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Citation

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MANAGING FEMALE FOREIGN DOMESTIC WORKERS IN SINGAPORE: ECONOMIC PRAGMATISM, COERCIVE LEGAL REGULATION, OR HUMAN RIGHTS?

*Eugene KB Tan**

Singapore's immigration discourse is deeply influenced by its need to "right-size" its population. As a society that has and remains in need of immigration, contemporary immigration and globalization have rigorously challenged the conventional thinking and understanding of citizenship, as well as notions of who belongs and who does not. Nevertheless, international marriages and pervasive in-and out-migration for purposes of employment, study, and family, conspire to make more pronounced the decoupling of citizenship and residence in Singapore. This transnational dimension sits uncomfortably with the policy makers' desire for, and the imperatives of, state sovereignty, control, and jurisdiction.

Although one quarter of people living in Singapore are foreigners, concerns of human rights and justice are largely peripheral, if not absent from the immigration discourse. This is seen most clearly in employment issues pertaining to foreign female domestic workers (FDWs), most of who come from other parts of Southeast Asia. 'Rights talk' is largely absent even as activists seek to engage the key stakeholders through the subtle promotion of rights for such workers.

The government, however, has resisted framing the FDW issues as one of rights but instead has focused on promotional efforts that seek to enhance the regulatory framework. This dovetails with the reality that immigration law also functions as quasi-family law in which the freedom of FDWs and other foreign menial workers to marry Singapore citizens and permanent residents are severely restricted. As such, the immigration regime's selectivity functions as a draconian gatekeeper. Justice and human rights are but tangential concerns.

INTRODUCTION

In their authoritative overview of migration, Stephen Castles and Mark Miller describe international migration as "part of a transnational revolution that is reshaping

* Assistant Professor of Law, School of Law, Singapore Management University. I thank the two anonymous reviewers and Dr Yaël Ronen for their careful reading, helpful comments, and critical advice on an earlier draft. Michele Manspeizer provided excellent editorial work on the Article. I appreciate the many thought-provoking feedback given by participants at the conference on "Human Rights and Justice in Immigration: National and International Perspective," held at the Minerva Center for Human Rights, Faculty of Law, The Hebrew University of Jerusalem, Jerusalem, Israel, May 25-27, 2009. All errors and shortcomings remain mine alone.

societies and politics around the globe.”¹ The central importance of migration and the challenges and prospects it poses, to both developed and developing countries, have not gone unnoticed. Migration’s role in development and economic prosperity is now commonly accepted and many governments seek to reap the benefits of migration while also minimizing the costs. The World Bank’s 2009 edition of the *World Development Report* (WDR) underscores the importance of migration and argues for facilitating the voluntary movement of people as part of the larger process of development.² The WDR further notes how the international migration pattern was shifting from South-North to South-South.³ The 2009 *Human Development Report* (HDR) observes that one out of seven persons (or one billion people) in the world is a migrant and notes that migration has significant human development potential for receiving and sending countries: “Allowing for migration—both within and between countries—has the potential to increase people’s freedom and improve the lives of millions around the world.”⁴ In similar vein, the United Nations Economic and Social Commission for Asia and the Pacific (UN-ESCAP) observes that international migration has become “a structural and permanent element of societies and economies” in the Asia-Pacific region, reinforcing the intimate linkage between international migration and development.⁵ This is particularly so in East and Southeast Asia where the demographic trends and economic disparities among countries in the region have stimulated transnational labor mobility.⁶

¹ STEPHEN CASTLES & MARK J. MILLER, *THE AGE OF MIGRATION: INTERNATIONAL POPULATION MOVEMENTS IN THE MODERN WORLD* (3d ed. 2003). See also PHILIPPE LEGRAIN, *IMMIGRANTS: YOUR COUNTRY NEEDS THEM* (2006).

² WORLD BANK, *WORLD DEVELOPMENT REPORT 2009: RESHAPING ECONOMIC GEOGRAPHY* (2009), see especially ch. 5 “Factor Mobility and Migration.”

