable labor contract nor a special work visa, Emma has no rights, nor any formal protection from the law. Apart from the risks and human costs well-articulated by the international organizations,¹² however, she is also earning above 1000 USD monthly wage (plus separate housing provided by the employer) and has two flexible rest days per week, far better than the earnings and working condition that most Filipina domestic workers can expect in other Asian jurisdictions where they work legally.¹³ Instead of the common move to educate workers about the law, I ask a question in the opposite direction: what can the international lawmakers and advocates learn from Emma and her fellow Filipina workers in this informal migration corridor?¹⁴

¹⁰ Janie A. Chuang, *Exploitation creep and the unmaking of human trafficking law*, 108 AM. J. INT. LAW 609–649 (2014); Hila Shamir, *The Paradox of “Legality”: Temporary Migrant Worker Programs and Vulnerability to Trafficking*, in PRABHA KOTISWARAN (ED), REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY 471 (2017).

¹¹ The estimate came from a talk given by the Philippines’ Secretary of labor and employment, Silvestre Bello III. See South China Morning Post, “Manila to ask Beijing to legitimise status of up to 200,000 domestic workers illegally on mainland” (Sep.25, 2016);

¹² For example, see ILO, “Formalizing Domestic Work,” International Labor Office Domestic Work Policy Brief, and IOM, World Migration Report 2018.

¹³ For comparison, the average monthly salary for overseas domestic workers in the other major destinations: Singapore 430 USD, Hong Kong 600 USD, and Saudi Arabia 400 USD. See the price quotes from Helper Choice, as a recruiter agency recognized by the ILO for fair practice, helperchoice.com.

¹⁴ Especially, for such a community saturated with the culture of labor emigration to many host jurisdictions, overseas Filipina domestic workers constitute a group of informed comparativists that would enrich our thinking about transnational labor migration. For further discussion about the group, see Section III.A.

Through studying the heterodox case of informal Filipina domestic workers in China, based on my embedded interviews with 36 workers,¹⁵ and the comparison to its real-world alternatives—Filipina domestic workers working under formal migration programs in other Asian jurisdictions, I raise several reflections on the formalization agenda to protect migrant domestic workers, as capsulized by the ILO’s Domestic Worker Convention (c189, hereinafter as the Convention).¹⁶ Resisting the dichotomized assumption that formality, through labor contract and special immigration program, is universally better than informal migration options, I argue that it is crucial to look into the actual distributional consequences of legal and non-legal mechanisms under formal and informal regimes for the workers. Thus the degree of formality cannot be taken as a proxy for the degree of pro-worker arrangement. Substantially, the investigation of this counterfactual case shows that a key arrangement that has been left out from what the Convention advocates for can largely empower migrant domestic workers’ interest. It is namely the elimination of the structural barriers on migrant domestic workers’ market access as set in many formal migration programs’ immigration and work permit laws. Relatedly, I also question the underlying archetype of migrant domestic workers as third-world women of exceptional vulnerability with a universally disadvantaged position in the labor market as well as in the employer’s household.

Once we try to see the regimes of labor migration from the workers’ perspectives, the paradigm shifts on several dimensions. Formal and illegal migration corridors are no longer good apples and bad oranges, but two plausible packages of pros and cons that are worth thorough evaluation—and formality doesn’t always win on every front. A good example in point is that three of my informants ran away from their legal jobs in Hong Kong and Macau Special

¹⁵ For further discussion of the methodology and its limitations, see section IV.A.

¹⁶ ILO, Convention concerning Decent Work for Domestic Workers (c189, 2011).

Administrative Regions (SARs) to work illegally in mainland China for a salary almost double their old ones. The paradigm also shifts from formal rights to the bargaining dynamics in the worker-employer-broker triangle that is happening in the shadow of background rules.¹⁷ Through this new lens, formal rights are one among many contested sources of bargaining power. The contract granting workers legal rights is often embedded in highly coercive background rules—the temporary labor migration programs that set stringent restrictions on workers’ autonomy. Moreover, the limitation on their market power sometimes can render their labor rights hard to realize. In contrast, under certain socio-legal conditions (such as loose enforcement of immigration laws and a lively informal economy), working illegally comes with no rights, but a key bargaining power, the autonomy to change employers and even the structure of the job, enabling the workers to extract more surplus from their labor and more control over their work and lives.

I am by no means the first person making this move to distribution in researching issues related to gender and labor. Many enlightening works have been produced.¹⁸ This move is especially urgent on the issue of migrant domestic workers for one distinct reason: the formal rules for them are extraordinarily unsatisfactory. Indeed, they are often so horrible that working illegally in China, not known for its labor-friendly conditions, can be emancipatory to some degree.¹⁹ Also, by no means do I propose to reverse the formality/informality dichotomy, or even

¹⁷ See Robert L. Hale, *Coercion and distribution in a supposedly non-coercive state*, 38 POLIT. SCI. Q. 470–494 (1923); Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the shadow of the law: The case of divorce*, 88 YALE LAW J. 950–997 (1979); JANET HALLEY ET AL., GOVERNANCE FEMINISM: AN INTRODUCTION (2018), 259–262.

¹⁸ Among many others, Prabha Kotiswaran, *Born unto brothels—toward a legal ethnography of sex work in an Indian red-light area*, 33 LAW SOC. INQ. 579–629 (2008); Chantal Thomas, *Migrant Domestic Workers in Egypt: A Case Study of the Economic Family in Global Context*, 58 AM. J. COMP. LAW 987–1022 (2010); Natalia Ramirez Bustamente, *Bargaining women: negotiating care and work across formality and informality in the Colombian garment industry*, Harvard Law School S.J.D. dissertation (2017).

¹⁹ In adopting this route, I recognize my normative bias on two dimensions: 1) I prioritize the pragmatic interests of the individual actors to more systematic or abstract stakes, such as the value of legalism and state’s sovereign over

that in this specific case the informal workers enjoy all-round benefits from informality. Rather, through studying this case of informal migration corridor and comparing the workers' bargaining power under informal and formal regimes, my normative ambition is to identify rules—legal and non-legal—working in workers' benefits and alternative pro-worker interventions that can enrich the current international pro-labor agenda.

The article proceeds as follows. Section II examines the global governance agenda for migrant domestic workers through an in-depth reading of the ILO's Domestic Worker Convention, a landmark international law instrument for domestic workers worldwide. Section III introduces this article's legal comparativists, a group of migrant domestic workers from the Philippines. It briefly introduces the group based on sociological literature and compares their major destinations' labor and immigration laws. In Section IV, I delve into my case study of informal Filipina domestic workers in China. The four sub-sections respectively discuss the research methodology and the basic setting of the local market; the immigration law on the books and in action in the locality; the key question of bargaining power among workers, employers, and broker in the shadow of illegality; and also the informal market providing service to the workers outside the workplace. Section V compares the worker-employer-broker power dynamic in this informal corridor and a representative formal market in Singapore. The article concludes with some normative reflections on the international agenda to empower migrant domestic workers globally.

border control. 2) Distribution-wise, I am rooting more for the domestic worker who travels thousands of miles from home to work in a foreign jurisdiction in order to support herself and her family, and less for the employers and brokers. I do acknowledge employer's concern—access to cheaper domestic service helps families in care crisis and enables women to gain equal opportunity in the formal job market.

II. The Global Governance of Migrant Domestic Workers: The Formalization Agenda and The ILO's Domestic Worker Convention

The ILO's Domestic Worker Convention and its supplementing Recommendation (r201, 2011) capsulates the emerging international governance agenda for migrant domestic workers. The Convention is a landmark achievement to extend the ILO's "decent work" agenda to millions of domestic workers, who had long been marginalized in labor law discussions. It follows the decent work agenda's dichotomized framework for formal and informal workers. This dichotomy also serves as a normative mark dividing the labor between a labor-oriented decent work agenda advanced by the ILO and an abolitionist agenda as advocated under the anti-trafficking law, which the Convention gives a nod to.²⁰

The Convention seals the victory of a long-fought battle by the transnational feminist and labor activists against the exceptional and marginalized treatment of domestic work within international labor law, because of its entanglement with family and intimacy.²¹ When the issue of domestic work first hit the ILO in the late 1940s and 50s, it was widely regarded as a residue non-modern form of production and as evidence of underdevelopment in many newly decolonizing or independent countries.²² The ILO's tripartite structure, with delegates respectively representing governments, workers, and employers, failed to find a channel to address the domestic workers' causes. The worker representatives were not accountable to

²⁰ ILO, Domestic Worker Convention, Preamble; Adelle Blackett, *The decent work for domestic workers convention and recommendation, 2011*, 106 AM. J. INT. LAW 778–794 (2012).

²¹ This resulted from the entrenched private/public divide or family/market divide in mainstream liberal ideology. See Eileen Boris & Jennifer N. Fish, "Slaves No More": *Making Global Labor Standards for Domestic Workers*, 40 FEM. STUD. 411–443 (2014)., for Family/market divide, see Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. LAW REV. 1497–1578 (1982).; Janet Halley & Kerry Rittich, *Critical directions in comparative family law: Genealogies and contemporary studies of family law exceptionalism*, 58 AM. J. COMP. LAW 753–775 (2010)..

²² Eileen Boris and Jennifer N Fish, "Slaves No More": *Making Global Labor Standards for Domestic Workers*. *Feminist Studies* 40, no. 2 (2014): 411-443, at 417-18.

domestic workers; the delegates representing private entities were equally at loss for a response. The labor feminists, the only group who raised the issue, were constrained by their marginal status in the institution and the fact that they were often employers of domestic workers. The government delegates, from industrialized, communist, and third-world countries, converged on dismissing the proposal to make some labor standards for domestic workers. Both industrialized and third-world countries insisted on the sufficiency of the familial relationship between the servants and their employers to maintain the workers' welfare while communist countries predicted the non-relevance of the domestic worker question under a non-capitalist system.²³ Since then, many labor-standard-making ILO conventions have permitted the exclusion of domestic workers from their scopes through the "flexibility clause."²⁴ This exclusion from the international labor law also corresponds with their exclusion from national labor laws. Up until 2011, though 70% of the countries have some labor protection laws for domestic workers, they often fall outside the labor laws for the general workforce and extend fewer protections.²⁵

Since 1999, the ILO's new "decent work" agenda put the informal economy in the forefront and recognized that the labor structure encompassing domestic work—flexible hours, outside the traditional workplace, part-time or multiple employers, non-or under-coverage by social security, and a high concentration of female workers—is resembling an increasing composition of work worldwide.²⁶ The ILO advocates for a rights-based agenda in response to informal work, promoting legal formalization and the inclusion of informal workers by

²³ Boris and Fish, *supra* note 21., at 419-422.

²⁴ *Id.*

²⁵ Virginia Mantouvalou & Einat Albin, *The ILO Convention on Domestic Workers: from the shadows to the Light*, 41 IND. LAW J. (2012).

²⁶ ILO, Report of the Direct General, Decent Work (1999).s

extending labor standards and other rights at work to them.²⁷ Without denying that the informal economy varies across countries, sometimes brings economic opportunities to the workers, and has a complex relationship with the formal economy and the law, the ILO promotes the transition to the formal economy as the universal solution to realize decent work for all and to achieve inclusive development.²⁸

The Domestic Worker Convention has followed the same route with two distinctive features: the strong presence of the transnational feminist activists and the adoption of a human rights approach.²⁹ Transnational NGOs such as International Domestic Workers Network, a loose informal network in 2011, established a non-conventional presence during the deliberation. Feminist advocates from allied organizations and within the ILO bureaucracy also played a determinant role in the passage of the Convention. For example, Manuela Tomei, Director of ILO's Conditions of Work and Employment Programme, a feminist advocate, played a pivotal role in framing domestic workers' causes under the "decent work" agenda and put together the 2010 report "Decent Work for Domestic Workers," which played an instrument role to the drafting of the Convention.³⁰ Moreover, the Convention followed an unprecedented human rights approach, emphasizing that the rights of domestic workers are universal, stringent entitlements. Its Preamble refers to multiple international human rights instruments and Article 3(1) explicitly stipulates the "effective promotion and protection of the human rights of all domestic workers."³¹

²⁷ ILO, Resolution on Decent Work in the Informal Economy (2002); Kerry Rittich, *Formality and Informality in the Law of Work*, in THE DAUNTING ENTERPRISE OF LAW: ESSAYS IN HONOUR OF HARRY W ARTHURS, EDS. S ARCHER, D DRACHE AND P ZUMBANSEN (MONTREAL AND KINGSTON, MCGILL-QUEEN'S UNIVERSITY PRESS, 2017) 109–123 (2017).

²⁸ ILO, Resolution on decent work and the informal economy (2002); ILO, R204 - Transition from the Informal to the Formal Economy Recommendation (2015).

²⁹ Mantouvalou and Albin, *supra* note 25.

³⁰ Boris and Fish, *supra* note 21., at 426-428.

³¹ Mantouvalou and Albin, *supra* note 25., at 72-73.

It also takes an integrated approach towards human rights, breaking down the division between civil and social rights.³²

Strategy-wise, the activists resorted to appealing to the international society's moral responsibility by providing a unified picture of the domestic workers' reality as poor, unprotected migrants in ways that made denying their rights seem immoral. Invoking personal testimony of an emotional "women's story" in a discourse of love and care, the representatives deliberately aimed at the "hearts" and "tears" of the audience, asking the delegates to look "deep in your heart and your conscience."³³ Other organizing techniques from women's movements were also employed, such as singing, dancing, and bringing pictures of vulnerable women to the convention. The moralizing representation was partially a strategic response to both employer and worker delegates' unfamiliarity with domestic workers' causes within their professional capacity.³⁴

The Convention follows the ILO's route to conceptualize domestic work as "work like any other, work like no other."³⁵ While acknowledging domestic work, as any other work, shall be recognized and protected by the law, it also notes its "sectoral disadvantage" resulting from both historical treatment as exceptional in the labor law and its practical hazard of being situated within the household and personal relationship.³⁶ Specifically, several clauses extend substantial labor standards to domestic workers as "work like any other," including minimum wage, working hours, rest and vacation, protection against discrimination or abuse, social welfare provision, maternity leave, among others, and stipulates formal complaint mechanisms and

³² *Id.*

³³ Boris and Fish, *supra* note 21., 435-36.

³⁴ *Id.*

³⁵ ILO, Decent Work for Domestic Workers: Report IV(1), at 12-14.

³⁶ *Id.*

stronger labor inspections as the enforcement mechanisms.³⁷ Meanwhile, as “work like no other,” the Convention both extends sector-specific provisions, such as industry-specific occupational and safety measures, and recognizes the special compromises in the labor standard. For example, enforcing the labor standard will be subject to legal access to household premises and respect of employers’ privacy.³⁸

Migrant domestic workers were not only central during the deliberation process leading to the Convention, but also in the Convention’s text. Its preamble recognizes that many of the domestic workers “are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and work, and to other abuses of human rights.”³⁹ It also notes many other international legal instruments related to migrants, such as the ILO’s Migrant Worker Convention (c143, 1975) and the UN’s Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol). Article 8 specifically addresses migrant domestic workers. It provides that “national laws and regulations shall require...a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed... prior to crossing national borders.”⁴⁰ In the 2012 publication *Effective protection for domestic workers: A guide for designing labor laws*, ILO explained that for “those among the most vulnerable of the world’s domestic worker population,” a written contract before migration crucially helps them have “a detailed understanding of the work” and “the applicable terms and conditions.”⁴¹ Article 8 also stipulates the right to repatriation at the expiry or termination of the employment contract.

³⁷ Article 11, 10, 13, 14, and article 16, 17.

³⁸ Article 13 and 17.

³⁹ C189, preamble.

⁴⁰ *Id.*, article 8.

⁴¹ ILO, *Effective Protection for Domestic Workers: A Guide for Designing Labor Laws* (2012) at 20.

Article 9 provides an entitlement to hold their travel and identity documents.⁴² The

Recommendation also includes some practices specifically address migrants' concerns: social security transfer, pre-placement visits, and promoting good practices of employment agencies.⁴³

Widely celebrated as a milestone, the Convention lacks the capability to directly change the working condition for workers, as only 28 countries have ratified the treaty by 2020.

Concerning Filipina domestic workers, the Philippines was the second country ratify the treaty, while none of the major destination countries has ratified it. Rather than functioning as a directly enforceable treaty, it serves more as an aspirational document that symbolizes a historical recognition of domestic work as work, and, more importantly, provides guidance and political leverage for activists to advocate more robust pro-worker local reforms under a unified agenda.⁴⁴ Many host jurisdictions have carried out legal reforms in the direction of formalization, though the outcomes so far are only partially satisfactory to the workers.⁴⁵

Here I particularly engage in the discussions of the ILO agenda from the perspectives of the formality/informality dichotomy and the workers' representation.⁴⁶

⁴² Article 8 and 9.

⁴³ R201.

⁴⁴ Boris and Fish, *supra* note 21., at 429.

⁴⁵ Nisha Varia, "Sweeping changes?" *A review of recent reforms on protections for migrant domestic workers in Asia and the Middle East*, 23 CAN. J. WOMEN LAW 265–287 (2011); Manuela Tomei, *Decent work for domestic workers: Reflections on recent approaches to tackle informality*, 23 CAN. J. WOMEN LAW 185–212 (2011); Lorena Poblete, *The influence of the ILO domestic workers convention in Argentina, Chile and Paraguay*, 34 INT. J. COMP. LABOUR LAW IND. RELAT. 177–201 (2018); Sabrina Marchetti, *The Global Governance of Paid Domestic Work: Comparing the Impact of ILO Convention No. 189 in Ecuador and India*, 44 CRIT. SOCIOLOGY 1191–1205 (2018).

⁴⁶ There are other critiques of the Convention that I don't address in the main text. For example, Guy Mundlak and Hila Shamir have raised concern that framing domestic work as "work as no other" might further drift apart domestic workers from general labor protection. See Guy Mundlak and Hila Shamir, bringing together or drifting apart—targeting care work as work like no other; trade unionists are worried that the ILO's turn to a human-right approach as sealed by the Convention would transform the presence of trade unions at the ILO into NGO-types of organizations that operates based on legal expertise rather than workers' membership. See Conversation, *supra* note 31.