³ SASKIA SASSEN, *A SOCIOLOGY OF GLOBALIZATION* 134 (2007) (terming this dimension of migration as “geoeconomics of international migrations” which explains “the considerable degree of patterning evident in the migrations and provides the crucial context within which to understand the dynamic whereby an overall condition of poverty, unemployment, or underemployment can become activated as a migration push factor.”)

⁴ U.N. DEV. PROGRAM [UNDP], *HUMAN DEVELOPMENT REPORT 2009, OVERCOMING BARRIERS: HUMAN MOBILITY AND DEVELOPMENT* (2009), available at <http://hdr.undp.org/en/reports/global/hdr2009/>.

⁵ U.N. Econ. & Soc. Comm’n for Asia and the Pacific [UN-ESCAP], *Key Trends and Challenges on International Migration and Development in Asia and the Pacific*, U.N. Doc. SDD/IMD/HLM/2008/INF/1 (Aug. 5, 2008), report prepared for the Asia-Pacific High-level meeting on International Migration and Development, Bangkok, September 22-23, 2008, available at http://www.unescap.org/esid/meetings/migration/SDD_IMD_INF1.pdf. The literature on the migration and development is voluminous. For a recent discussion, see Alejandro Portes, *Migration and Development: Reconciling Opposite Views*, 32 *ETHNIC & RACIAL STUD.* 5 (2009).

⁶ Graeme Hugo, *Emerging Demographic Trends in Asia and the Pacific: The Implications for International Migration*, in *TALENT, COMPETITIVENESS AND MIGRATION* 33 (Bertelsmann Stiftung &

In much of developing Asia, migration of low-skilled workers internally or internationally is crucial. For the more advanced Asian economies, encouraging the permanent migration of high-skilled migrants is an economic imperative. At the same time, these economies seek to restrict the migration of low-skilled workers who are also attracted by the economic opportunities there. Amid these large flows of people in search of a better life, a striking characteristic of migration trends and patterns—especially in Asia—that is hard to miss, is the feminization of these people movements over the last three decades.⁷

This Article is concerned primarily with one aspect of this feminization of labor migration into Singapore viz. the care economy that the temporary female foreign domestic workers (FDWs) crucially provide to Singapore households. The focus on FDWs is deliberate because the exclusively domestic setting in which they perform their employment duties makes regulation of their work conditions extremely difficult. This Article examines both the legal and the policy regimes shaping the FDW sector in Singapore. For many Singaporean households, FDWs are almost indispensable. Yet they are regarded, to all intents and purposes, as being unsuitable for inclusion into Singapore society. Despite the heavy reliance on FDWs in the caring and mothering functions in a typical household, the dominant conception of FDWs and their work as home-bound and domestic (i.e., a private and apolitical domain), results in the disproportionate limitation on their ability to openly assert their “rights” in the public realm. Labor rights are characterized as being apposite only in formal employment outside the home. Thus, in the public discourse, regulation is conceived as necessary and effective in managing the needs and interests of FDWs, as well as those of their employers and society. Their rights are structurally confined to selected employment rights and do not engage the more amorphous “human rights,” which are often a red flag in a polity that has often emphasized responsibilities rather than rights. Furthermore, the market economy is viewed as an appropriate pathway by

Migration Policy Institute eds., 2009); THE INTERNATIONAL MIGRATION OF WOMEN (Andrew R. Morrison, Maurice Schiff & Mirja Sjoblom eds., 2008). On the feminization of intra-regional migratory flows, see Nicola Piper, *Feminisation of Migration and the Social Dimensions of Development: the Asian Case*, 29 *THIRD WORLD Q.* 1287 (2008). A related issue is the racialization of labor in which race is a “pivotal aspect underlying today’s global labor system,” see Edna Bonacich, Sabrina Alimahomed & Jake B. Wilson, *The Racialization of Global Labor*, 52 *AM. BEHAV. SCIENTIST* 342 (2008).

⁷ See generally Piper, *supra* note 6; Saskia Sassen, *Two Stops in Today’s New Global Geographies: Shaping Novel Labor Supplies and Employment Regimes*, 52 *AM. BEHAV. SCIENTIST* 457 (2008); EAST ASIAN SEXUALITIES: MODERNITY, GENDER AND NEW SEXUAL CULTURES (Stevi Jackson, Liu Jieyu & Woo Juhyun eds., 2008).

which economic justice and the interests of FDWs are best secured. Competition and confrontation over contested understanding and agendas of human rights are portrayed and treated as socially divisive and conferring no tangible benefit to FDWs. This Article focuses on the immigration policies and laws that circumscribe the place of FDWs in Singapore. By aggressively managing the regulatory framework governing FDWs, the Singapore case demonstrates that contemporary immigration and globalization may not necessarily privilege migrant rights or necessarily valorize human rights and justice. However, there is increased government, judicial, and civil society interest in the well-being of such workers, and the emphasis on rights may well gradually grow in importance within the regulatory framework.

Part I of this Article provides the contextual setting with an overview of the deep roots and relevance of both permanent and work migration in Singapore. A sketch of Singapore's inherent demographic challenges and economic needs is outlined, in order to demonstrate the need for the hiring of significant numbers of foreign domestic workers to provide care to Singaporean households. This Part also discusses the role of foreign domestic workers in Singapore's domestic households and political economy.

In Part II, the Article examines the policy and legal ethos that regulate the employment of FDWs in Singapore. The Article argues that the overarching framework consciously avoids a rights-centric approach in the management of such workers. In particular, it seeks to ensure that the presence of such workers in Singapore is temporary. These workers are disqualified from becoming citizens or permanent residents regardless of how long they have worked in Singapore. Under-girding the regulatory framework is the emphasis placed on the contractual approach, in which the granting of a work permit to work in Singapore is a privilege, and requires the quid pro quo from the foreign domestic worker of agreeing to a transient status in Singapore. This suitably distinguishes Singapore's legal regime vis-à-vis the foreign domestic workers through its strong emphasis on regulation and responsibilities (of the foreign domestic worker and her employer) as well as surveillance, in order to ensure that the contractual requirements of employment are observed. In particular, the conditions attached to the work permits instrumentally exclude these workers from making their contractual, transient presence in Singapore into anything substantive, such as securing citizenship or permanent residence rights.

Part III explores how civil society organizations in Singapore tread gingerly in their advocacy efforts for, and the promotion of, the interests and welfare of foreign domestic workers there. For these organizations, their advocacy efforts seek to have the government and employers adopt a basic level of rights recognition through

education rather than robust rights assertion. Confrontation is seen as an ineffective way of mutually protecting the rights and welfare of the workers and the larger societal interests.

One quarter of people living in Singapore are foreigners, the bulk of whom are transient workers. However, concerns of human rights and justice are largely peripheral, if not absent, in the migration of transient workers discourse. This is seen most clearly in issues pertaining to foreign female domestic workers, who are predominantly from other parts of Southeast Asia. “Rights talk” is largely absent even as activists seek to engage the key stakeholders on the rights of such workers as a means to the end of better protecting their interests and welfare. The Singapore government, however, has firmly resisted a rights-based approach in framing the FDW issues, such as employment conditions. Instead, the focus has been a public education approach emphasizing responsibilities of both the FDWs and the employers, in tandem with enhancing the regulatory framework to reduce abuse of such workers as well as ensuring that FDWs comply with the conditions of their work permits. However, given the limits of regulation, the evolution of the discourse toward a greater focus on rights of these workers may well be the key to their well-being. In this Article, the methodology adopted is a textual analysis of primary and secondary legislation, parliamentary debates, case law, ministerial speeches, newspaper reports, and other socio-legal literature (especially academic scholarship) pertaining to employment of these workers in Singapore.