A thread of literature reflects on the normative dichotomization of formality and informality as advanced by the ILO Decent Work Agenda, the Trafficking Protocol, and the division of labor between the two.⁴⁷ The dichotomized evaluation focuses on the form of labor arrangement: formality as benefit and protection, informality as risk and peril. The ILO report *Women and Men in the Informal Economy* restates that “informality has a harmful effect on workers’ rights, including fundamental principles and rights at work, social protection, decent working conditions and the rule of law.”⁴⁸ Formality, as a boundary between a decent work agenda to extend protection and an abolitionist one to eliminate extremely bad working condition, also serves as the normative criteria for justified and unjustified exploitation in international law.⁴⁹

In reality, exceptions on both sides of the division arise. While work within the formal arrangement can be in the peril of onerous exploitation, some workers also find positive values in the informal work. For example, Hila Shamir, through studying multiple temporary migrant worker programs, finds that the documented status as constructed by such programs often generates vulnerability to substandard exploitation and trafficking that remains unaddressed under the current international law. Rather, the formal programs are claimed to be the best guarantee against trafficking and risky conditions.⁵⁰ Janet Halley names such systems the “new indenture” where workers from the global South commit themselves to labor for particular

⁴⁷ Blackett, *supra* note 20; Chuang, *supra* note 10; Chantal Thomas, *Immigration Controls and “Modern-Day Slavery”*, in PRABHA KOTISWARAN (ED), *REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY* 212 (2017).

⁴⁸ ILO report, *Women and Men in the Informal Economy: A Statistical Picture* (third edition, 2018).

⁴⁹ Blackett, *supra* note 20; Chuang, *supra* note 10.

⁵⁰ *Id.*

employers or labor bureaus for a specific term and a visa is only valid as long as they honor the terms of their labor contract.⁵¹

On the other side, illegality carries some benefits that are not fully acknowledged under the international consensus. Several sociological studies in the United States, Taiwan, and Israel have found a similar phenomenon that many temporary migrant workers have left their documented status for financial and other benefits in the informal economy. The leap often comes with a reduction of security but a substantial bump in wages.⁵²

Scholars also question the validity of the boundary. Kerry Rittich notices that informality has become a heavily normative term, serving as a proxy for “bad work” in need of intervention. The common use of the term also presumes a fundamental divide between formal and informal work, which rarely reflects reality. She thus urges scholars to refuse this presumption to place formal and informal workers within different conceptual and policy categories.⁵³ Natalia Ramirez-Bustamante’s ethnographic study of female garment workers in Colombia shows that neither is formality and informality dichotomized, nor have workers exclusively engaged only one set of arrangements to meet both workplace and household needs.⁵⁴

Scholars’ also criticize the international agenda’s intervention as insufficient. By proposing to eliminate the use of force, fraud, and coercion through criminalization, the anti-trafficking law legitimates the non-trafficking transnational labor practices as justified by the

⁵¹ Janet Halley, *Anti-Trafficking and the New Indenture*, in PRABHA KOTISWARAN (ED), REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY 179–211 (2017).

⁵² Gordon, *supra* note 17, at 449 footnote 14.17 CLAUDIA LIEBELT, CARING FOR THE ‘HOLY LAND’: FILIPINA DOMESTIC WORKERS IN ISRAEL (2011); Pei-Chia Lan, *Legal servitude and free illegality: Migrant ‘guest’workers in Taiwan*, in ASIAN DIASPORAS: NEW FORMATIONS, NEW CONCEPTIONS 253–277 (2007).

⁵³ Kerry Rittich, *Formality and Informality in the Law of Work*. At 113.

⁵⁴ Natalia Ramirez-Bustamante, *Bargaining Women: Negotiating procreation in the market and at the ‘workplace’: A legal sociological approach to women’s work from a Latin American Perspective*. (Harvard Law School, SJD Dissertation, 2018).

workers' free and unproblematic consent, despite the vast unfair economic distribution involved.⁵⁵ One step forward, the Convention, though it aspires to extend some formal labor standards to the workers, leaves intact, legitimizes, and even promotes the legal rules facilitating the global labor market that unequally distribute powers among the workers and other market players. Most obviously from the perspective of the Asian migrant domestic workers, the Convention fails to address the restrictive immigration regulations that put migrant domestic workers in a substantially worse bargaining position than local workers.⁵⁶ Although it's nearly a universal governance experience for migrant domestic workers that resident and work visas are being issued on the condition of a labor contract for a particular employer and certain legal arrangement which often bind them to substandard treatment and in some circumstances, abusive employment relationship, neither the Convention nor the Recommendation sufficiently tackle it.

The Convention prescribes the pre-departure written contract as the legal mechanism to protect the migrant worker and, besides, outlaws certain abusive employer behaviors like document confiscation. In reality, however, the ability of migrants to exercise any choice in selecting employment before departure is quite restricted. After arrival, however, their contractual vulnerability is exacerbated by the very limited right of workers to terminate contracts with an employer and negotiate alternative employment arrangements without forfeiting the residence and work visa and being exposed to expatriation.⁵⁷ During the deliberation leading to the Convention, labor activists from Asia proposed to target immigration and work permit laws, which they saw as a major obstacle to migrant domestic workers.⁵⁸ A call

⁵⁵ Halley, *supra* note 51.

⁵⁶ Stuart C. Rosewarne, *The ILO's Domestic Worker Convention (C189): Challenging the gendered disadvantage of Asia's foreign domestic workers?*, 4 GLOB. LABOUR J. 1–25 (2013).

⁵⁷ *Id.*

⁵⁸ Boris and Fish, *supra* note 21.

for the “freedom to change employer” was also among the list of workers’ demands collected by Women in Informal Employment Globalizing and Organizing (WIEGO), an NGO serving informal workers global wide.⁵⁹ However, the Convention deliberately takes a limited route not to address the background rules of immigration law, regulating workers only in their relation to a labor market framed as preexistent to laws.⁶⁰

The immigration regulations and the work permit laws often cause obstacles to the enforcement of the formal labor protections that the Convention aspires to advance. Among the enforcement mechanisms provided by the Convention, inspection is largely constrained by the protection of the employers’ private property and privacy rights. Thus the worker’s self-report and active invocation of the formal dispute resolution system is still necessary in most cases, which is especially hard for temporary migrant workers whose immigration status is often at stake. As Jennifer Gordon points out in her study of temporary migrants in American factories, “If the migrant workers complain, and are fired, they are immediately subject to deportation because their visas are valid exclusively to work for one employer. In that sense, the employer can rely on U.S. government enforcement of immigration law as an additional mechanism of control over its labor force.”⁶¹ Not too surprisingly, underreporting of labor rights abuse is very common among migrant domestic workers.⁶²

Another critique concerns the agency of domestic workers. The strategy to represent and self-represent a unified picture of women with exceptional vulnerabilities because of their identities, though was effective in obtaining a unanimous vote for the Convention, raises

⁵⁹ WIEGO, *Informal Workers in Focus: Domestic Workers* (2019).

⁶⁰ Blackett, *supra* note 20.

⁶¹ Jennifer Gordon, *Regulating the human supply chain*, 102 IOWA L. REV. 455 (2017), at 473.

⁶² ASHA D’SOUZA, MOVING TOWARDS DECENT WORK FOR DOMESTIC WORKERS: AN OVERVIEW OF THE ILO’S WORK (2010).

concerns among feminists. Eileen Boris and Jennifer Fish, on-site observers of the Convention, objected that the representation of the domestic workers in the vein of Chandra Mohanty's "typical third world woman," poor, migrant, marginal women in need of protection, echoed the power-laden binary of West and the Other and presumed exceptional vulnerability as the foundation to earn workers their well-deserved labor rights.⁶³ Rhacel Salazar Parreñas raises a parallel critique in her analysis of the anti-trafficking law, where she claimed that the victimization language recasts the migrant domestic workers as perennial victims without agency.⁶⁴

The Convention's presentation of the worker's vulnerability as intrinsic also projects and presumes an essentializing image of the power hierarchy based on workers' identities. The local, upper-middle-class employers are the new dominant patriarch while the migrant, poor domestic worker from marginalized ethnicities the new subordinated woman. Though many of the female migrant domestic workers are living in highly subordinated conditions—some lead to serious even deadly abuses, presuming them to be powerless within the household not only dismisses their agency but also limits the possibility of solutions relying on their agency. Understanding migrant domestic workers' vulnerability as intrinsic also obscures the law's role in distributing power and vulnerability between the employer and the worker through permitting and prohibiting certain actions for one but not the other.

⁶³ Boris and Fish, *supra* note 21., 437-41.

⁶⁴ Rhacel Salazar Parreñas and Rachel Silvery, *The Indentured Mobility of Migrant Domestic Workers: The Case of Dubai*, in Prabha Kotiswaran (ed), *REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY* (2017). Parreñas and Silvery's stance is just one among many the backlash against casting migrant labor in terms of the current trafficking debate among scholars studying migrant labor, see also BRIDGET ANDERSON & JULIA O'CONNELL DAVIDSON, *IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN?: A MULTI-COUNTRY PILOT STUDY* (2003); Sealing Cheng, *Sex trafficking: Inside the business of modern slavery*, 21 *J. WORLD HIST.* 363-368 (2010); PARDIS MAHDAVI, *GRIDLOCK: LABOR, MIGRATION, AND HUMAN TRAFFICKING IN DUBAI* (2011).

Contributing to these threads, this case study, complicating the relationship between law and migrant domestic workers, goes beyond the formality/informality dichotomy to investigate the distributional outcomes in different settings from the perspective of a group of workers who face this choice in the real world.

III. Filipina Domestic Workers as Bargaining Power Comparatists

A. The Agency of Filipina Domestic Workers

The Filipina domestic workers are not only a group of frequent users of the global labor migration regime but also a community of model users. The Philippines has been providing the world with migrant domestic workers, the majority of whom are female, as a matter of public policy. An estimate of 2.3 million people from the Philippines worked as Overseas Filipino Workers (OFWs) in other jurisdictions in 2018, a large percentage of whom, especially female OFWs, work as domestic workers, child and elder caregivers, and other jobs involving care.⁶⁵ The sociologist Rhacel Salazar Parreñas estimated that, as of 2011, more than 1.4 million female migrant workers from the Philippines work as domestic workers in other countries.⁶⁶ While their presence is widely noted in the global north, including the U.S., Canada, Cyprus, Italy, and Netherland,⁶⁷ the top destinations for Filipina domestic workers and caregivers are in Asia. As of 2018, 96.8% of female OFWs in the official statistics work in Asia.⁶⁸

Remittance economy plays an important role in the Philippines' political economy. The Philippine government has consciously trained, brokered, and incentivized its citizens to take up

⁶⁵ It is not denying that an increasingly large portion of the domestic workers are male. Still, the percentage is usually under 10%. See PARREÑAS, *supra* note 3, chapter 6.

⁶⁶ *Id.* Page 3, footnote 13.

⁶⁷ *Id.*

⁶⁸ Philippine Statistics Authority, Overseas Filipino Statistics, available at <https://psa.gov.ph/statistics/survey/labor-force/sof-index> Distribution of Overseas Filipino Workers by Place of Work, Sex and Area 2018

the low-paid jobs in other economies, as an institutional answer to profound poverty and government debt issues, which at the same time also satisfies labor-importing states' demand for temporary migrants.⁶⁹ In the early 1970s, President Ferdinand Marcos initiated the “manpower exchange program,” taking the Philippines into a development strategy heavily depending on the export of labor.⁷⁰ The Philippine state, constantly suffering from a balance of payments deficit and vast external debts, actively encourages labor emigration as a means of furthering capital accumulation.⁷¹ It is also typical for Southeast and South Asian countries to follow the prompting of the World Bank to establish labor-export programs.⁷² In 2009, the remittances sent by OFWs amounted to US\$19 billion, which was 11.2% of the Philippines' annual GDP.⁷³

At the same time, the Philippines state has resorted to multiple channels to better protect OFWs, such as bilateral labor treaty negotiations, promises of extraterritorial intervention, blacklisting countries with extraordinary human right violations, and other endeavors to the extent that had earned it a reputation as the “model sending state” to global labor migration.⁷⁴ The landmark Migrant Workers and Overseas Filipino Act of 1995 (RA No. 8042) was aimed at “establishing a higher standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress,” said the Philippine Overseas Employment Administration (POEA).⁷⁵ For example, the Philippines has imposed a ban since 2018 on the deployment of all Filipino workers to Kuwait after the body of a domestic worker was found in a

⁶⁹ ROBYN MAGALIT RODRIGUEZ, *MIGRANTS FOR EXPORT: HOW THE PHILIPPINE STATE BROKERS LABOR TO THE WORLD* (2010).

⁷⁰ *Id.*

⁷¹ JAMES A. TYNER, *MADE IN THE PHILIPPINES* (2004), at 24.

⁷² Stuart C. Rosewarne, *The ILO's Domestic Worker Convention (C189): Challenging the gendered disadvantage of Asia's foreign domestic workers?*, 4 GLOB. LABOUR J. 1–25 (2013).

⁷³ Patrick R Ireland, *The limits of sending-state power: The Philippines, Sri Lanka, and female migrant domestic workers*, 39 INT. POLIT. SCI. REV. 322–337 (2018).

⁷⁴ RODRIGUEZ, *supra* note 69.

⁷⁵ *Id.*

freezer, with signs of torture and strangulation.⁷⁶ It has also appointed officers in embassy and consular offices to represent the interests of migrant workers and established several “safe houses” for women workers fleeing abusive employers.⁷⁷

Though the government offers consistent support through embassies abroad, the majority of the protection occurs before the worker’s departure. The pre-departure measures mainly consist of three parts: regulations of private broker agencies, certifying individual employment contracts, and mandatory pre-departure training programs. Apart from the various standards to a new brokerage license, the POEA also prohibits the Filipino broker agencies from charging domestic workers placement fees. In reality, however, a large amount of fees is still being charged under other names.⁷⁸ In addition to regulating the agencies, the state reviews the individual overseas employment contract as compliant with the Philippines’ labor laws’ minimum wage and working condition requirements.⁷⁹ In 2011, the minimum monthly salary was raised to US\$400. POEA has set an additional minimum age requirement (23 years old) for domestic workers.⁸⁰ The workers are also required to pass mandatory skill and health tests, and to attend general pre-departure orientation seminars and women-specific ones organized by NGOs in cooperation with the government.⁸¹ For domestic workers, the mandatory seminars also include their immediate families.⁸² The NGO-led pre-departure programs are designed to construct OFWs, especially female domestic workers, as “empowered” neo-liberal subjects of economic competitiveness and entrepreneurship, to navigate the risky workplace overseas

⁷⁶ Ireland, *supra* note 73.

⁷⁷ Rosewarne, *supra* note 75, at 7.

⁷⁸ Rule V, section 51. RODRIGUEZ, *supra* note 69.

⁷⁹ Law XX.

⁸⁰ RODRIGUEZ, *supra* note 69.

⁸¹ Ong, *supra* note 5.

⁸² Rule II, Rule IV, section 211.

saturated with potential gender-based harms.⁸³ When a potential worker is compliant with all of the steps and clearing all of the administrative charges, the government issues an Overseas Employment Certificate that permits the exit of the worker at airports.⁸⁴

Still, the state's dependence on revenue from labor exportation constrains its ability to further protect migrant workers' interest.⁸⁵ The Filipino government's action suggests their priority in regulating OFWs is still sustaining the labor outflow and remittance inflow.⁸⁶ The Philippines government also has conflicted interest in promoting the formal migration channels. To ensure stable diplomatic relations with labor-receiving governments, the government has a strong incentive to make certain its citizens comply with those countries' laws, especially their immigration laws.⁸⁷ However, systematic corruption in the Philippines' government also facilitates the irregular flow of workers.⁸⁸

Another layer of relevant background rules for its labor export-oriented economy is the Philippines' socially conservative family law. As of 2020, the Philippines is the only UN-affiliated country besides Vatican City that does not allow legal divorce, with a limited exception to its Muslim minorities. Contraceptives and access to abortion are also not available across the population.⁸⁹ Many women become mothers at an early age. As of 2018, one in five girls age 19 in the Philippines is either pregnant or has given birth. On one hand, the nation has an abundant

⁸³ Anna Romina Guevarra, *Managing 'Vulnerabilities' and 'Empowering' Migrant Filipina Workers: The Philippines' Overseas Employment Program*, 12 SOC. IDENTITIES 523–541 (2006).

⁸⁴ Rule IX, section 72.

⁸⁵ Ireland, *supra* note 73.

⁸⁶ RODRIGUEZ, *supra* note 64, at 117-19.

⁸⁷ *Id.*, at 117.

⁸⁸ Rosewarne, *supra* note 56.

⁸⁹ United Nations Population Fund, *The State of World Population* (2018).

young workforce; on the other, many women have the responsibility to support their kids from a young age.⁹⁰

After decades of massive labor emigration and state' investment, some commentators have observed that a "culture of migration" is now robustly established in the Philippines.⁹¹ As multiple ethnographers noted, Filipina domestic workers are not just victims of globalization.⁹² Rather, they embody "new subjectivities of globally mobile and feminized workers."⁹³

Contrary to common expectation, Filipina domestic workers are not always coerced out by poverty or unemployment in their own country. Instead, many of them identify as middle-class women from the Philippines seeking financial security or wealth accumulation that is not feasible even for middle-class families in the country.⁹⁴ Two social markers signify their socio-economic class in their own country. First, they are often over-educated for the job of unskilled caregivers. Second, they are sometimes both "maids" at work and "madams" hiring maids in their home country.⁹⁵ They also deviate from the common belief of migrant workers as docile workers who are too illiterate in rights discourse to protect their interests through legal means. Indeed, in Hong Kong, Filipina domestic workers have earned a reputation as including educated skillful workers with high resistance to over-exploitation, compared to migrant domestic workers from other south-east Asian countries.⁹⁶

⁹⁰ *Id.*

⁹¹ Rochelle Ball & Nicola Piper, *Trading labour–trading rights: the regional dynamics of rights recognition for migrant workers in the Asia-Pacific*, in TRANSNATIONAL MIGRATION AND WORK IN ASIA 227–248 (2006), at 131.