I. IMMIGRATION AS A DEFINING FEATURE OF SINGAPORE SOCIETY

Singapore was and remains an immigrant society. Its immigration policy is heavily affected by a pervasive sense of security and economic vulnerability. Surrounded by the Muslim-majority countries of Malaysia and Indonesia, Singapore is the only nation-state with an ethnic Chinese majority population in Southeast Asia.⁸ Paradoxically, its relative prosperity and decisive governance have also exacerbated its innate sense of insecurity vis-à-vis its neighbors.⁹ There is heavy reliance on foreign labor at the skilled and low-skilled levels to meet the needs of Singapore’s high-performing economy. As of June 2009, of the 3.03 million persons in the labor force, 1.99 million

⁸ Singapore is densely populated with 4.99 million people living in the island city-state of about 700 square kilometers in area. See <http://www.singstat.gov.sg/stats/themes/people/hist/popn.html>.

⁹ For a concise introduction to the “foreign policy of an exceptional state,” see MICHAEL LEIFER, SINGAPORE’S FOREIGN POLICY: COPING WITH VULNERABILITY (2000).

(65.5 per cent) were residents (i.e., citizens and permanent residents) and 1.04 million (34.5 per cent) were non-residents.¹⁰ The vast majority of the non-resident labor force were transient workers (“guest workers”). Of these, an estimated 190,000—all female—were employed as domestic help (or “maids” in domestic parlance).¹¹

Singaporeans are severely under-reproducing. The necessity to top up Singapore’s population and import foreign labor to meet its economic needs are critical policy imperatives. In 2009, Singapore’s resident total fertility rate (TFR) reached a historic low of 1.22 (i.e. 1.22 babies per woman), among the lowest in the world. This precipitous decline is not a recent phenomenon as Singapore’s TFR has been below the replacement level of 2.1 since 1976. This can be attributed to an overly-successful population control regime in the 1970s that coincided with a period of rapid economic growth. In 2009, Singapore citizens, permanent residents (PRs) and non-residents accounted for 64.2, 10.7 and 25.1 per cent of the total population respectively.¹² Immigration of new citizens and temporary workers has become the primary means by which the population is replenished and right-sized for Singapore’s demographic and economic requirements respectively.¹³ Not surprisingly, concerns have been raised over the relatively high proportion of foreigners in Singapore.

This dependence on foreign manpower, whether high-skilled or low-skilled, is an abiding feature of Singapore’s economic life,¹⁴ for without foreign manpower:

[O]ur industries would have been handicapped and we would not have been able to achieve robust levels of growth. Overall, our

¹⁰ See REPORT ON LABOR FORCE IN SINGAPORE 2 (2010), published by the Ministry of Manpower.

¹¹ For a succinct introduction, see Ueno Kayoko, *Foreign Domestic Workers in Singapore*, in ASIA’S NEW MOTHERS: CRAFTING GENDER ROLES AND CHILDCARE NETWORKS IN EAST AND SOUTHEAST ASIAN SOCIETIES 140 (Emiko Ochiai & Barbara Molony eds., 2008).

¹² Figures obtained POPULATION IN BRIEF 2010 (2010).

¹³ Senior Minister Goh Chok Tong analysed the declining birth rate problem starkly:

This means that we are not replacing both parents. The last time we were replacing both parents was 30 years ago [1976]. And that was a Dragon Year! If the total fertility rate falls further, we will not be replacing even the mother! Will Singapore last 100 years if local-born Singaporeans are becoming an endangered species?

Goh, *The Singapore Nation: a Work in Progress*, speech by the Senior Minister at the Marine Parade National Day Dinner, Aug. 19, 2006. In the Chinese horoscope, the Dragon year (which occurs once in the 12-year Chinese zodiac cycle) is regarded as an auspicious time to have a child. By 2005, all races in Singapore were reproducing below the replacement level, see Li Xueying, *Rules Eased As Part Of Efforts To Woo Immigrants: Urgent Need to Boost the Population is Underscored Together with Measures to Increase Births*, THE STRAITS TIMES, Aug. 24, 2006.