⁹² NICOLE CONSTABLE, *MAID TO ORDER IN HONG KONG: STORIES OF FILIPINA WORKERS* (1997); 17 CLAUDIA LIEBELT, *CARING FOR THE 'HOLY LAND': FILIPINA DOMESTIC WORKERS IN ISRAEL* (2011); PARREÑAS, *supra* note 4.

⁹³ 17 LIEBELT, *supra* note 92.

⁹⁴ PARREÑAS, *supra* note 4; Anju Mary Paul, *Stepwise international migration: A multistage migration pattern for the aspiring migrant*, 116 AM. J. SOCIOL. 1842–86 (2011).

⁹⁵ Which is also a shared characteristic of foreign domestic workers global wide. See HONDAGNEU-SOTELO, *supra* note 6.

⁹⁶ Hsiao-Chuan Hsia, *The making of a transnational grassroots migrant movement: A case study of Hong Kong's Asian Migrants' Coordinating Body*, 41 CRIT. ASIAN STUD. 113–141 (2009).

Scholars have found that Filipino migrant workers have developed numerous individual and community strategies to navigate the global labor market. One is the so-called “stepwise international migration trajectory.”⁹⁷ A sub-group of workers were found to be consciously working their way up a hierarchy of destination countries and accumulating sufficient migrant capital in the process so as to eventually gain legal entry into their preferred destinations.⁹⁸ Entering the informal market through running away from their legal employers is another observed strategy in the jurisdiction where it is feasible.⁹⁹ Workers also adopt passive everyday resistance techniques, such as deference in front of their employers and gossiping and ridiculing them with friends.¹⁰⁰ The communities of fellow Filipina women are providing crucial support networks across jurisdictions.¹⁰¹

With an ample repertoire of community knowledge about different markets and comparatively strong abilities to navigate the system, Filipina domestic workers constitute a strong case to study labor migration governance. However, it would be exaggerating to say that they are shopping around destination countries with full information. The decision to migrate always has contingent factors.¹⁰²

Several specific features of this population also factor their experience in the global migration regime. First, most of the Filipina domestic workers working in other Asian countries don’t long for permanent settlement in the jurisdiction where they work, differing from many

⁹⁷ Paul, *supra* note 94.

⁹⁸ *Id.*

⁹⁹ Lan, *supra* note 52; 17 LIEBELT, *supra* note 52.

¹⁰⁰ Kayoko Ueno, *Strategies of resistance among Filipina and Indonesian domestic workers in Singapore*, 18 ASIAN PAC. MIGR. J. 497–517 (2009).

¹⁰¹ Though some research also suggests that the community is selective in providing help to new members. See Anju Mary Paul, *Good help is hard to find: the differentiated mobilisation of migrant social capital among Filipino domestic workers*, 39 J. ETHN. MIGR. STUD. 719–739 (2013).

¹⁰² Paul, *supra* note 94.

foreign domestic workers in the US and Europe.¹⁰³ Instead, their typical life plans consist of serial labor emigration to different jurisdictions or repetitively to the same one, followed by returning home or emigration to the West for good.¹⁰⁴ As Nicole Constable observes about Filipina domestic workers in Hong Kong, they've often learned "to make themselves at home, away from home."¹⁰⁵ Second, remittances play an essential role in the worker's life. Though often migrating as an individual, labor migration is often an economic strategy of a household.¹⁰⁶ Sending remittances back is widely understood as fulfilling the woman's duty as a member of the family and often as a mother. Through performing what traditionally is perceived as "women's labor" in a foreign household, the migrant domestic workers simultaneously contravene the traditional division of labor in their home family by stepping into the role of breadwinner. On a cultural level, it is both a threat to the traditional Filipino family and reinforces its persisting cultural value of mutual obligation among kin.¹⁰⁷ Thirdly, Filipina domestic workers value relational quality with their employers. Many of them are willing to accept slightly lower pay or work in a less desirable jurisdiction if they can find a good employer that "treat her as a family."¹⁰⁸

B. A Cross-jurisdiction Comparison of Temporary Labor Migration Programs

In this section, I look at the formal labor migration programs in the Asian jurisdictions where Filipina domestic workers most often go to, specifically, Israel, Saudi Arabia, and United Arab Emirates (UAE) in the middle east and Hong Kong, Singapore, and Taiwan in East Asia.

¹⁰³ See HONDAGNEU-SOTELO, *supra* note 6; CATI COE, THE SCATTERED FAMILY: PARENTING, AFRICAN MIGRANTS, AND GLOBAL INEQUALITY (2013).

¹⁰⁴ PARREÑAS, *supra* note 3, page 12.

¹⁰⁵ CONSTABLE, *supra* note 50, at page 224.

¹⁰⁶ LIEBELT, *supra* note 39, at 59.

¹⁰⁷ PARREÑAS, *supra* note 4., 75-79.

¹⁰⁸ *Id*; Parreñas and Silvery, *supra* note 30.

Through this “thin” cross-country comparisons, I discover the shared structure among these temporary labor migration programs and thus the Singapore example I am going to look at in Section V has some representation value beyond that specific jurisdiction. Without trivializing the substantial differences in distribution the specific legal arrangements can and do make, a common feature underwrites the legal infrastructure: the law sets rigid restrictions on workers’ market behaviors in exchange for substandard legal protections, with the threat of visa revocation and repatriation. Reversing the general liberal legal principle for citizens that when prohibition runs out, permission starts, for temporary workers, when permission runs out, prohibition starts. This comparison reminds us of the law’s institutional baggage for domestic workers that they are often very light on protection while heavy on disciplinary regulation of the industry and of immigration.¹⁰⁹

Temporary labor migration programs, also referred to as “guest worker” programs, aim to add workers temporarily to a country’s labor force without adding permanent immigrants to the population.¹¹⁰ The Economic Policy Institute’s research report and recommendations to the UN’s Global Compact for Migration have raised the warning that the rules and structures of such programs are “leading to extreme vulnerabilities and exploitation of guest workers” so that the system is “too broken to repair.” Among the many reasons contributing to workers’ vulnerabilities, the report finds specifically that “guest workers are usually tied to one job and employer by contracts and visas, which makes them inherently vulnerable.”¹¹¹

¹⁰⁹ As another scholar notices, many of laws over domestic workers can trace back to the colonial history and the English law of servitude. Shireen Ally, *On Laws, Rights and Conventions: A Provocation*, 13 INT. FEM. J. POLIT. 457–461 (2011).

¹¹⁰ Economic Policy Institute, *Temporary labor migration programs: Governance, migrant worker rights, and recommendations for the U.N. Global Compact for Migration* (2018)

¹¹¹ *Id.*

Indeed, this is true for all of the six countries compared here.¹¹² In addition, all of these countries have a set of rules for foreign domestic workers separate from other migrant laborers. Most significantly, all the jurisdictions attach stringent restrictions on the workers' freedom to change employers in the local market. A total prohibition on employer change was still good law in Saudi Arabia as recently as 2017.¹¹³ Even when countries reform to allow changing employer, it provides limited legitimate grounds for doing so and imposes prohibitively burdensome procedures that often involve a review by the immigration department, the violation of which leads to potential deportation. Specifically, Singapore requires permission from both the current and the new employers to transfer the worker's work permit before and even after the expiration of a contract.¹¹⁴ In Taiwan, by law, workers can initiate a transfer only "for reasons not attributable to the worker," such as the death or the emigration of the person she has cared for.¹¹⁵ In practice, the Taiwanese administration since 2008 often interprets the clause to include the scenario where the old employer, the new employer, and the worker all agree on the transfer.¹¹⁶ In Hong Kong, premature termination by either party has to come with a one-month notice or a one-month salary penalty. Besides, the worker can stay in the jurisdiction only for two weeks after the termination. During that time, she has to identify a new sponsor of the work visa and get

¹¹² Among all the major destination countries for Filipina domestic workers, only less than five exceptions, including Canada and Italy, provide pathway to permanent residency for overseas domestic workers. Such destinations also set higher entrance barrier. For example, Canada requires a professional nurse degree. The application fee is also as high as 15,000 USD. See Paul, *supra* note 94..

¹¹³ Ministry of Labour and Social Development Kingdom of Saudi Arabia Minister's Office Ministerial Decision No. 605 (2017); Republic of China Employment Services Act, article 53.

¹¹⁴ Singapore Ministry of Manpower, Work Permit Conditions, at <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/work-permit-conditions>

¹¹⁵ Republic of China Employment Services Act, article 59.

¹¹⁶ 顧玉玲(KU Yu-Lin), 跛腳的偽自由市場: 檢析台灣外勞政策的三大矛盾 (Crippled Free Market: On the three paradoxes in Taiwan's policies on foreign labor)- 台灣人權學刊, 2013; Republic of China Ministry of Labor, Report On Protection of the Rights for Foreign Workers in Taiwan, (October 19, 2001; Revised in January, 2020), at 26.

the immigration authority's approval to change sponsors. In practice, changing employers without returning to the home country is almost impossible.¹¹⁷ Saudi Arabia, in its 2017 regulation, has allowed the worker to be transferred to a new employer in several specifically designated circumstances of employers' violation of the contract, such as non-payment of salary for three months, or assignment of dangerous work. The worker's termination, however, has to be permitted by the Ministry of Labor.¹¹⁸ In Israel, the foreign caregiver must give "special, longer, prior written notice before leaving his employment," which can be up to one month, and the change must be registered with the Population and Immigration Authority before the worker can start with a new employer. Changing employers is under other restraints, such as the maximum number of changes.¹¹⁹ UAE, in a different route of reform in response to human rights organizations' criticisms, creates new visa programs for a wide range of domestic workers¹²⁰ to be sponsored by the government-licensed labor centers in lieu of the employer family. Under such programs, both parties have the right to no-fault termination without affecting the workers' visas.¹²¹ The workers, however, can be charged a fee as high as Dhs8,000 (~2,180 USD) at the end of the two-year contract for re-employment.¹²²

¹¹⁷ HK SAR Immigration Department, Employment Contract for a Domestic Helper Recruited from Outside Hong Kong, clause 4. clause 12; HK SAR Immigration Department, "Online Notification of Premature Termination of Employment Contracts of Foreign Domestic Helpers," at <https://www.gov.hk/en/residents/employment/recruitment/terminateforeignhelper.htm>

¹¹⁸ Ministry of Labour and Social Development Kingdom of Saudi Arabia Minister's Office Ministerial Decision No. 605 (2017).

¹¹⁹ Israel Population and Immigration Authority, Foreign Workers' Rights Handbook (2013), "Special Restrictions Applying to Foreign Caregivers Wishing to Change their Place of Employment," at page 16.

¹²⁰ "housemaid; private sailor; watchman and security guard; household shepherd; family chauffeur; parking valet workers; household horse groomer; household falcon care-taker and trainer; domestic labourer; housekeeper; private coach; private teacher; babysitter/nanny; household farmer; gardener; private nurse; private PRO; private agriculture engineer; cook." see UAE domestic helpers law.

¹²¹ UAE Federal Law No. 10 of 2017, clause 23.

¹²² Gulf Business, UAE reveals new fee packages for hiring domestic workers, at <https://gulfbusiness.com/uae-reveals-new-fee-packages-hiring-domestic-workers/>

Aside from these restriction on job transfers, the jurisdictions usually provide extremely short grace periods for the workers to legally stay in the jurisdiction after leaving a job. Consequently, termination of the employment contract by either party often effectively leads to the workers' removal from the jurisdiction. Apart from the aforesaid two-week period in Hong Kong, Singapore grants the workers just one week.¹²³ Jurisdictions who use foreign domestic workers predominantly for eldercare give the workers longer periods to stay after the termination since it happens often beyond anybody's control. Taiwan gives the worker up to two months to find a new employer if the reason to leave the previous employer is not attributable to her and its social welfare department also operates a state-run recruitment platform to connect eligible employers and workers.¹²⁴ Israel also gives a relatively generous length of 90 days after termination to secure a new placement.¹²⁵

The jurisdictions also set legal obligations on employers to report premature termination to the immigration authority and effectively enforce the restriction on the workers, ruling out the possibility for many workers to enter informal labor markets. In Hong Kong, not informing the immigration authority about worker's overstay may lead to prosecution for aiding and abetting the worker to breach a condition of stay, and, on conviction, to a fine of HK\$50,000 (~6380 USD) and imprisonment for 2 years.¹²⁶ Singaporean employers have a similar legal duty to cancel the work permits within 7 days from the termination or expiry. Employers in Singapore must post a security bond of S\$5,000 (~3,670 USD) with registered financial institutions at the beginning of the employment, which becomes forfeitable if the domestic worker runs away or

¹²³ Employment of Foreign Manpower (Work Passes) Regulations 2012.

¹²⁴ Republic of China Ministry of Labor, Report on Protection of the Rights for Foreign Workers in Taiwan, (October 19, 2001; Revised in January, 2020), at 26-27.

¹²⁵ *Id.*

¹²⁶ Hong Kong Ordinance section 41.

the employer fails to cancel the work permit in time.¹²⁷ In Taiwan, each eligible household has the quota to hire only one foreign caregiver and thus the household's failure to report is punished by not being able to legally hire a new one.¹²⁸ UAE also requires employers to report workers who are absent from their jobs without a legitimate reason within five days to the Human Resources and Emiratization Ministry.¹²⁹

Immigration laws also impose strict restrictions on which sectors workers can participate. All of the jurisdictions have temporary work visa programs specifically designated for domestic workers. In Hong Kong, Taiwan, and Singapore, the immigration rules significantly differ between low-income workers, including domestic workers and construction workers, and foreign elite manpower, which can lead to permanent residency.¹³⁰ Even among the countries that operate parallel temporary labor migration programs for different sectors, such as Israel and UAE, changing sectors without re-entry is not allowed.¹³¹ Some jurisdictions further restrain workers to a specific sub-category of domestic work. Both Israel and Taiwan grant permission to hire an overseas caregiver as a form of welfare provision only to families with an acute need for care, including elders and people with disabilities. The permission is granted by the welfare department on the basis of a medical evaluation.¹³² This restraint substantially reduces the pool of employers for the workers and complicates the procedure to change employers.

¹²⁷ Singapore MOM, "Security bond requirements for foreign domestic worker," <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/security-bond>

¹²⁸ Ku, *supra* note 114.

¹²⁹ UAE, Domestic Labour Law.

¹³⁰ Pei-Chia Lan, *Legal servitude and free illegality: Migrant 'guest' workers in Taiwan*, ASIAN DIASPORAS NEW FORM. NEW CONCEPT. 253–277 (2007); Singapore Immigration Checkpoint Authority, "Becoming a Permanent Resident"; HK SAR, CAP115 Immigration Office Section 2(4); Chieh-Hsuan Wang et al., *The Foreign Domestic Workers in Singapore, Hong Kong, and Taiwan: Should Minimum Wage Apply to Foreign Domestic Workers?*, 51 CHIN. ECON. 154–174 (2018).

¹³¹ Israel Population and Immigration Authority, Foreign Workers' Rights Handbook; UAE Domestic Worker Law.

¹³² For Taiwan, see Wang et al., *supra* note 43; for Israel, see Hila Shamir, *The state of care: Rethinking the distributive effects of familial care policies in liberal welfare states*, 58 AM. J. COMP. LAW 953–986 (2010)..

Many jurisdictions also set restrictions on the structure of the domestic work, based on the prototype of “a status as bound laborers whose legal residency is contingent on their continued live-in employment with one citizen sponsor.”¹³³ In Hong Kong, Singapore, and Israel, legal residency is contingent on workers’ living in the employers’ households, the exemptions to which have to be approved by the immigration authorities. In Saudi Arabia, a live-in status is not explicitly required by the law but is presumed in its standard labor contracts.¹³⁴ And except for Israel, separate lodgings for domestic workers are rare in reality.¹³⁵ In Hong Kong and Singapore, Workers are prohibited from working in a different residence other than the registered address and also from taking part-time jobs.¹³⁶ Both legislatures are at least partially departing from a benevolent incentive to protect the workers from some employers’ abuses, such as lending the worker to a relative or giving the workers extra manufacturing jobs in the family business.¹³⁷ In addition, Singapore specifically prohibits workers from starting their own business.¹³⁸

Besides restraints on market participation, countries like Singapore also impose tight surveillance regarding the migrant workers’ body and sexuality. An overseas domestic worker will be deported once she becomes pregnant, contracts sexually-transmitted diseases, or marries a Singaporean citizen without immigration authority’s permission. To enforce the law, female foreign domestic workers are required to undergo a medical examination every six months for pregnancy.¹³⁹

¹³³ PARREÑAS, *supra* note 3, at 20.

¹³⁴ Saudi bilateral labor treaty with India.

¹³⁵ CLAUDIA LIEBELT, *CARING FOR THE ‘HOLY LAND’: FILIPINA DOMESTIC WORKERS IN ISRAEL* (2011), chapter 5.

¹³⁶ Israel Population and Immigration Authority, *Foreign Workers’ Rights Handbook*; HK SAR Immigration Department, *Conditions of Employment for Foreign Domestic Helpers: A General Guide*; Singapore Ministry of Manpower, *Work Permit for Foreign Domestic Worker*.

¹³⁷ CONSTABLE, *supra* note 92.

¹³⁸ *Id.*

¹³⁹ Singapore Immigration Regulations 21; Ministry of Manpower, Security bond requirements for foreign worker, <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/security-bond>

In the past decade, in response to transnational advocates and human rights organizations' advocacy, many jurisdictions are extending more labor rights to migrant domestic workers, which, however, always fall short of the protection of the local workforce and other migrant sectors.¹⁴⁰ As a general trend, the host jurisdictions prefer standard employment contracts to legislatures as the means to extend rights.¹⁴¹ Except for Hong Kong, no jurisdiction protects overseas domestic workers under the general labor law, but legislation specifically designated to domestic workers or foreign workers.