¹⁴ For a general overview, see Brenda S.A. Yeoh & Natalie Yap, *Gateway Singapore: Immigration Policies, Differential (Non)Incorporation, and Identity Politics*, in MIGRANTS TO THE METROPOLIS: THE RISE OF IMMIGRANT GATEWAY CITIES 177 (Marie Price & Lisa Benton-Short eds., 2008).

flexible foreign workforce policies have enabled us to maintain a critical competitive edge over competing economies by allowing companies to expand their workforce quickly to capitalize on opportunities, at the same time creating more and better jobs for our citizens.¹⁵

The political leadership has urged Singaporeans to accept the “trade-offs” that result from an economy heavily dependent on foreign labor. The National Development Minister portrayed the stark choices when it comes to Singaporeans’ “not in my backyard” attitude toward the siting of housing for these foreign workers: “If we want more foreign workers, we must collectively make adjustments to resolve the social problems. If we want fewer foreign workers, we must be prepared for slower growth, higher costs, lower service levels and delays in the completion of our flats, our roads, our rail lines.”¹⁶

The economic thrusts in the immigration regime are evident, and they reinforce the functionality of Singapore’s heavy dependence on foreign labor, both skilled and low-skilled. At the same time, the Singapore government is selective in deciding who to admit as permanent residents and naturalized citizens.¹⁷ Ganesan succinctly observes the place of transient foreign workers in Singapore’s political economy as one where:

[T]heir presence allays fears regarding the long-term sustainability of the country, sustains high economic growth levels, and lowers the cost of social reproduction. Additionally, migrants from Asia are comfortable with the status quo in Singapore and less likely than citizens to challenge the tone and temper of the domestic political culture.¹⁸

¹⁵ Home Affairs Minister’s written answer of Oct. 20, 2008 to a parliamentary question whether future immigration policies would be tightened in view of recent population statistics which revealed that citizens comprise only 65 per cent of the total population, and the need for a rooted local populace in Singapore, available at http://www.mha.gov.sg/news_details.aspx?nid=MTI5Ng%3D%3D-ExK7QXfi2hc%3D (last visited Feb. 21, 2010).

¹⁶ *Fewer Foreign Workers? The Price is Slower Growth*, THE STRAITS TIMES, Oct. 21, 2008. The increase in the number of foreign workers in Singapore has led to a lack of decent housing for them, and some Singaporeans’ concern that a foreign worker dormitory in their residential neighborhood would lead to increased crime, disorderly behavior, and that the value of their residential properties would be negatively affected, see *A Dangerous Divide*, TODAY (Singapore), Sep. 18, 2008; *Serangoon Gardens Dorm to Go Ahead*, THE STRAITS TIMES, Oct. 4, 2008; *Margaret Drive to Get Foreign Worker Dorm*, THE STRAITS TIMES, Dec. 4, 2008.

¹⁷ On the global race for talent, see Ayelet Shachar, *The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes*, 81 N.Y.U. L. REV 148 (2006).

¹⁸ Narayanan Ganesan, *Singapore in 2008: A Few Highs and Lows while Bracing for the Future*, 49 ASIAN SURV. 213, 218 (2009).

This Article examines the regulatory regime of the FDWs in Singapore to articulate the various themes that characterize the migration governance regime of low-skilled foreign workers there. One in six households in Singapore employs at least one FDW,¹⁹ demonstrating the impact of what has been popularly referred to as the “global care chains” and “transnational mothering.”²⁰ It is no exaggeration to say that they occupy a niche in the Singaporean labor force today. As these jobs are not sought after by Singaporeans, this necessitates the search for such employees from overseas sources.²¹ Most FDWs in Singapore hail from the Philippines and Indonesia, with smaller numbers from Sri Lanka and Myanmar. Work permits for employment as FDWs are only issued to females from these source countries.²² Yet, the division of labor between the sexes within the home and family remains largely unchanged, and Singapore has been described by the government as a “patriarchal society.”²³ Nevertheless, the knee-jerk criticism and irrational fear that transient foreign workers, in general, cost local workers their jobs, depress local wages, and are prone to vice and criminal activity, color the perceptions of Singaporeans toward FDWs.²⁴