The two focal points of labor rights are minimum wage and weekly rest day. UAE and Singapore set no minimum wage for domestic workers while others set it lower than the general minimum wage (Israel and Taiwan) or the minimum wage for nationals (Saudi Arabia).¹⁴² Even in Hong Kong, the minimum hourly wage for the general workforce is 37.5HKD (~4.85 USD). If a domestic worker works longer than 30 hours per week, her minimum rate is also below the general one.¹⁴³ The job, meanwhile, has to surpass the minimum monthly salary in the Philippines' general labor law to qualify for emigration, which is much lower than that for local workers in the destinations.¹⁴⁴

Weekly rest day is another focal point that often leads to workers' rallies and organized protests.¹⁴⁵ In all of the six jurisdictions, the domestic workers enjoy the legal right to 24 consecutive rest hours per week, subject to two qualifications. The first is whether it can be contracted away with additional payment, which UAE, Israel, and Singapore explicitly permit.

¹⁴⁰ PARREÑAS, *supra* note 4.

¹⁴¹ Varia, *supra* note 45.

¹⁴² Wang et al., *supra* note 130.

¹⁴³ *Id.*

¹⁴⁴ RODRIGUEZ, *supra* note 69.

¹⁴⁵ Taipei Times, Foreign caregivers rally for days off, Jun 11, 2018.

The second is whether the rest hours happen outside the employers' home. This makes a huge difference as the workers are often subject to overtime requests if they cannot leave. In UAE and Saudi Arabia, all of the 24 hours usually happen inside the employer's home and thus lack effective enforcement mechanisms.¹⁴⁶ In East Asian countries, the common practice is a household curfew that allows the worker to spend 6 to 12 hours outside and the employers often hold the belief that they are not allowed by the law to let the worker spend the night outside their house.¹⁴⁷

Even though the labor rights in the books are already stringent, the legal structures often put the workers in a harder position to enforce their rights in action. Though the worker and the employer are bound by the same contract, their enforcement mechanisms are fundamentally disparate. Without denying that employer's violation sometimes leads to consequences beyond contractual remedies, such as fines, forfeiture of bonds, and being blacklisted from future hiring by immigration authority or the workers' country, it is much more likely for the worker to face additional fatal immigration law consequences, such as revocation of work visa or denial of visa extension and ultimately deportation. In some jurisdictions, like Hong Kong, Saudi Arabia, and Singapore, the worker can be removed from the jurisdiction due to the employer's early termination. Against the background that it is often the worker who bears the high immigration cost, including but not limited to the recruitment fees, sometimes in the form of bonded debt,¹⁴⁸ it is quite challenging to report labor rights violation with the risk of being removed from the

¹⁴⁶ Masako Ishii (Ed.), *Asian migrant workers in the Arab Gulf States: The growing foreign population and their lives* (2019).

¹⁴⁷ Margaret Fenerty Schumann & Anju Mary Paul, *The Giving Up of Weekly Rest-Days by Migrant Domestic Workers in Singapore: When Submission Is Both Resistance and Victimhood*, 1 SOC. FORCES 24 (2019).

¹⁴⁸ Many countries' regulations of brokers are not thoroughly enforced, either. Though both the Philippines and Singapore's laws set the maximum broker fee as one-month salary, many brokers charge up to 6 months' salary for the whole package. Maria Platt et al., *Debt, precarity and gender: male and female temporary labour migrants in Singapore*, 43 J. ETHN. MIGR. STUD. 119–136 (2017); Paul, *supra* note 94.

country. Despite many jurisdictions' efforts to enhance formal dispute resolution mechanisms, such as hotlines and formal tribunals, employers' violation of laws remains rampant and under-reported.¹⁴⁹

The migrant domestic worker contract is, in some circumstances, also enforced on the workers by criminal law. For example, the standard employment contract provided by Hong Kong authority stipulates that the contract clauses "will form part of the conditions of stay to be imposed on the Helper by the Immigration Department upon the Helper's admission to work in Hong Kong under this contract. A breach of one or both of the said conditions of stay will render the Helper and/or any aider and abettor to criminal procedure."¹⁵⁰ In Israel, abandonment of a helpless or incapacitated person without prior notice and/or in circumstances in which alternate help is not available may be a criminal offense and may lead to prosecution and/ or deportation.¹⁵¹

Not so surprisingly, many workers who had entered through a legal corridor are coerced to escape into an informal labor market where such a market exists. Sociologist Pei-Chia Lan has found that Filipino migrant workers in Taiwan were running away from the employers/ visa-sponsors for higher wages and more freedom in their work life at the cost of losing health care coverage and legal labor rights.¹⁵² Claudia Liebelt also found a lively community of informal Filipina workers in Israel who lived a vivid weekend life. She also found that entering illegality meant a rise in the workers' standard of living rather than a decline because they were free to

¹⁴⁹ Varia, *supra* note 37; Human Rights Watch, *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East* (2010).

¹⁵⁰ HK SAR Immigration Department, *Employment Contract for a Domestic Helper Recruited from Outside Hong Kong*, at <https://www.immd.gov.hk/eng/forms/forms/id407.html> clause 4.

¹⁵¹ Israel Population and Immigration Authority, *Foreign Workers' Rights Handbook* (2013), "Special Restrictions Applying to Foreign Caregivers Wishing to Change their Place of Employment," at page 16.

¹⁵² Lan, *supra* note 52.

take up live-out work and demand higher wages from the employers. However, the community vastly shrank after the Israeli government's mass deportation campaign targeting informal foreign caregivers.¹⁵³

IV. Illegal but Free: The Case of Filipina Domestic Workers in China

With an understanding of their real-world alternatives, this section turns to the Filipina domestic workers in China and their heterodox experience in an informal migration corridor. It answers the following questions: how do Filipina domestic workers enter, stay, and work in mainland China despite the ban on overseas domestic workers? And more importantly, how does informality affect the workers' bargaining power vis-à-vis employers, broker agents, and other stakeholders, in and outside their workplace?

A. Methodology: Sampling, Limitation, and the Field

Filipina domestic workers in mainland China, due to the nature of their illegal status and their job, constitute a difficult-to-reach population.¹⁵⁴ There also exists no formal statistics or official reports about the population. Thus, instead of using a randomized sample, I developed my sample of informants through snowballing, a method which is often used in qualitative fieldwork for subjects with similar characteristics.¹⁵⁵

I entered the social world of Filipina domestic workers through one Filipina nanny friend who had worked in China for over 9 years and had been a highly respected member of the community. She introduced me to her friends as a student from Harvard researching about their

¹⁵³ CLAUDIA LIEBELT, *CARING FOR THE 'HOLY LAND': FILIPINA DOMESTIC WORKERS IN ISRAEL* (2011), at 135.

¹⁵⁴ Before the Filipino Labor Minister called to attention to the over 200,000 Filipina domestic workers in China in his speech in 2016, little attention has been paid to the population. Since, some media coverage had reported about the industry. *See* South China Morning Post, "Manila to ask Beijing to legitimise status of up to 200,000 domestic workers illegally on mainland" (Sep.25, 2016); Sixth Tone, "China's Undocumented Filipino Housekeepers Eke Out Risky Living" (Jun. 11, 2018).

¹⁵⁵ H. RUSSELL BERNARD, *RESEARCH METHODS IN ANTHROPOLOGY: QUALITATIVE AND QUANTITATIVE APPROACHES* (2017).

life and encouraged them to allow me to tag along in their outings. Between June and August 2019, I was regularly invited to their group outings in S City, a metropolitan coastal city, on weekends and their off days. Every weekend was a new adventure. We went to karaoke bars, artificial beaches, a peach farm, a nearby island, and so on; we have celebrated many birthdays and some engagements; I have also experienced a police checking with them. Due to the nature of snowball-sampling, the limitation is obvious: all of my informants have some connections to the community and my sampling has left out those without access to the community or rest days.

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Overall I conducted semi-structured interviews with 45 workers, nine of whom were omitted due to incomplete information, and multiple casual group discussions.¹⁵⁷ During individual interviews, I asked the informants to tell their own stories about working in China and other jurisdictions, with follow-up questions based on their own narratives. Aside from individual interviews focusing on personal experiences, I also discussed general issues with informants in the group meetings, like the benefit and harm of holding a visa, the new opening of job opportunities, the price of an agent, and so forth. Topics like these had been frequently discussed in the community so that sometimes they would initiate the discussion themselves. All of the interviews were conducted in English. Due to the informants' reluctance, I did not record most of the conversations but rather transcribed them immediately after the interviews based on handwritten notes. In addition, I also interviewed two broker agents working with Filipina domestic workers. I have attempted multiple interviews with the employers but they all declined

¹⁵⁶ However, the similar limitation applies to almost all researches about overseas domestic workers, including large-scale quantitative researches about documented domestic workers in other jurisdictions with formal migration programs. See MARTIN RUHS, *THE PRICE OF RIGHTS: REGULATING INTERNATIONAL LABOR MIGRATION* (2013); ANJA WESSELS, MADELINE ONG & DAVANIA DANIEL, *Bonded to the System: Labour exploitation in the foreign domestic work sector in Singapore Report* (2017).

¹⁵⁷ The sample size is also comparable to sociological studies of Filipina domestic workers in other jurisdictions.

for privacy concerns. For the informants' privacy and safety, I use pseudonyms for both individuals and the location.

As many studies noticed, I found a diverse composition of the group with some shared characteristics.¹⁵⁸ All of the informants are female workers of Filipina nationality. Except for one Muslim informant, the rest of the group all go to Catholic churches. Their ages range between 23 and 55 (average: 38.9). The lengths of their stay in China ranges between fresh arrival to 13 years (average: 6.2). Twenty out of thirty-six informants had working experience in other Asian jurisdictions before, six in middle east countries and sixteen in East Asia (including Hong Kong and Macau SARs). Only five of them held a valid visa issued by the Chinese government at the time of interviews.¹⁵⁹ Their socio-economic backgrounds also diverge widely: some were struggling to feed all of her children while others have multiple houses and shops in the Philippines. Three workers reported experiencing of physical abuse in China, one of them sexual abuse.¹⁶⁰

At the time of the interview, 23 of them had dependent children to support and 10 of them were supporting other family and relatives. Only four told me that they were working solely for their savings. They commonly sent 4-5K RMB (USD 570-710) home every month. Seventeen of them were in a legal marriage, four of whom were openly separate from the husband.¹⁶¹ One informant's husband was working in S City and another regularly comes on business trips. One was married to a Chinese man and ran away from his family. Five told me

¹⁵⁸ For Filipina domestic workers in Israel, See 17 LIEBELT, *supra* note 39, at 57-58.

¹⁵⁹ One tourist visa, three work visa, and one S-1 family companion visa.

¹⁶⁰ One was abused by her Chinese husband; the other two employers. Cannot rule out underreport; but sex was not so much tabooed in the community communication.

¹⁶¹ Divorce is hard under the Philippines' law. The only option is annulment and it costs both money and time. See Jeofrey B. Abalos, *Divorce and separation in the Philippines: Trends and correlates*, 36 DEMOGR. RES. 1515-1548 (2017).

that they had white boyfriend(s) in S City and three had Filipina girlfriends. Six of them had other close family members in S City.

Here I also introduce the basic composition of this sub-market of overseas domestic workers in S City and the major stakeholders. Though not well known to the public, multiple informants estimated that there existed around 100,000 Filipina domestic workers in S City alone, with a few thousand undocumented domestic workers from other countries, such as Myanmar and Indonesia.¹⁶² The ethnicity, class, and domestic/foreign relations in the locality twists the international presumptions. As an emerging economy, China has gone through rapid economic development in the past few decades and witnessed an emerging upper-middle class. However, both the jurisdiction and this upper-middle-class community are fairly new players to globalization, which brings unexpected twists to the employer-worker dynamic. Only a few decades ago, thousands of Chinese citizens migrated to take up low-paid jobs in South-East Asia, the Philippines included. The recently enriched society now has a thirst for the embodiment of globalization, a new wave of incoming foreign workers. Though the employers are much richer in monetary measurement, some of them lack the cultural capital in the globalization. For example, many of them don't speak English but crave an English education for their kids. Whereas the Filipina workers can fluently use and teach basic English, typical local workers cannot understand it. Their language skills earned them two distinct client pools: the foreign elite workers' families who often don't speak Chinese and upper-middle-class Chinese families who crave an English education for their young children in addition to basic care. Thus many Filipina domestic workers are not only substituting the labor of the local women but bringing in some

¹⁶² S City is estimated to be one of the two cities in mainland China with large Filipina domestic workers. A few Filipina domestic workers work in other regions as well.

unique skills to the household and the market.¹⁶³ As a result, the average salary for a Filipina nanny is 10-15% higher than a Chinese nanny in the local market.

Their salary is also high based on other metrical comparisons. The market salary for a live-in Filipina nanny in S City is 8k to 10K RMB (USD 1135-1415 USD). It's more than triple the S City's minimum wage (2480 RMB or 352 USD) and higher than the city population's average wage (6500RMB or 923 USD). Their salary is also higher than the average salary of Filipina domestic workers in other Asian jurisdictions, which is 640 USD in Hong Kong, 560 USD in Taiwan, 500 USD in UAE, and 370 USD in Singapore. The only Asian market yielding a higher wage is Israel with above 1270 USD.

Between the Filipina workers and the employers stand two types of agents, the "transnational recruiter" and the "local headhunter." A "transnational recruiter," usually consisting of two branches, one in the Philippines and the other in China, connects a worker in the Philippines and an employer in China. He also facilitates the immigration of the worker. The mechanism follows the common "fly now, pay later" practices recruiting Filipina domestic workers into other Asian jurisdictions.¹⁶⁴ After online interviews and sometimes a deposit fee, the recruiter arranges for the worker when she is still in the Philippines to sign a two-year-long contract to work for the specific employer. The contract usually stipulates a salary 25% lower than the market wage and shorter weekly rest hours. (The wage is still often better than other jurisdictions.) The recruiter also charges a high fee in the term of 50 to 75% deductions from the first six-month salaries, which usually amounts to \$2,500-\$2,800. The deduction is directly transferred by the employer. In exchange, the recruiter takes care of the visa application,

¹⁶³ It's more than just language. Also connection to foreign countries. Maria's example: when her employer family was a visiting scholar in US, she connected them to her uncle who's an American citizen. He helped them settling in the City. During the time, her employer also found her a satisfying tutor job.

¹⁶⁴ PARREÑAS, *supra* note 4; Lan, *supra* note 52..

transportation, and initial training and medical examination. In the process, he often controls the workers' travel documents. The worker is escorted during transportation and her travel document is often passed on to the recruiter's local office.

In contrast, a "local headhunter" connects employers and workers who are already in China. A headhunter uses the same recruitment mechanism for local domestic workers. He often posts available jobs on social media. Interested workers are put into connection with employers. After a three-day trial time, the agent provides a standard domestic worker contract only when the parties request one.¹⁶⁵ On the formation of an employment relation, the agent charges the employer a commission fee equal to the worker's one-month salary (8K to 10K RMB, or 1135-1415 USD) while the worker pays 20-30% (~2K RMB or 285 USD). Both pay the fee directly to the headhunter. Seventeen of my informants entered the country with the help of a transnational broker, and twenty-two has used local headhunters. Informal networks, such as friends and former employers, remain a strong alternative way to find jobs.

In addition, another informal market provides service to Filipina workers to support their everyday livelihood. Among them are remittance service, landlords, drivers, and all kinds of traders, as is to be introduced in section IV.C.

B. Contingent Deportability: Immigration Law on the Books and in Action

In this section, I narrate the law as written and as experienced by my informants, whose experience, to be sure, might not be generalizable.¹⁶⁶ The prohibition read as certain in the legal text is only contingently enforced on the ground through a fragmented immigration law

¹⁶⁵ If either party was unsatisfied, the worker left with the daily salaries.

¹⁶⁶ For example, their experience substantially differs from that of undocumented African and Arabic traders in Southern China, as recorded in *The World in Guangzhou*, a 2017 ethnography about illegal immigrants in China. According to the authors, Nigerian Igbo traders were disproportionately harassed and pursued by the police and their illegal immigration status caused them substantial everyday inconvenience. GORDON MATHEWS, LINESSA DAN LIN & YANG YANG, *THE WORLD IN GUANGZHOU: AFRICANS AND OTHER FOREIGNERS IN SOUTH CHINA'S GLOBAL MARKETPLACE* (2017), chapter 5.

enforcement system. This contingency enables the Filipina domestic workers to enter, stay, and work in the country for years, and, at the same time, also leaves them vulnerable in their encounters with law enforcement.

Both the rules that they are trying to comply with and the ones the workers are violating shape their strategies and their bargaining power in at least two ways. First and foremost, immigration law creates and distributes costs and risks. As complete compliance with the immigration regulation is only possible in exceptional situations, whether, how much, and how to comply with the visa regulation is a judgment call based on a combined calculation of the cost of compliance, the probability of being caught, and the consequence after being caught, as perceived by the individual against a shared perception in the community. Second, the risk of being caught and the distribution of negative consequences in the scenario of getting caught also redistribute bargaining leverage among the workers, the employer, and the brokers.

To start with, working in mainland China as a Filipina domestic worker violates laws in both countries. On the host country's side, China's immigration law in principle doesn't extend employment visas to domestic workers. An enactment issued by multiple ministries in 1996 prohibits individuals and individual businesses (a legal category for small businesses) from hiring foreign workers.¹⁶⁷ Since 2016, with the permission of the Ministry of Public Security, a few municipalities, including S City, have exceptionally allowed "long-term elite foreign workers" to hire foreign domestic workers, an exemption that is rarely invoked.¹⁶⁸

¹⁶⁷ PRC Ministry of Labor et al, Administration of Foreigners Working in China (1996), clause 33. I shall press here that this is another example of Family Law Exceptionalism.

¹⁶⁸ These domestic workers are issued S-1 visa, a category for family companions, which traditionally only covered elite foreign workers' family members. PRC Exit and Entrance Administration Law (hereinafter as EEAL), Article 6-10. Less than one thousand domestic workers, according to a news report, had obtained a visa under this exception as of 2017. S City Gov, "It's more convenient for foreign elite workers to hire Filipina helpers!" at <http://www.shanghai.gov.cn/nw2/nw2314/nw2315/nw17239/nw23858/u21aw1220470.html>

All but three of the workers I interviewed entered the country on one-month tourist visas. Workers can either apply for a tourist visa by themselves, which requires certain knowledge about the system but is possible for informed individuals, or resort to a transnational recruiter. As China is becoming stricter on visa issuance, the workers increasingly find a recruiter necessary.¹⁶⁹ Though most workers simply overstayed their tourist visa, some managed to maintain a misclassified business or work visa, to work quasi-legally in the country.¹⁷⁰

For the majority of workers who are working without visas, they undoubtedly violate domestic law. Exit and Entrance Administration Law (EEAL) stipulates the legal consequence for all parties involved. For overstaying the visa and employment without a visa, the law stipulated fines up to 10,000 RMB (~1,412USD), and detention up to 15 days for the worker, and fines up to 100,000 RMB (~14,115 USD) for the employer and the agent.¹⁷¹ For violations of EEAL and other Chinese laws, the foreigners “may be repatriated;” repatriated persons shall not be allowed to enter the jurisdiction for 1 to 5 years after the repatriation.¹⁷² All the penalties

¹⁶⁹ Interview with recruiter II; group discussion with Anita and friends.

¹⁷⁰ A business visa requires an invitation from the cooperating corporation accompanied by an introduction about the corporation, which leaves immense discretion to the immigration officials. See EEAL, Article 7; The workers, with the help of visa agents, often shop around different ports of entry to find the “soft spot” to try luck or a bribe for the visa. Such visa agent usually charges a fee of 10 to 30k RMB (3-3.5 months’ salaries) for a one-year visa, which is commonly covered by the employer. As the Chinese government is exerting tighter control over immigration, the cost for a business visa dramatically increased in the past three years, See Group discussion with Anita and friends, and Group discussion with Erika and friends. The work visa sets a much higher criterion for the employer. China’s work visa system is designed for corporation jobs only. An immigration official issues a work visa based on a work permit that a corporate employer obtains from local government. In the application, the employer has to prove that its “special need” for the specific position cannot be fulfilled by local workers. In practice, local governments often grant the permit only to large-scale corporation employers. Consequently, if the domestic worker’s employer also owns a large-scale corporation, they can get a work visa for the worker. In such a scenario, the visa is completely contingent on working for this specific employer. See interview with recruiter 2 and group discussions with Alex and friends.

¹⁷¹ a fine up to 10K RMB and/or 5 to 15 days of detention and a 2k to 10K fine for persons harboring the overstaying foreigners. EEAL, Article 80. For illegal employment, it provides for a 5K to 20K fine on illegal foreign workers, with an increased penalty of 5 to 15 days of detention in serious circumstances; a 10K per hiring fine to employers of illegal foreign workers, with a cap of 100K; and a 5K fine per introduction to the intermediary agent, with a cap of 50K for individual agents and of 100K for entities. EEAL, Article 62.

¹⁷²

above are for violation of administrative regulations. The transnational recruiter is the only party who might be criminally liable.¹⁷³ Section 6-3 of the Criminal Code criminalizes various acts related to human smuggling, subject them to up to 7 years' incarceration, or life imprisonment in serious offenses.¹⁷⁴

While the statutes seem certain and non-negotiable, immigration law enforcement is uncoordinated and sporadic. The procedural rules in EEAL contribute to this fragmentation. EEAL stipulates that only police or immigration bureaus *above the county level* have the authority to investigate immigration-related activities, including initiating an on-site interrogation.¹⁷⁵ This clause immunizes the Filipina domestic workers from much of the risk imposed in everyday life, not because the law is strictly followed by the law enforcement, but because it provides little incentives of recognition for street-level enforcement officials to go after illegal overstays. A worker made a brilliant observation that “if you see an officer speaking English (very likely an immigration policeman), you know you are in the system. Before that, you can always escape, tip, or pray to God, and God might give you another chance.”¹⁷⁶ Up to the time of my interviews in 2019, the Filipina community finds that illegal overstay *per se* is not on the top of the law enforcement's radar. Filipina workers did occasionally encounter street-level law enforcement personnel in routine census checking and other police activities, such as the search of private churches. In their encountering with the police that workers can strategize to

¹⁷³ I corroborate the legal text with a search of the online adjudication database. (<http://www.court.gov.cn/wenshu.html>) Under the search terms of “the Philippines” and “domestic workers,” the only case records I found were agents brokering the workers into the country.

¹⁷⁴ PRC Criminal code section 6-3.

¹⁷⁵ EEAL, article 58.

¹⁷⁶ Sia.

avoid deportation, such as staying vigilant, bribery, invoking sympathy, among others.¹⁷⁷ Most of the police the workers encountered did let them off the hook.¹⁷⁸

Even if a worker has already been swallowed into the immigration control system, some workers still managed to stay. For example, Elinor managed to get off the hook twice during her 10-year stay in China. The first time, after she was reported by a fellow Filipina worker, immigration policemen came to her door. She “explained the situation to the police with tears, saying that ‘I am staying for my kids and I need to earn money for my family.’” They “had mercy” and let her go. The second time, the police decided to deport her. But the detention center was full at the time and she had blood hypertension issues. Not wanting to take responsibility for her potential health issues, they sent her home and told her to wait for a phone call. Not hearing from them for a month, she just changed her phone number, moved to another boarding house, and continued working in the city.¹⁷⁹

The Philippines also impose restrictions on workers’ movement across borders. POEA regulates overseas employment at three stages: first, it licenses private placement agencies in the Philippines; second, it accredits foreign employers and verifies each job order before permitting the worker’s departure; third, it also sets pre-departure clearance for the workers, including skills

¹⁷⁷ In fact, I myself encountered a law enforcement officer when I went on a fruit-picking trip with my informants. The fruit farm happened to be next door to an incarceration institution. Suspicious on seeing a group of English-speaking foreigners, the farmers called the prison police. An official turned up at the farm and silently observed us as we unloaded, weighed, and paid for the peaches, and didn’t speak a word until we left in a taxi.

¹⁷⁸ Here is one worker--Aida’s recent encounter with a police investigation: “My landlord texted us that there was checking in the area. Another Filipina nanny living here stole something from her employer. The police are looking for her. The landlord said that we should be vigilant. But I didn’t believe him and went downstairs to wash my clothes. Then there came 3 officers! The officers knocked at our door and shouted to us ‘open the door.’ So we had to open the door. We had five women in the whole apartment. One jumped out of the window and hailed a taxi. Another Filipina had a visa so she went to them first. But they turned to me demanding a ‘passport!’ I was so scared; the other two girls were already crying. So I acted calm and showed my passport to the police. They checked the front page with my name, said ‘okay!’ and gave it back to me. ‘Just like that?’ It’s just like that. They checked everybody’s names and let us go. They were good guys. They said nothing.” Aida.

¹⁷⁹ Elinor.

testing, medical examination, and compulsory pre-departure seminars.¹⁸⁰ Many migrant workers and their recruiters contravene at least the second and third sets of rules. The legal consequence for the former is to be stopped at the border and the latter, administrative fines, and removal of licenses.¹⁸¹

The Philippines's Consulate in S City also plays a discretionary role regarding possible support for the workers. The Consulate issues a travel document when a worker reports a lost passport (often in her process of leaving a transnational recruiter), without asking about the reasons. It also renews expired passports without checking the visa pages. Moreover, it also organizes community events, including national elections, that are open to all Filipina workers. Workers on overstay status find these practices empowering in maintaining their independence and legal identity. At the same time, the Consulate refrains from actively intervening in the repatriation process, striking a subtle balance with the border control officials.

Despite the loose enforcement and other informal support, the workers, although they acknowledged that deportation was rare by then, experienced fear and stigma because of informality. Staying vigilant was the most common concern in their daily life outside their employers' households. During the weekend parties, the sight of a policeman in the public often touched some nerves and the groups sometimes avoided certain locations in fear of police. Some workers, especially those from the better socio-economic background, had concerns to discuss their immigration status with families and friends back at home. "I cannot tell them at first. And

¹⁸⁰ POEA Rules and Regulations, Part II, Rule VI.

¹⁸¹ Only one of my informants had been actually stopped by the Filipino emigration officer at the border due to lack of an employment certificate. But the Filipino restriction does enter some workers' calculations for migration strategies. Even when the worker has mis-categorized Chinese visas to travel across borders, they're more deterred to return to the Philippines. See interview with Danny.

they didn't understand even when I did. 'Why are you still traveling here and there on weekends when you're illegal? Why aren't you scared?' they asked me," said Gabriella.¹⁸²

C. Bargaining in the Shadow of Illegality

Now I turn towards the key question of workplace bargaining power. This section follows the literature on bargaining power and background rules.¹⁸³ It also draws lessons from contract theorists about the non-legal enforcement mechanisms of contract.¹⁸⁴ Under this framework, the players are not so much governed by law as conditioned by it. The stakeholders' bargain with each other in the predictive range of their individual and collective guesses about the legal consequences of their action or non-action and accordingly speculate their bargaining power vis-à-vis each other.¹⁸⁵ Though the stakeholders are not always antagonistic, the bargaining framework emphasizes the role of reciprocal threats of coercion as strategies to bargain and to enforce the bargain, as enabled or disabled by layers of legal and non-legal rules.¹⁸⁶ In Filipina domestic workers' case, the weekend community gatherings serve as a crucial site where the workers define the value of their labor, explore the background rules, and discover, discuss, and to some extent, enforce their bargaining strategies in this informal market.¹⁸⁷ In this section, I first identify the major background rules of bargaining. Then I discuss what the workers are bargaining for and the repertoire of workers' bargaining strategies.

¹⁸² Gabriella.

¹⁸³ For a summary of the literature and its applications, see Hale, *supra* note 13; Duncan Kennedy, *The stakes of law, or Hale and Foucault*, 15 LEG. STUD F 327 (1991); Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the shadow of the law: The case of divorce*, 88 YALE LJ 950 (1978); HALLEY ET AL., *supra* note 13 at 256-66; LIBBY ADLER, GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM (2018).

¹⁸⁴ David Charny, *Nonlegal sanctions in commercial relationships*, HARV. LAW REV. 373-467 (1990); Lisa Bernstein, *Opting out of the legal system: Extralegal contractual relations in the diamond industry*, 21 J. LEG. STUD. 115-157 (1992).

¹⁸⁵ Mnookin and Kornhauser, *supra* note 17.

¹⁸⁶ Hale, *supra* note 17.

¹⁸⁷ This is true in other East Asian jurisdictions where Filipina workers are allowed to congregate on Sundays. See CONSTABLE, *supra* note 92; Schumann and Paul, *supra* note 147.

One key message that saturated in workers' discussions is that, with contract and immigration enforcement afar in the background and with every player reluctant to involve the formal authorities, she can exit the employment relationship without severe legal consequences if she finds it unsatisfactory. Working illegally means working without their immigration status attached to a specific employment contract. Consequently, they can move among employers and between different types of employment away from the law's explicit disciplinary role. The workers have identified that this specific leverage to change their jobs substantially enhances their bargaining power. This leverage is again and again identified as empowerment by the worker themselves: "no visa means free. It's free for the employers and free for us too. They can choose us and we can choose them. If I don't like them, I will change. (Job change) is normal here."¹⁸⁸ "Some of us are lucky to find a good boss, who treats us like families. If we are not lucky and the boss is too bad, here we can simply quit them."¹⁸⁹

A community norm that enables many job changes is the information gathering and sharing in the group. The job opportunities outside their current employment are commonly discussed at group gatherings and sometimes persuaded onto the fellow worker who has a bad employer according to the group. To a certain degree, to switch from a less-than-average employment relationship is not only a possibility but also a norm. Complaints about bad treatment from the employers to the group often lead to suggestions of job openings on the market. Sometimes the women start blaming and pushing interviews onto the worker if she sticks to her bad employer.¹⁹⁰ Since employment also means a home for many live-in domestic

¹⁸⁸ Nancy.

¹⁸⁹ Eugene.

¹⁹⁰ Group discussion with Erica and friend.

workers, the independent lodging and informal support network to be discussed in the next section enhances the possibility of job changing.

Now I introduce the surplus that the workers are bargaining for with other players. I conceptualize “surplus” as utilities that have value to the workers and the employers. It can be both quantitative and objective (salary) and qualitative and subjective (“I am treated as a family”). The worker’s surplus can be in tension with the employer’s (salary again) or a win-win situation with both being better off (the employer and the worker get along well).

The most obvious surplus metrics are the salary and rest hours. The baseline in the City is 8,000 RMB and 24 consecutive hours per week outside the employer’s home. If the employment renders salaries or rest hours falling short of the baseline, the workers need some extra-standard treatment to stay in it and also to justify her staying in the employment to her peers, such as free separate housing¹⁹¹ and extra short working hours.¹⁹² Aside from the two basic metrics, workers’ satisfaction with their work is also illustrated in relational aspects with their employers that surmount measurable standards, or in a common saying in the community, whether “they treat me like a family.”¹⁹³

“Being treated like a family” is both a subjective feeling and a collective evaluation by her group. In other words, a group of friends shared a consensus on who had the best employer. One common dimension is the level of respect the worker receives from the employer, whether she is treated as an equal family member enjoying similar freedom. Workers enlist specific details in everyday life as signs of (dis)respect, such as whether she is dining together with the family, whether she can watch videos on the phone in front of the employer, whether she can go

¹⁹¹ Emma.

¹⁹² Shelly.

¹⁹³ This is also well recorded in other ethnographies about Filipina domestic workers, see PARREÑAS, *supra* note 4. At 9

out during working hours, and so on. One gesture the workers appreciate as extra-standard treatment is if the employer asks the nanny to teach the child some words of her native language. All of these non-monetary factors enter the workers' calculation about whether to stay with the employer. One worker said she quit her previous employer after she was repetitively assigned urgent tasks, with her employer failing to deliver the promise of a coherent schedule.¹⁹⁴ Another worker kept a record to herself the incidents of disrespect, such as locking her out, and returning home late without previous notification. "I gave them four strikes. But they somehow managed to cross the line four times in one month." She left the employer soon after that.¹⁹⁵ Quitting has been an efficient way of eliminating disrespectful employment relationships.

Aside from the employer's treatment, the worker also takes into account her own preferences about the household that she prefers to live in among the possible options she might have. In this way, their autonomy in changing employers is also a freedom of family formation. By finding a family she likes better, the worker increases her surplus from the employment relationship without causing more cost to the employer. Here are some common preferences the workers have: the size of the household, the (non-)existence of a grandma, the age of the kid, level of privacy, etc. One key preference mentioned by many is the ethnicity of the employer, embodying different family cultures the workers feel identified with. Some workers prefer culturally traditional Asian families that don't perpetuate the stereotype of a sexually available Filipina woman and respect her relationship with her husband.¹⁹⁶ Meanwhile, others embrace Western families with more amicable employers, less disciplinary rules, and more independent children.¹⁹⁷

¹⁹⁴ Coco.

¹⁹⁵ Meghan.

¹⁹⁶ E.g. Frida and Meghan.

¹⁹⁷ E.g. Adele and Marian.

Now I move on to the bargaining power structures and the community's repertoire of bargaining strategies.

In terms of their bargaining positions, workers can be broadly divided into two categories, those who are under the transnational recruiters' first contracts ("first-comers") and those who come without transnational recruiters or who are not under the first contract ("freelancers"). As mentioned, the first-comers' salaries under the first contract is usually a quarter less than the freelancers' wage, which is perceived by the community as the "market wage." The worker also owes the recruiter the debt of their commission and immigration cost, which is enforced through the wage deduction by the employer. Moreover, this is the period that the worker suffers more from fraud and coercion, excessive strategies from the employer and the recruiter to keep the worker in the contract, and has limited access to the community and thus the bargaining strategy repertoire. The contract often contains strict clauses, such as "no use of cell phones in the first three months" or "two off days in one month" (the norm in the local market was 24 hours off per week.) Other coercive strategies not written in the contract were also invoked to prevent the workers from running away from both the employer and from non-payment of the debt, such as passport confiscation, arranging the worker's off hours on Saturday instead of common Sundays,¹⁹⁸ controlling the Wi-Fi in the house,¹⁹⁹ putting the Filipina in the same room with another Chinese nanny,²⁰⁰ and so forth. Fourteen workers out of seventeen who had come through transnational recruiters mentioned that the first employer was the worst, or even "the only bad family" they had in China.²⁰¹

Here is Elsa's drastic experience of her first employer: "I signed the contract in the

¹⁹⁸ Regina.

¹⁹⁹ Elsa; Pearl.

²⁰⁰ Pearl.

²⁰¹ Rosemary.

Philippines. They told me they would give me only 2k RMB per month (after deduction) to work in F City (a provincial city). I worked in Kuwait before. So I thought 2k was fine. I didn't know about the high salary in China then. The employer was bad to me. They didn't give me Wi-Fi. Other things I can live without but life without Wi-Fi is impossible. The Wi-Fi machine was only on between 8 and 10 in the evening. My work usually finished at 9:30 or 10 so it was impossible for me to use it. They only paid me 500 RMB and sent back the rest of my salary to my parents. If I asked for cash from them, they would ask me what stuff I want and buy it for me instead of giving me money.”²⁰²

The transnational brokers often use fraudulent and coercive behaviors that add to the workers' exploitative conditions in their first contract. Many agents provide false descriptions of the job to the workers before departure²⁰³ or teach the employers tricks to control the workers.²⁰⁴ The brokers were often reluctant to allow the workers to change employers. However, after running away happened more often, the brokers became more willing to transfer the worker to a new employer without any extra charge once she complained.²⁰⁵

Despite all the coercion from the employers and brokers, running away was a very common strategy among first-comers. Indeed, it was so common that a recruiter told me that she would warn the employers of this risk in advance if they insisted on hiring a newly arrived worker.²⁰⁶ An informal industry consisting of local headhunters and drivers, or “Filipina's friends,” are out there ready to assist runaways. As a Filipina nanny is expected to earn a considerable salary after running away, the “friends” are happy to help her with transportation in

²⁰² Elsa.

²⁰³ Two of 17 workers who used transnational brokers were told they were going to work legally and another was lied to about getting an office lady job.