¹⁹ To help regulate demand for FDWs and other transient workers by reducing excessive reliance on them, the government imposes a foreign worker levy. A FDW levy is SGD265 (normal) or SGD170 (concession) and is payable by the employer every month. See http://www.mom.gov.sg/publish/momportal/en/communities/work_pass/foreign_domestic_workers/during_employment/foreign_domestic_worker.html.

²⁰ On global care chains, see GLOBAL WOMAN: NANNIES, MAIDS, AND SEX WORKERS IN THE NEW ECONOMY (Barbara Ehrenreich & Arlie Russell Hochschild eds., 2004); RHACEL SALAZAR PARREÑAS, SERVANTS OF GLOBALIZATION: WOMEN, MIGRATION AND DOMESTIC WORK (2001). On the East Asian context, see Emiko Ochiai, *Gender Roles and Childcare Networks in East and Southeast Asian Societies*, in ASIA'S NEW MOTHERS, *supra* note 11; Emiko Ochiai, *Care Diamonds and Welfare Regimes in East and South-East Asian Societies: Bridging Family and Welfare Sociology*, 18 INT'L J. JAPANESE SOC. 60 (2009).

²¹ The concern that the FDWs are stealing jobs from the locals is unfairly exaggerated.

²² The approved source countries include Bangladesh, Hong Kong, India, Indonesia, Macau, Malaysia, Myanmar, Pakistan, Philippines, South Korea, Sri Lanka, Taiwan, and Thailand, see http://www.mom.gov.sg/publish/momportal/en/communities/work_pass/foreign_domestic_workers/application0/requirements.html. Information on the actual number of FDWs from any one source country is not available publicly.

²³ For a thumb-nail sketch of the history of domestic help in Singapore and its persistence in the global capitalist economy, see Diana Wong, *Foreign Domestic Workers in Singapore*, 5 ASIA AND PAC. MIGRATION J. 117 (1996). On Singapore as a patriarchal society, see Geraldine Heng and Janadas Devan, *State Fatherhood: The Politics of Nationalism, Sexuality and Race in Singapore*, in BEWITCHING WOMEN, PIOUS MEN: GENDER AND BODY POLITICS IN SOUTHEAST ASIA (Aihwa Ong & Michael Peletz eds., 1995); Maila Stivens, *Post-modern Motherhoods and Cultural Contest in Malaysia and Singapore*, in WORKING AND MOTHERING IN ASIA: IMAGES, IDEOLOGIES AND IDENTITIES 29 (Theresa W. Devasahayam & Brenda S.A. Yeoh eds., 2007).

²⁴ However, the overall arrest rate in 2007 for foreigners (385 arrested per 100,000) is lower than that for Singapore citizens and permanent residents (435 per 100,000): see *Unjustified Fears*,

The irony of the rapid growth of FDWs as employees within the Singapore households, is that their easy and relative affordability in Singapore have been a boon for many Singaporean households, enabling many women to seek employment outside the home.²⁵ A study has suggested that FDWs in Singapore (and Hong Kong) help raised the income of local low-skilled Singaporean workers by 3.9 per cent, and contributed to a 1.2 per cent boost in the overall income of the economy. Furthermore, the same study stated that FDWs also helped reduce the wage gap between high-skilled and low-skilled workers.²⁶

II. WHITHER JUSTICE AND RIGHTS FOR MIGRANT WORKERS IN SINGAPORE?

Migration has instigated several key developments in both sending and recipient countries. Given the large movement of migrant workers across national borders, questions naturally arise over their rights status. What sort of rights and privileges ought to be accorded to these workers?²⁷ The 1990 International Convention on the Rights of All Migrant Workers and Members of their Families,²⁸ which reaffirms the basic rights applicable to migrant workers and their families, has not been ratified by the major destination countries of migrant workers, including Singapore.²⁹ Various countries approach this issue of rights for migrant workers in different ways.³⁰ A universally accepted international regime governing FDWs is a long way in the

TODAY (Singapore), Sep. 15, 2008. Such discourse is not unusual although highly discriminatory. On the use of criminal justice imagery and strategies in the management of foreign nationals, see Mary Bosworth & Mhairi Guild, *Governing through Migration Control: Security and Citizenship in Britain*, 48 BRIT. J. CRIM. 3 (2008).