²⁰⁴ Janice.

²⁰⁵ Wendy and Jade.

²⁰⁶ Recruiter 1.

exchange for 50% of her one-month salary (4K RMB, ~570USD). Almost every informant I knew had the contact number of at least one “Filipina’s friend” and were usually happy to introduce them. As a result, for a newly arrived worker, acquainting one fellow Filipina is usually enough for runaways. Elsa in the previous story, for example, ran away within 6 months after connecting to a Filipina in S City through a mobile app for Filipina workers.

Better informed workers were prepared for the runaway scheme even before their arrival. For example, Eugenia ran away from her first employer before they ever met. “I hadn’t started working but I knew they were not good. In the instructions they sent me, they asked me to wear facial masks while cleaning the house. Am I disease or what? So I decided to run away before I started working in their house. I had the passport with me after passing the border. I asked a friend to connect me to a local agent (a headhunter). They drove a car and picked me and another Filipina up and connected me to a good employer. Normal pay and normal off days and no 6-month salary deductions.”²⁰⁷ More than one worker mentioned that it was not the particular individual that made their first employment the worst, but the sub-market power structure embodied in the form of sub-market salary and wage deduction. “They (the employer family) were actually good persons and did nothing wrong as an employer. But I had to run away because the wage gap was so large.”²⁰⁸

Their illegal status, paradoxically, made their runaway easier. The non-existence of a prospective long-lasting legal visa, a potential surplus, reduces their incentives to stay longer in the contract and to repay the debt. More importantly, the lack of an immigration law system in support of the financially onerous contract disempowers the employer and the agent to enforce the contract against the migrant domestic workers with the state’s power. This, of course, doesn’t

²⁰⁷ Eugenia.

²⁰⁸ Pearl.

eliminate the possibility of extralegal strategies to self-enforcement, such as holding the travel documents. There are particular socio-legal conditions, such as the Filipino consulate's travel document policies, that make running away less costly.

In fact, some first-comers with the knowledge of the unenforceability of the contract do choose to finish the contract with their first employer and leverage the market salary to her advantage. For example, Yulia, who was one year into her first contract, decided to stay with the first contract even if the salary is 25% below the market baseline: "My family is good. I have my own room in the apartment. I don't need to sleep with the child. This is very important to me, privacy. When I finish my work after 8:30 or 9, I just go back to my own room. I need some family time (on video calls) too. Also, they always ask what I need when they go shopping for themselves. 'Do you need lotion or shampoo? What brand?' They are very nice to me and I am like a family. I have told my employer that they have to give me a raise after two years. They agreed. I know others have like 8k or 9k a month, right? 6k is too low."²⁰⁹

As for freelancers who haven't entered through the transnational recruiter or who are working outside their first contract, they have developed a broad variety of bargaining strategies leveraging both her role as an indispensable caregiver in the employer's family and against her alternative opportunities in the market.

Some bargaining strategies come from within the household. It's worth noticing that many workers are more than a passive service-provider inside the household; rather, they have some authority in reshaping other household members' behaviors, which is often established through their close relationship with the child, who is well cherished by all family members.²¹⁰

²⁰⁹ Yulia.

²¹⁰ This bargaining strategy within the family is not unique to the Filipina domestic workers in this informal market. Ethnographies about Filipina domestic workers in Singapore also document similar strategies. See Nirmala's work.

Authority in the household per se is a surplus that the worker values, and it simultaneously constitutes the worker's power to establish a better working environment for herself. For example, Erika's employer's family is composed of a picky "madam," a quibbling "granny," a silent "sir," and a protective "boy". The madam and her granny are always picky and at odds with Erika. "But after our fights, the boy always came to me, not his mother or granny: 'my mother is stupid. Don't mind it.' Once the granny was being picky again and the boy yelled: 'stop talking, granny! I need a quiet room for homework.' So she stopped."²¹¹ Another worker mentioned using her language skills as a weapon to alter the dynamic in the family. She proposed to the female employer to eliminate Chinese speaking in the family during weekdays to foster an English language environment for the child, efficiently silencing an antagonistic granny.²¹²

A more market-oriented strategy is to keep their options open by maximizing their information about job opportunities through keeping in connection with local headhunters and keeping an eye on fellow workers' posts, and in some scenarios receiving job interviews without leaving the current job.²¹³ An opportunistic worker colluded with one local headhunter to change jobs every few months so that the headhunter can earn additional commission fees from the employers.²¹⁴

Indeed, some workers explicitly exerted her power as an active participant of an informal labor market on one end and a member of an inter-dependent household on the other, in order to extract more surplus from the employer, improving the quantitative as well as the relational aspect of her working condition. For example, Alex had left and returned to the same employer

²¹¹ Erika.

²¹² Maria.

²¹³ Cecilia, Kate.

²¹⁴ Jane.

three times to get the condition she wanted: “For the first two years, I didn’t have off days. The madam only allowed me to get out for a few hours every week. After another fight, I left them to work for another family. Madam begged for me back. She sent me videos of the two boys (I was caring for), crying and asking for me. ‘Please come back. The boys cannot live without you. We cannot live without you.’ She begged on the phone. I was too attached to the two boys so that I went back. She also gave me a salary raise. From 4k to 6.5k and now 8k. She also agreed to give me 24 hours off per week and flexible hours during the work. Now we are good. We are *finally* like families.” (emphasis by the author)²¹⁵ It’s through exerting this power not to be part of the family that she was able to make the employer into a responsible family member that treats her with respect and an employer that pays her a better wage: “like families.” It is also worth noticing that the employer, in reverse, leveraged the worker’s attachment to the child to keep her within the family.

The freedom to change employers also enables quick exit as a compromising way to reduce abuse, though the limited incidences in my sample cannot survey its effectiveness on a large scale. For example, after narrowly escaping a sexual assault by the male employer when the female employer was on a business trip, Anita contacted several agents and took online interviews for jobs in other cities. When the female employer returned home a week later, Anita politely told her employers that she needed to pack everything and fly back to the Philippines. Rejecting her employer’s offer of a lift to the airport, she called herself a cab to the train station and started a new job in another city.²¹⁶

The informality also enables some workers to develop an alternative work arrangement and thus to have a household of their own in the city. Three of my informants worked live-out

²¹⁵ Alex.

²¹⁶ Anita.

while eight did part-times with multiple households. Ming, who switched to part-time arrangement two years ago, explained her work with a calculator in her hand, managing her hours as a micro-entrepreneur. “It’s more money (doing part-times than live-ins) if all of my time is filled. I charge 50RMB per hour. Right now I got 8K RMB per month easily if I work 8 hours a day. The live-in nannies also earn 8K RMB, but if you consider the long hours, their hourly rate is only 25 RMB. Part-time jobs mean I have to clean more houses than live-ins but I have the time 7 to 10 p.m. to myself, that’s my time with my family (on video calls).”²¹⁷ Part-time is also a common arrangement among lesbian Filipina couples, enabling them to live with their partners in their own households. Free from the occupational restraints set by the immigration laws, some workers even managed to take jobs outside the domestic worker sector. Three of the informants were teaching English in private kindergartens and one became a salesperson at a trading company.

Aside from the market norms in cooperative settings, the illegality of the employment also introduces a weapon into the bargaining—the threat to report the other party to authorities. In other words, Filipina workers and their employers are not only bargaining in the shadow of illegality, but they are also bargaining *with* it. The threat to report comes into the power dynamics in contradictory ways—it’s a weapon ready to be used by all stakeholders, as the others always involve in different illegal acts; at the same time, the threatening party also doesn’t want the threat to be realized ultimately because it might backfire. In the law, the consequence of such revelation is 10-to-15-day detention and repatriation for the worker, fines for the employers and local headhunters, and potential criminal charges for the transnational recruiter.²¹⁸ An additional drawback for the employer in the practice is that their residence will enter the radar of

²¹⁷ Adele.

²¹⁸ EEAL and criminal code as in previous section.

the immigration officials, which might induce future inspection. The inspection, or even just the fear for such a possibility shared by the workers, may constitute a de facto blacklisting of hiring foreign domestic workers.

Judging from the limited incidents emerging from my interviews, workers are no less active in invoking this weapon than other parties. And they found it sometimes useful. For example, when Meghan quit her first employer after working for less than one month, both resorted to this weapon of illegality, the employers to coerce her to stay in the contract, and her to annul it. “The boss wanted to threaten me: ‘there are many immigration officials around. If you just quit, we might report you.’ ‘You think I am afraid? I know your name, your home address, and your company’s name, and your company’s address. If you report me, I would report you and your agent. It’s not legal for you to hire me in the first place. It’s a big company and you don’t want troubles.’ So he asked me whether I need extra money for the taxi.”²¹⁹

Workers also deploy this weapon to get their documents back from the transnational recruiters. Denise got her documents back with a threat to sue: “When I was starting working under my first contract, I called the agent. I told her to send back all of my documents and I will let her go. Otherwise, I am going to go back to the Philippines and to sue her there. Whatever she is doing is illegal in the Philippines. So she was scared and sent all of the documents back to me.”²²⁰ Janice, in a similar scenario, was not so lucky: “When I decided to leave my first employer, I went directly to the agent and to threaten to report them. I did that. But she didn’t give it back anyway.”²²¹ It’s hard to predict when such a threat would work and why as the threat derives its power from the ambiguity as much as from its punitive legal consequences.

²¹⁹ Meghan.

²²⁰ Denise.

²²¹ Janice.

The strategy—and ethics—of bargaining is being developed and reproduced during community gatherings. In the first gathering I attended, an experienced worker taught a newly arrived worker the techniques of quitting and threatening to report. In the end, she added: “But don’t leave your employers in the middle of the week. They both work and have children to care for. We shall be considerate of them too. Pack your stuff and leave them next weekend.”²²²

Of course, the workers’ bargaining power and strategy are severely restrained by the involvement of informality. Only one of my informants resorted to the police for help in the scenario of wage underpayment and another reported the recruiter’s document confiscation practice to the immigration law enforcement. Labor organizations and support from the civil society organizations, which have been proven to significantly empower the workers elsewhere,²²³ are absent in this case study. The worker’s bargaining position is also restrained by the broader structure in the political economy such as income inequality even between developing countries so that she has to work in a foreign family to support her family at home.²²⁴ It also doesn’t mean that the perils of the immigration law are non-existent.²²⁵ What the informality has done here is to untie the connection between the workers’ market behavior and the risk of deportation and thus to enable some bargaining strategies that are not available when immigration law is more fully enforced. As a worker has already become deportable upon overstaying her visa, her further decisions about her work and family life like finishing her current employment or moving out of the employer’s household are no longer disciplined by the immigration law system can remove her from the jurisdiction.

²²² Group gathering with Janice and friends.

²²³

²²⁴ Global care chain, in EHRENREICH AND HOCHSCHILD, *supra* note 3..

²²⁵ As explained in the previous section.

Bargaining strategy repertoires			
	Worker	Employer	Agency (transnational recruiters and local headhunters)_
Before departure	Go through the immigration process on herself; Connect with the employer through friends and relatives to bypass charges.	Threat not to hire	Threat with no success; Use other market's salary; Misinform the market standard and legal status;
Within the household	Everyday resistance; Family-like bond with the employer; Meddling with family members; Leveraging English.	Document confiscation; Cutting short rest time; Controlling Wi-Fi; Etc.	Teaching employer controlling techniques.
During the employment	Taking new job interviews to compare conditions; Maintaining the connection with multiple headhunters; The threat to leave.	The threat to fire; Taking additional workers.	
Changing the employment	Runaway with help (if the first contract); Changing employers; Taking part-times and side jobs (see below).	Taking new workers; Taking part-time workers.	Enabling free job changes to keep the worker (if the first contract); Colluding with opportunistic job-hopping workers.
Invoking the state.	The threat to report a violation of immigration law; Report other violations, such as wage theft.	A threat to report a violation of immigration law; Report other violations, such as theft.	A threat to report.

D. Surviving and Thriving in the Informal Economy

In this section, I turn towards the informal economy that supports the workers' livelihood outside their workplaces and ultimately, strengthens their bargaining power at the workplace. In the formal law in China, many basic services are provided on the basis of residency status, so that overstaying a visa means exclusion from these provisions, or legal disability. Meanwhile, a

lively informal market, where the Filipina workers both provide and consume services in place of public provisions, supports the everyday life of the community, ranging from housing, leisure traveling, to sending remittances to her family members in the Philippines. Again, illegality also removes the restraints often imposed by the immigration law for Filipina workers to participate in the trading as a moonlighter or sometimes as an entrepreneur.

Such an informal support network outside her workplace empowers certain bargaining strategies for the Filipina women in their role as domestic workers: 1) it enables her to live a more independent life, less or not reliant on the employer household's provision of everyday goods, including housing; 2) it provides an alternative income source to domestic work; 3) it also enriches the reproduction of the Filipina workers as a community in the city. It is also worth noting, however, that the informal network fails to find a solution for some legal disabilities, like the ability to travel outside the country.

Table 4: Informal Networks of Everyday Livelihood for Informal Workers		
Everyday disability in the formal system	Provision from informal supporting network	Alternative: reliance on employer
Enter legal lease	"Boarding house"	Live-in
Access to financial service, especially transnational transfer	Remittance service and mobile payment app	A bank account under the employer's name
Register a telephone number and recharge it	A sim card under a friend's name, often free.	A sim card under the employer's name
Guaranteed access to public health service	Some Filipina-friendly doctors; public hospital.	The employer brings her to the hospital.
Online shopping platform with registered online bank	Social media-based private traders	An online account under the employer's name
Public inter-city transportation in the country	Private drivers for Filipina workers	Tag on an employer's trip.
Travel outside the country and re-entry	No provision.	No provision.

Here I use the examples of remittance, housing, and shopping and trading to illustrate how the workers balance between the informal market and the employer's household to fulfill their everyday needs and to generate income from the process.

Remittance

Remittance is a shared goal of overseas Filipina workers around the world. OFWs' remittances not only support their family members to live a decent life but also accounts for one-tenth of the whole country's gross income. Consequently, the Filipino state has named remittances as part of their "civic duty" and invested heavily in channeling their remittance through official financial institutions.²²⁶ Formal financial institutions, however, are hardly accessible for undocumented workers in China as the banks require identification documents to open a bank account. This legal disability can be circumvented in two ways.

The most common channel is the private remittance service, often operated by Filipina traders in China with the help of some Filipina domestic workers. As Alex, a Filipina woman helping with the business explained, her boss, who had his own trading company, hired around 20 moonlighting nannies to advertise the service to fellow Filipinas through social media platforms. The solicited worker deposits RMB to a Chinese bank account held by the trading company or hands over the cash to the moonlighter, in exchange for a receipt. The next day, the boss's helpers in the Philippines, often the moonlighters' family members, collect Filipino pesos from the company's Filipino bank account and send the money to a Filipino bank account as designated by the Filipina worker. The exchange rate is the bank's daily rate, often publicized on the moonlighters' social media. For each remittance up to 5K or 8K RMB, the business charge 50 RMB (a minimum of 1% rate). Of that sum, 20RMB goes to the moonlighter who's recruited

²²⁶ RODRIGUEZ, *supra* note 69.

the transfer and 30 goes to the big boss. The involvement of the boss, however, can be further circumvented by the informal network. Alex told me she was starting her own remittance business with the help of her girlfriend back in the Philippines, who held bank accounts in both countries. Thus they got to keep all of the 50 RMB charges.²²⁷

In an alternative way, if a worker has found a reliable employer, she might ask the employer to open a Chinese bank account for the exclusive use of the worker and her family. Some nannies also kept the debit card under the name of her previous trustworthy employer or even her own name. She then sends the debit card to her family in the Philippines and deposits her salary on an ATM using the account number. This option gives the worker more flexibility in the timing and amount of remittance to be sent. Sharing the bank account with her families also enables her to maintain financial control over her own household. For example, Rosemary, a single mother of three adolescent children controlled the family budget by sending allowance back every week instead of every month. “If I deposit money every month, my three kids will buy and buy and buy, spending all the money in a week. Then they come back to me crying. ‘Mommy, I have no money.’ I have to send them more money. Where does my money come from? I have to budget.”²²⁸ It also avoided the risk of embezzlement by the private remittance business, which is rare but not unheard of. On the other hand, the private remittance service is arguably cheaper than the official banks, because the Filipino banks charge higher fees for withdrawals from a foreign bank account than the informal remittance services.²²⁹

The informal remittance business facilitates the workers’ economic connection with her families as well as bring in income to her and her family members some times.

²²⁷ Alex.

²²⁸ Rosemary.

²²⁹ Margaret.

Housing

Housing is another example testifying to the importance of this informal support network. Technically speaking, the municipal government of S City has enacted a regulation requiring every lease to be registered with the housing department and prohibiting leasing to individuals without identification documents. It also sets many habitability restrictions on leases, such as maximum occupancy and a prohibition on leasing the room to multiple (non-family) individuals.

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In reality, informal housing markets, including both illegal development and informal group renting, are rampant across the city, especially in the so-called “urban villages” on the cities’ edges.²³¹ Millions of migrant workers from other regions in China find affordable dwellings from this informal housing market, where both landlord and tenant bypass the formal regulations.

Filipina domestic workers find housing in these areas as well. Almost every Filipina domestic worker I’ve met has leased an independent room, sometimes shared with a Filipina friend, in this informal housing market for weekend stays, which they call their “boarding house.” The monthly rent is between 600 to 1200 RMB (~85-170 USD), around 7.5% to 15% of their average monthly salary. A studio including a separate kitchen and bathroom can cost 1500RMB (~212USD). For the majority of domestic workers who live in their employers’ homes while working, they often retreat to their boarding house on Saturday evenings and spend the night there.

The precarity of their staying in the country urges them to find a good landlord who provides something more than space. Hosting tens of thousands of migrants, the “urban villages”

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²³¹ SHITONG QIAO, CHINESE SMALL PROPERTY: THE CO-EVOLUTION OF LAW AND SOCIAL NORMS (2017).

are often viewed as a threat to social stability and are subject to higher police presence.

Consequently, the migrant domestic workers need friendly landlords who can speak simple English to protect them against police inquiries. A protective landlord can tip them off to police presence in the community, answer the routine checking on their behalf, and in some cases, assist them to slip away from a hostile police officer.

Occupying an independent room in the city has significant implications for their bargaining power in the workplace. Most obviously, having overnight accommodation substantiates the weekly 24-hour off rest. Without it, the worker is coerced back to the employer's home before the end of the 24 hours not by law, but by the necessity to sleep under a roof. In comparison, Filipina domestic workers in Taiwan, Hong Kong, and Singapore, all of which has a legal mandate of 24 consecutive rest hours per week, often have only 12 free hours and have to return to the employers' home before curfew and spend the rest of their rest hours there.²³² The boarding house also accommodates the worker and her personal properties between jobs, substantiating the workers' freedom to switch jobs and to leave undesirable employment. The workers seldom see housing as a factor keeping them in unwanted employment. Independent informal housing sometimes also shelters a new friend who had just run away from her first employer or a relative who just got off the plane from the Philippines.

Having an independent living space also makes it easier to move out of the employer's household and start one's own. Ming, the part-time worker with a calculator we met in the previous section, named the cost of housing a key factor in her decision to start working part-time: "The rent's the same. The live-ins are paying for the boarding house too; they only sleep there for one night. The room is empty most of the time for live-ins."²³³ With some

²³²

²³³ Ming.

entrepreneurial spirit, the living space can easily be turned into a business space. Some workers cook hometown food in the boarding houses and sell it to fellow Filipinas. Others use it as a shipping address to receive packages from online vendors and resell it on social media.

The boarding house is also a site of community gathering. A small group of friends often lease separate rooms or share a room in the same neighborhood or the same house, forming their own family away from the employer in the community. A worker sharing a room with her friend told me she preferred sleeping in her employer's house but was keeping the room to maintain her connection to the community. "I got to see old friends in the house and to meet new ones at parties. Sometimes we party at the house. It's cheaper. I don't keep stuff at the boarding house. I keep the room for my friends."²³⁴ Access to the boarding house also shelters their romantic relationship, ranging from long-time girlfriends, visiting husbands, to a short-term boyfriend met online.

Enabled by their comparatively high salary in the City, the lost-cost informal housing market, and the lack of enforcement of prohibitive laws on their housing arrangement, the Filipina domestic workers built their access to independent housing from their employers.

Shopping and trading

Aside from shared legal disabilities due to illegal immigration status, the workers' capability/incapability in everyday life varies vastly because of a combination of many factors, such as holding an unexpired passport, strong connection with the employer, language ability, and so forth. The workers with entrepreneurial spirits, again, transform such capability to navigate the commodity market into a business opportunity.

²³⁴ Yulia.

Soon after I entered the Filipina domestic workers' social world, I noticed that some workers were posting a lot of commercial advertisements on their local social media (WeChat). More than half of the posts were about gold jewelry, both new and second-hand. A common post writes: "18K China Gold. [different emojis of a ring] 100% pawnable authentic PM ME for Inquiries." Accompanying the words were several photos of different gold rings on a scale. Mobile among different countries for most of their lifetime, Filipina women have turned to the universal currency of gold to store their wealth. The social-media-based moonlight traders operate this network of sale and resale, enabling the workers to liquidate and materialize their wealth at their convenience and also to own the luxurious embodiment of feminine beauty. The business usually operates on a small scale among their acquaintances and also constitutes an incentive for the worker to acquaint more friends.

The sales of gold jewelry operate like a chain, with Filipina domestic workers filling all the roles: sellers, buyers, and traders in the middle. Once a Filipina has some jewels to sell, she usually notifies her close trader friends about the piece and the price. The trader posts the piece on her social media and in her buyers' group chat. Other moonlighting traders can re-post the advertisement on their own account if permitted by the original trader. A client with the intent to buy has to privately contact the trader for a price. Each trader in the reposting chain adds her own small service fee to the price. Some traders also buy the product herself and resell it for a higher price. Thus "how much you get for the gold depends on which seller you buy it from."²³⁵ The purchased piece is usually delivered on the occasion of a weekend party, sometimes through the hands of a common friend.²³⁶ The whole system operates on a reputational system shared by a community in which everybody loosely knows of each other.

²³⁵ Sia.

²³⁶ In fact, I have been asked to deliver such products for several times.

This informal market also sells everyday goods, like snacks, vitamins, shampoos, outfits, or homemade food. Only traders with independent access to outside markets or self-production can operate this business. In some traders' cases, it is having a relative importing vitamin beverages. In another, it is that a previous employer had taught her how to shop on Taobao, a Chinese online shopping platform. This business, in contrary to the previous one, can induce losses when the stocks don't sell among the group.

Overall, the profits from trading are lucrative. One worker told me that her earnings from the business exceeded her salary from the helper job.²³⁷ As the income is almost exclusively from the network of her friends and acquaintances, workers who operate remittance or trading businesses have an additional economic incentive to befriend more fellow Filipina both online and offline and to sustain the community. Thus the traders not only extensively reach out to fellow Filipinas on social media but also create group chats and host offline parties to foster her communication with the group. The profits sometimes also drive the group into factionalism. During my field study, two friends declared war on each other over a shared customer base. Both sides deployed escalating strategies, from defaming on social media posts and requesting common friends to pick sides, to threatening to report the other's violations of the law. During the battle, each side also organized more group events, both to establish dominance in the community and to compete for the customer base.

The trading network not only brings access to commodity and income to the sellers and buyers but also facilitates the reproduction of the community as a whole. It is within this informal community that the Filipina migrant care workers find emotional belonging, economic profit, and empowering support.

²³⁷ Shelly.

IV. A Bargaining Power Comparison between Informality and Formality

In this section, I dive deep into the case of Singapore as an example of a formal regime in comparison.²³⁸ I first outline the operation of the formal migration program and then use the abundant sociological researches and NGO reports in the past ten years to explore the realistic bargaining dynamic under this specific set of formal rules.²³⁹ I further compare it to the informal China case analyzed above. The law, and other background rules, are, again, distributional among the players in that they condition each players' bargaining strategies with prohibition, permission, or even mandate, with enforcement mechanisms of various effectiveness, and thus

²³⁸ The two markets share similarities. First, the employer population in Singapore and S City share cultural and economic traits. The majority of Singaporeans (76.2%) are of Chinese ethnicity. The employers of foreign domestic workers in Singapore is composed of 2/3 local Singaporeans and 1/3 expatriates, including expatriates from China, a similar composition to the employer population in S City. Second, foreign domestic workers in both jurisdictions are both predominantly women and their work mainly happens in the household, not institutions. The workers are also not limited to certain sectors of domestic work, like elder care, as in some other jurisdictions. Both countries are geographically adjacent (cheaper air ticket) and culturally similar (eating rice) to the sending countries, in comparison to the destinations in the Middle East. Third, the two countries, though they differ drastically, both have authoritarian governments with strong state capitalism.

Undoubtedly, the two markets have differences in other aspects than legal arrangements, the focal point here. With almost no local domestic workers, foreign domestic workers have a much stronger presence in Singapore: on average, one in ten households in Singapore have one. S City has more local domestic workers than foreign ones. Though Filipina domestic workers enjoy some language dividend in Singapore, it is less so than their counterparts in S City. The majority of workers in Singapore are Indonesian (56%) and Filipina constitute the second large group (32%), while Filipina predominate the foreign domestic worker market in S City. Singapore also has a longer history with Southeast Asian domestic workers since the 1990s, while the parallel market emerged in the past ten to fifteen years in S City.

²³⁹ Foreign domestic workers in Singapore is a densely studied population in social science literature since the 1990s. Most of them don't make distinctions between foreign domestic workers from the Philippines and other Asian countries and thus the literature I include here also covers foreign domestic workers from Indonesia, Sri Lanka, and Thailand, among other Asian countries. One widely noted difference is that the Filipina workers are comparatively more actively bargaining for their interest and on average paid higher because they speak better English than workers from other countries.

In this section, I refer to the following works: Transient Workers Count Too (TWC2), *The Price of a Job: New Domestic Workers and Efforts to Reduce the Costs in Starting Employment in Singapore* (2016); Wang et al., *supra* note 130; Ueno, *supra* note 100; Minu Thomas & Sun Sun Lim, *Migrant workers' use of ICTs for interpersonal communication—The experience of female domestic workers in Singapore*, in E-SEMINAR WORKING PAPER: MIGRANT WORKERS' USE OF ICTS FOR INTERPERSONAL COMMUNICATION (2010); Platt et al., *supra* note 148; WESSELS, ONG, AND DANIEL, *supra* note 156; AUDREY VERMA, *Multiple forms of violence in maid-employer relations in singapore*, 2010; Varia, *supra* note 45; Thomas and Lim, *supra* note; Shirlena Huang & Brenda SA Yeoh, *Emotional labour and transnational domestic work: the moving geographies of 'maid abuse' in Singapore*, 2 MOBILITIES 195–217 (2007). Charmian Goh, Kellynn Wee & Brenda SA Yeoh, *Who's holding the bomb? Debt-financed migration in Singapore's domestic work industry* (2016); Schumann and Paul, *supra* note 147.

veer the power dynamic to one direction or the other.²⁴⁰ However, even a highly formalized regime with stringent law enforcement like Singapore doesn't exclude people's behaviors in contradiction to the laws. For example, document confiscation by the employer is strictly outlawed by the Singaporean laws; however, research in 2017 showed that 67% of the foreign domestic workers still have their document confiscated.²⁴¹

Singapore, hosting 243,000 documented migrant domestic workers, is the largest receiving country in South-east Asia.²⁴² Like many other formal migration programs, migrant domestic workers are recruited under a system of sponsorship through licensed private agencies and governed through stringent work permit regulations under the Employment of Foreign Manpower Act (EFMA).²⁴³ A regulation under the EFMA, after decades-long efforts by pro-worker advocates, has passed in 2012 that prohibits much labor abuse by the employers but doesn't touch the structure of work permit laws.²⁴⁴ The work pass for domestic worker falls under the categorization of unskilled labor, which is eligible for the specific employment for up to two years.²⁴⁵ Until the new regulation in 2012, the work pass could only be renewed up to four years. Now the work pass is renewable until the worker turns the age of 50 and if the worker stays with the same employer, the age of 60. Through her entire stay in the country, the worker must have a valid work pass sponsored by her employer and she has to leave the country within 7 days after the work pass expires.²⁴⁶

²⁴⁰ Hale, *supra* note 17; Mnookin and Kornhauser, *supra* note 17; Duncan Kennedy, *The stakes of law, or Hale and Foucault*, 15 LEG. STUD F 327 (1991); JANET HALLEY ET AL., GOVERNANCE FEMINISM: AN INTRODUCTION (2018).

²⁴¹ WESSELS, ONG, AND DANIEL, *supra* note 156.

²⁴² *Id.*

²⁴³ Employment of Foreign Manpower Act (Chapter 91a).

²⁴⁴ Wang et al., *supra* note 130.

²⁴⁵ MOM, Work Permit for FDW: eligibility and requirements, <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements>

²⁴⁶ Employment of Foreign Manpower (Work Passes) Regulations 2012.

Before the worker's arrival, the employer must apply by themselves or through a licensed agency for a work permit from the Ministry of Manpower (MOM) on behalf of the worker. The MOM scrutinizes the eligibility of both the employer (age and mental and financial capacity to hire domestic workers) and the employee (gender, age, nationality, and education²⁴⁷) and also determines the amount of the monthly levy the employer has to pay to the MOM for this employment based on the domestic worker's salary and the employer households' urgency of care needs.²⁴⁸ Before applying for the work permit, the employer is also required by the EFMA to post a security bond of S\$5,000 (~3,500 USD) through licensed finance institutions. The security bond not only covers the health and accident insurance for the domestic worker²⁴⁹ but also becomes forfeitable by the state if the state finds that the employer breaks the EFMA requirements or fails to ensure the workers' compliance with the EFMA or other Singaporean laws.²⁵⁰

The 2012 regulation specifies that the employer's duties include: payment of fixed monthly salary; no abuse or injury to the worker; no assignment of dangerous jobs, especially cleaning exterior windows; provision of adequate food, medical treatment, and acceptable accommodation; no document confiscation; sending the worker to medical examination every 6

²⁴⁷ Singapore only accepts female foreign domestic workers; the worker must be from 23 to 50 years old; workers above 50 can only renew their work permit with the same employer until 60; she also has to come from an approved source of origin of 13 Asian jurisdictions and has received a minimum 8-year education with a recognized certificate. MOM, "Foreign domestic worker eligibility," <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/fdw-eligibility>

²⁴⁸ MOM, "Paying levy for a foreign domestic worker," <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/foreign-domestic-worker-levy-paying-levy>

²⁴⁹ EOFM 2012 Regulations, Part II Regulatory Conditions to Be Complied with by Employer of Foreign Employee Who Is Domestic Worker Issued with In-Principle Approval for Work Permit, article 2 and 2A; WESSELS, ONG, AND DANIEL, *supra* note 156.

²⁵⁰ EOFM Regulations 2012, article 12 and 13; Common situations of forfeiting the bond listed by the MOM include when the employer doesn't pay the salary, the employer doesn't ensure the worker's return to her home country on expiration, and the worker goes missing. MOM, Security bond requirements for foreign domestic workers, <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/security-bond>

months; and ensure the repatriation of the worker upon termination.²⁵¹ Physically abusing workers, upon conviction, is subject to incarceration, corporal punishment (caning), and fines. The perpetrator also has to pay compensation to the worker and will be banned from future hiring through the MOM.²⁵² The employer also has the duty to inform the worker of the general conditions at least three days before her departure for Singapore.²⁵³ The most debated clause is on the rest day. Although the law stipulates the worker's right to an unpaid weekly rest day, it also provides the option for the parties to contract it away with an additional payment of a daily salary.²⁵⁴

The same regulation reiterates the stringent restrictions on the workers and the employers' duty to ensure the workers' compliance.²⁵⁵ The workers are not allowed: to do non-household work; to work for other employers than her work permit sponsor; to take part in any other business or start their own business; to reside or work away from the address set by the employer; to get pregnant or contract sexually transmitted disease, or to marry a Singapore citizen without MOM's approval. They also have to carry their original work permit all the time for inspection when they go out of the employer's household.²⁵⁶ Hiring or working without a work permit is faced with high fines, caning, and prison terms, and additionally repatriation for the foreign worker.²⁵⁷

²⁵¹ Employment of Foreign Manpower (Work Passes) Regulations 2012, Part I.

²⁵² MOM, Abusive FDW employer are barred by MOM from hiring, <https://www.mom.gov.sg/newsroom/press-replies/2019/0821-abusive-fdw-employers-are-barred-by-mom-from-hiring>

²⁵³ Employment of Foreign Manpower (Work Passes) Regulations 2012, Part II, article 1.

²⁵⁴ Schumann and Paul, *supra* note 147.

²⁵⁵ Employment of Foreign Manpower (Work Passes) Regulations 2012, Part I, article 15; Part II, article 1-3.

²⁵⁶ Employment of Foreign Manpower (Work Passes) Regulations 2012, Part II.

²⁵⁷ Employment of Foreign Manpower Act, Article 5. The corporal punishment is usually waived with leniency in actual practice.

Employment agencies deploy the majority of FDWs in Singapore and play a substantial role in managing the employment conditions of FDWs in Singapore from arrival to departure. Under the 2012 regulation, agencies in Singapore are permitted to deduct placement fees from the FDW's salary up to two-month salaries' worth for a two-year contract and additional transfer fees up to two months' salary if the unsatisfied employer sends her back to the employment agency.²⁵⁸ As a result, similar to the informal channel in China, the migrant domestic workers in Singapore also go through two stages in their employment: the wage-deduction period when they are most vulnerable to over-exploitation by other players and have limited access to financial resources and their communities, and the period afterward when they commonly enjoy more control over their lives.²⁵⁹ Differing from the China case, the workers in Singapore receive no salaries but S\$10 (~7 USD) allowance during the deduction period in Singapore. Furthermore, the wage deduction period often exceeds the length and amount as set by the law. Before the 2012 regulation, some workers were not able to receive a salary for up to 11 months; since then, the no-wage period is commonly between five to six months.²⁶⁰

The power imbalance between the worker and the employer and the recruiter agency also evinces in their different bargaining leverage at the scenario of employment termination as conditioned by the law. When the employer decides to terminate the employment, they can either bear the repatriation cost and cancel the work permit or send the worker back to the recruitment agency and transfer back the work permit, first to the agency and then to the next

²⁵⁸ WESSELS, ONG, AND DANIEL, *supra* note 156. The employer is forbidden to receive any benefit from the agency in relation to the worker's employment. Employment of Foreign Manpower (Work Passes) Regulations 2012, Part I, article 5.

²⁵⁹ Goh, Wee, and Yeoh, *supra* note 241.

²⁶⁰ Transient Workers Count Too (TWC2), *supra* note 241; WESSELS, ONG, AND DANIEL, *supra* note 156; Ueno, *supra* note 100; Schumann and Paul, *supra* note 147.

employer. Both the current and new employers' consent is required by the EFMA to transfer the work permit, even after the expiration of the original employment contract.²⁶¹ Therefore, in the best scenario when the worker has found another employer within the time frame, the current employer still has the power to reject the work permit transfer and ultimately the power to remove the worker from Singapore. Moreover, the law allows the employer to end the employment unilaterally without any reason and there is also no minimum duration of the employment or work permit.²⁶² In practice, the agency often offers the employer free change of domestic workers in a certain period, while upon sending back, the worker has to pay for the extra transfer charge of a two-month salary as a result of the termination.²⁶³ Some opportunistic agencies also deliberately mismatch the worker with incompatible employers so that they can repeatedly charge the worker the two-month-salary transfer charge or push the worker to go back to the home country to pay for the initial commission fee again.²⁶⁴ In the most extreme case, the worker didn't receive a salary for the entire first year due to the multiple transfer fees.²⁶⁵

Though the highly punitive regulations prohibit multiple behaviors on both the employer and the worker's side, the prohibitions have different enforcement mechanisms. Without pervasive labor inspection, the employers' violation of the regulations can only be exposed through the worker's self-report. The workers are constantly facing the dilemma that "asserting her rights risks her overseas employment chances" in the current system.²⁶⁶ In contrast, the employer has more economic incentives to effectively control and enforce the prohibitions on the

²⁶¹ MOM, "Transfer an FDW to a new employer," <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/transfer-to-a-new-employer>

²⁶² MOM, "Key facts on Work Permit for FDW," <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/key-facts>

²⁶³ Ueno, *supra* note 100.

²⁶⁴ Transient Workers Count Too (TWC2), *supra* note 241.; Schumann and Paul, *supra* note 147.

²⁶⁵ WESSELS, ONG, AND DANIEL, *supra* note 156.

²⁶⁶ *Id.*, at 19.

worker since the failure to do so will lead to their own financial losses upon exposure, especially for the violations that the government's routine scrutiny are highly likely to expose, such as the pregnancy ban and immigration laws.²⁶⁷

Against this background, the migrant domestic workers in Singapore, similarly as migrant domestic workers elsewhere, are facing various exploitative behaviors by the employer while also exerting a range of bargaining strategies within and outside the household.²⁶⁸ The community with fellow Filipina women also serves a crucial role in communicating the strategies.²⁶⁹

Within the household, the Singaporean employers frequently employ various strategies to control the workers and to establish dominance in the relationship, many of them specifically outlawed by the law, including document confiscation, restrictions on their mobile phone usage and food consumption, installing surveillance cameras in the home, among others.²⁷⁰ Workers employ various everyday resistance techniques to channel their dissatisfaction, such as using sarcasm and gossiping behind the employers.²⁷¹ More active strategies include subtly manipulating the relationship in the family, especially her connection with the female employer, whose family role the worker usually is hired to assist or to replace. One strategy is to establish sisterhood with her that opens the worker to some familial benefits, including soliciting loans and seeking her protection from less respectful family members. The opposite is to meddle with the female employer's relationship with other family members, such as invoking jealousy by

²⁶⁷ *Id.*

²⁶⁸ Ueno, *supra* note 100; VERMA, *supra* note 241; Paul, *supra* note 101; Schumann and Paul, *supra* note 147.

²⁶⁹ Paul, *supra* note 101.

²⁷⁰ Ueno, *supra* note 100; WESSELS, ONG, AND DANIEL, *supra* note 156; VERMA, *supra* note 241.

²⁷¹ Ueno, *supra* note 100.

showing intimacy with her husband or child or causing friction among the family members.²⁷²

Some workers also protest by producing noise in the middle of the night and causing disruption to the family's schedule. A widely reported strategy among Indonesian workers is to attempt "black magic" rituals in the hope to manipulate their employers.²⁷³

With the state and their employer closely enforcing the restrictions set in the EMFA, workers' strategies outside the employer's household are more constrained compared to the China case. Though the workers find emotional and strategic support from the community with fellow migrants, the economic network within the community is more limited. One strategy the fellow worker can enable is to informally connect a Singaporean employer or recruitment agency with another worker who is still in the Philippines, which allows the new-hire to bypass part of the commission fee and to reduce the wage deduction period.²⁷⁴ The end of the standard two-year employment relationship is the common moment that workers can attempt to find a more compatible employer for better terms at the cost of a lower transfer fee or to renegotiate the terms with the previous employer.²⁷⁵

In more extreme scenarios, desperate workers run away to the police or civil society organizations from abusive employers and expose the employer's abuse through the formal channel. However, leaving the employer, even in the case of a labor rights violation, is likely to compromise her job opportunity. Most of the reported cases are of extreme abuses, such as repetitive starving and sexual abuse. More common violations like document confiscation and

²⁷² *Id.*; VERMA, *supra* note 241.

²⁷³ Ueno, *supra* note 100; VERMA, *supra* note 241.

²⁷⁴ Paul, *supra* note 101.

²⁷⁵ Schumann and Paul, *supra* note 147.

more subtle violations like under-provision of food and housing rarely trigger a report.²⁷⁶ The structure results in a vast under-report of the employer's and the agency's violations.²⁷⁷

Here I am going to look at the most common bargain around the worker's waivable right to the weekly rest day under the 2012 Regulation. With exceptions on both ends, the employers usually prefer not to give the workers the day off while the workers typically prefer the rest day than the in-lieu compensation.²⁷⁸ From the employer's perspective, denying the worker the rest day not only guarantees some stable labor in the household but, more importantly, establishes their control over the worker by secluding the workers from their community as well as minimizing the risk of her violating other laws, such as getting pregnant or gambling.²⁷⁹ Most workers prefer going out and socializing with their community outside the household after a week of non-stop work, even when it means foregoing an additional day's wage and even when social activities usually incur the cost.²⁸⁰ Workers are well aware of their legal right to the weekly rest day, yet most give it away as a calculated decision once the employer brings it to the table.

The tilted bargaining dynamic starts before the workers' arrival. During their online interviews, the employers and the recruiter agencies often ask for the workers' consent to reducing to monthly rest days and receiving compensation-in-lieu, which is soon recorded into the terms and conditions of her employment contract. The employer sometimes signals an unwillingness to hire if the worker hesitates. The agencies also hint at the possibility of not being

²⁷⁶ VERMA, *supra* note 241; WESSELS, ONG, AND DANIEL, *supra* note 156.

²⁷⁷ VERMA, *supra* note 241; Transient Workers Count Too (TWC2), *supra* note 241; WESSELS, ONG, AND DANIEL, *supra* note 156.

²⁷⁸ There exist reasons for both side to prefer the contrary, too. Some employers prefer the workers to go out so that they can have family time and some workers prefer the extra financial compensation. Schumann and Paul, *supra* note 147.

²⁷⁹ Ueno, *supra* note 100; VERMA, *supra* note 241; WESSELS, ONG, AND DANIEL, *supra* note 156.

²⁸⁰ Schumann and Paul, *supra* note 147.

able to find another interview for her before the job interview. Some of them inform the workers that no weekly rest day is the market norm in Singapore.²⁸¹ Faced with the alternative of not being able to secure an overseas job that they and their families desperately need, the workers often willingly submit to the request to leave a good impression on her potential employer. Even when the employer brings the topic to the worker after her arrival and her going through various state-organized orientation seminars, the worker commonly agrees with the request to avoid conflict with the employers in whose household they are living. Not only do the workers agree, they often choose to do it in the most submissive manner, such as declaring their subjective unwillingness to take the day off, in order to distinguish themselves from the stereotypical socially overactive trouble makers that the employers will have a second thought on retaining or keep an eye on.²⁸²

Usually, it is at the end of the two-year contract when the worker has the option to transfer to another employer and thus another opportunity to assert her weekly days to either her new employer or renegotiate it with her old one. However, even when the worker is at the peak of their bargaining power, her choice is still conditioned by the immigration law. If the current employer doesn't want to renew the contract and she cannot find another employer by the end of seven days after the expiration of her current work, she will have to go back to the home country and to apply for employment from there, going through the six-month salary deduction period again. Sometimes the worker also agrees to the employer's renewal despite her dissatisfaction with her current job in the fear that the current employer will not agree to transfer her work permit.²⁸³

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

The cross-jurisdiction comparison is not only an academic experience. My informants consciously do similar exercises among themselves to figure out life plans for themselves and their families.²⁸⁴ When I asked about the choice of destinations in the group discussion, all of the participants picked China as a better destination than the Gulf Cooperative countries while they are more ambivalent about the competition among East Asian countries.²⁸⁵ They universally agreed that the Chinese market produced significantly higher wage and better quality of life, but was overshadowed by the risk of immigration law enforcement. On treatment by the employers, the workers debated in group discussions: one camp argued that employers in S City treated Filipina workers with less disrespect while the other insisted that it still came down to the specific employer.²⁸⁶ On documentation confiscation, experienced workers reported that it rarely happened in some of the formal markets (Hong Kong) while many employers in both informal ones (China) and formal ones (Singapore and Gulf Cooperative countries) still did it.²⁸⁷ Some workers pointed to the differences in bargaining power in different systems. “Here, it’s always the nannies who quit employers; elsewhere, like Hong Kong, it’s employers who fire nannies. No nannies can quit the employers even when they treat us like something less.”²⁸⁸

Sociologist Anju Mary Paul has also discovered that the workers’ migration trajectories, especially the well-thought-through movements, are revealing about the desirability of the destinations. She finds that Singapore is among the top tier destinations in Asia but falls behind

²⁸⁴ Six of them have worked in the Middle East, fifteen in East Asia, and also many others have families and friends in other jurisdictions.

²⁸⁵ Group discussion with Cecily and four others; Group discussion with Anita and five others; Group discussion with Jane and six others.

²⁸⁶ Group discussion with Cecily and four others; Group discussion with Anita and five others; researches in other jurisdictions also report the employer-specific arguments among overseas domestic workers. Parrenas in revisiting the law and governance; WESSELS, ONG, AND DANIEL, *supra* note 156.

²⁸⁷ Group discussion with Anita and five others; Group discussion with Jane and six others.

²⁸⁸ In group discussion with Cecily and four others.

Canada and Italy, where permanent settlement is plausible.²⁸⁹ In this case, I have found that some workers are also leveraging their previous working experience in other formal migration programs to aim at the informal market in China. Three workers directly left their formal jobs in Hong Kong and Macau to work in mainland China. Six workers had arranged or were arranging their young-adult daughters or other younger family members to come. Two of them specifically mentioned that they were sending their daughters to other jurisdictions to get them into China more easily. One said: “Of course I want my daughter to come here, not to Singapore (where she started a job recently). But getting a Chinese tourist visa from the Philippines is becoming harder, especially for a new passport without any visa stamps. So I told her to apply for a tourist visa (to China) from Singapore when she is about to finish her contract there.”²⁹⁰ Another mother was more ambivalent: “I don’t want my eldest daughter to work illegally here like me. But I don’t want her to go to work in Dubai even more.”²⁹¹ Even though my sample of informants is highly biased because it has been exclusively drawn from those who are working in China, it still reveals the desirability of this new market among its participants.

Comparing the Singapore case with the informal corridor between the Philippines and China, I find that the different sets of rules—legal and non-legal—not only enable and disable bargaining strategies different parties may equip but also condition the goals parties are bargaining for. On one end, the well-enforced part of regulations guarantees some of the rights for workers without any need of bargainings, such as their access to health and accident insurance, the right not to be assigned visibly dangerous tasks, and the right to repatriation; on the other, some arrangements are also beyond their reach in the formal system, like a live-out

²⁸⁹ Paul, *supra* note 94.

²⁹⁰ Maria.

²⁹¹ Ming.

arrangement, or side businesses. The law also frames the focal point of the bargaining around the negotiable weekly rest days, away from other benefits like salary. The power imbalance between the worker and the employer and the recruitment agency—who are also tasked as private immigration law enforcers by the law—contradicts some of the labor rights the formal program wants to guarantee.

The two systems lead to two patterns of surplus and risk distribution. The informal China case is riskier for all of the parties involved. Yet the workers are able to extract more salaries, longer rest hours, and alternative arrangements from the employers. The employers also have to treat them better because the law doesn't help them to retain workers. The Singapore case, in contrast, leads to a labor market working structurally in favor of the employers and the agencies. The strict disciplinary rules over the workers produce less costly and more obedient workers that serve the employer's family's interest. The law further enables and obligates the employer and agency to privately discipline the workers.

On a macro level, other than enabling and disabling various bargaining strategies, both states are also affecting the supply-and-demand paradigm in the background of micro bargaining through immigration law practices. In the China case, it is through the issuance of tourist visa and flexible enforcement of deportation; in the Singapore case, the issuance of work visa and the charge and subsidy of levies. This is not to say the two are not distinct in their way to tilt the market. The former is less transparent and the increased information cost might select a group of more resourceful workers while the latter enables the government to quickly increase the number of imported workers in response to rising demand.²⁹² Despite the common myth that the global care work market is characterized by a bottomless reserve army of women from poor countries, it

²⁹² Amarjit Kaur, *International labour migration in Southeast Asia: governance of migration and women domestic workers*, 15 INTERSECT. GEND. HIST. CULT. ASIAN CONTEXT 2007 (2007).

is through the specific legal system that they become workers in a given society and their bargaining position is probably determined less by the size of the global workforce than by the local rules they are bargaining against.

V. Conclusion: Rethinking the Global Governance of Migrant Domestic Workers

How can we interpret this heterodox case of informal labor migration in the context of the global governance of migrant domestic workers?

I am by no means arguing that this case study informs the debate as a “good practice” example that can or should be replicated across the jurisdictions. Living undocumented in China can be cruel and precarious. A huge human cost for working illegally is long-time family separation. The workers have to make a tradeoff between losing future employment in this jurisdiction and not being able to return to their home country for years. The so-far prosperous market is highly contingent on the Chinese government’s not-so-harsh attitude. As the anthropologist Claudia Liebelt recorded a comparable case in Israel, the lively community of informal Filipina migrants in Tel Aviv shrank dramatically in six months when the Israeli government started a deportation campaign against undocumented immigrants.²⁹³ The whole industry of migrant labor, informal or formal, has become more unpredictable than ever now in the middle of a pandemic. The fear for disease drives the host countries to be more xenophobic than usual, which put the migrants’ life under an unprecedented threat.²⁹⁴

²⁹³ 17 LIEBELT, *supra* note 52.

²⁹⁴ For example, African immigrants, many of them also undocumented, have experienced large-scale discrimination in Southern China. CNN, “Africans in Guangzhou Are on Edge, After Many Are Left Homeless amid Rising Xenophobia as China Fights A Second Wave of Coronavirus” (April 12, 2020) See <https://www.cnn.com/2020/04/10/china/africans-guangzhou-china-coronavirus-hnk-intl/index.html> Also, migrant construction workers in Singapore have disproportionately suffered from the disease and under-treatment because of uneven healthcare coverage and desperate living conditions. New York Times, “Packed With Migrant Workers, Dormitories Fuel Coronavirus in Singapore” (April 28, 2020) See <https://www.nytimes.com/interactive/2020/04/28/world/asia/coronavirus-singapore-migrants.html>

Nevertheless, this case, at least, raises a local exception to the current normative formality/informality dichotomy that tends to use informality as a token for bad jobs.²⁹⁵ Rather, both informal and formal regimes can produce rules working in favor of or against the workers and thus different compromises of benefits and risks for the workers. A considerable number of workers, with varying levels of knowledge and some options, prefer the compromises in an informal system when the alternative formal system works significantly in their disadvantage. This is not an attempt to reverse the dichotomy or a naive celebration of the informality. Instead, I urge to separate in our analysis the form and the substance of the arrangement and to look beyond the legality question into the concrete distributional consequences for the workers that both legal and non-legal mechanisms enable. Complicating the existent framework, we can find pro-worker informal norms and pro-employer formal laws. I give some examples in the table below.

Formal = good jobs	Informal = bad jobs
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	Formal	Informal
In the workers' advantage	Health and accident insurance.	No restrictions on job hopping and alternative arrangement; loose immigration law enforcement.
In the workers' disadvantage	Labor contract tied to visa sponsorship; strict immigration law enforcement.	Repetitive entries are hard.

Furthermore, studying this informal case also reveals the limitation and compromises in the current formal migration programs that the ILO's formalization agenda has normalized. Even

²⁹⁵ Rittich, *supra* note 27.

though the informal system cannot and should not be replicated, the specific pro-worker rules identified by the workers still inform the reform agenda beyond the local. I thus argue that the ILO and labor advocates should promote and prioritize pro-worker rules, formal or informal, to advance their interest. Here I give three tentative suggestions.

First, the workers have identified that the disconnection between their workplace choices and the immigration law consequences in the informal setting works significantly in their favor. This enables them to change employers, employment structure, and even the sector of their job. Given the intimate nature of domestic workers' jobs, workplace arrangements also deeply affect their personal and family life. As a consequence, strictly enforced work permit laws often enable the employers and the host states to impose invasive discipline on the workers. This can happen in the extreme form that the ILO's Recommendation has tackled, like a compulsory pregnancy test and live-in mandate;²⁹⁶ it can also happen in a less obvious form, like the prohibition on part-time jobs and obstacles to job changing. The work permits laws—as are common among formal migration programs—inevitably contribute to this unequal bargaining power structure between the employer and the worker. Thus, in addition to outlawing specific coercive behaviors, the ILO should prioritize a more structural change of work permit and visa sponsorship laws.

This study also suggests that pre-departure is not the best timing for workers to draw contracts, though the Convention explicitly mandates a written enforceable contract before the workers' departure. At this moment, even if the worker hasn't incurred the vulnerability caused by migration, she is disadvantaged in the bargaining for many other reasons: the low labor cost in the sending country, the limited knowledge and support network in the destination society, and the desperate need to find a job. She is indeed competing with many other women in multiple

²⁹⁶ ILO, R201.

labor-export countries who are ready to take bad jobs. On the contrary, once she becomes a participant in the destination jurisdiction's labor market if the rules give her sufficient access to it, she is competing with a limited group of workers in the same society as set by the immigration law system. Meanwhile, employers in affluent cities are increasingly dependent on migrant workers for care. The worker also has more information about the society and the specific household she is working in. There are many reasons to support that the workers have more bargaining power a duration after her arrival. If we want the law to mandate a contract, it should happen post-arrival or the law should give the worker a right to renegotiate the contract terms after her arrival.

The third implication is to strengthen the social network of migrant workers in the destination society. While Filipina domestic workers endure vulnerability originating from their marginal legal status as workers providing low-pay labor in other people's households and sometimes also as undocumented immigrants, they are not lacking in capability and strategy to bargain for their interest. Their community plays the most crucial role in communicating and diversifying bargaining strategies. When the rules permit, the community can also provide some alternative income sources and livelihood and thus decrease the workers' dependency on their employers. Preserving or supporting the community benefits the workers, even if it can lead to the expansion of the informal economy.

Nascent and contingent as the international agenda for migrant domestic worker is, it is possible and urgent to rethink about the specific legal designs with concrete empirical studies to enhance migrant domestic workers' substantive working conditions and also their agency in defining their working arrangements.