²⁵ On the relevance and irrelevance of gender in Singapore, see Youyenn Teo, *Gender Disarmed: How Gendered Policies Produce Gender-Neutral Politics in Singapore*, 34 SIGNS: J. WOMEN IN CULTURE & SOC'Y 533 (2009).

²⁶ See Michael Kremer & Stanley Watt, *The Globalization of Household Production*, available at http://www.cid.harvard.edu/bluesky/papers/kremer_globalization_0609.pdf.

²⁷ For a compelling discussion of the intimate connection between citizenship and life chances, see AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* (2009).

²⁸ International Convention on the Rights of All Migrant Workers and Members of their Families, Oct. 21, 1990, 75 U.N.T.S. 287.

²⁹ See also Susan Martin and Rola Abimourched, *Migrant Rights: International Law and National Action*, 47 INT'L MIGRATION 115 (2009).

³⁰ I am grateful to one of the anonymous reviewers who pointed me to the useful literature on the "management of migration" and the "governance of economic migration." See, e.g., JEAN GRUGEL & NICOLA PIPER, *CRITICAL PERSPECTIVES ON GLOBAL GOVERNANCE: RIGHTS AND REGULATION IN GOVERNING REGIMES* (2007); *GOVERNING INTERNATIONAL LABOUR MIGRATION: CURRENT ISSUES, CHALLENGES AND DILEMMAS* (Christina Gabriel & Hélène Pellerin eds., 2008), especially Part I.

making. All too often, migrants are essentialized by host societies either as desired (talented individuals who can add value to the economy and for whom grant of citizenship is preferred), and those as necessary (individuals who do dirty, degrading jobs) but for whom citizenship is but a pipe dream by virtue of their lack of academic and professional qualifications.

In the case of Singapore, a contractual approach, rather than a rights approach, is preferred when it comes to the management of FDWs within the migration regime. The admission of transient workers into Singapore is seen solely as a transactionary, legal agreement, in which the issue of rights of permanent residence or citizenship is pre-empted and excluded at the outset. The fact that FDWs are admitted into the country as transient workers, on renewable short-term employment contracts, is relied upon to justify a differential regime—one where regulations are more prominent and deemed more appropriate than rights—for managing the issues relating to FDWs.

Under the law, the designated workplace of a FDW is her employer's home. FDWs are also required by law to reside at the homes of their employers.³¹ This reinforces their separate and often less visible status. In turn, this creates the perception and reifies the stereotype that housework is not real work that contributes to the country's economy. The abiding association of FDWs with the domestic sphere—buttressing the notions of privacy, harmony, familial obligations and responsibilities—denies such workers full access to a range of rights, since the home is not perceived as an appropriate setting for the structuring of an employer-employee relationship that is heavily rights-based. Instead, an insistence on rights in an intimate setting like the domestic household is seen as setting the stage for confrontation and disharmony. In a paternalistic, consensus-seeking polity, the ideal of harmony has gained traction with the Singaporean political elite vis-à-vis the goals of good governance.³²

The FDWs' status as special work-permit holders mean that they are subjected to a treatment protocol that invariably highlights their simultaneous functionality and marginality in the overall employment and immigration regimes. The employment opportunity afforded to a FDW is beneficently characterized as a privilege provided

³¹ See *Conditions of Work Permits/S Passes* imposed by the Controller of Work Passes under § 7(4)(e) of the Employment of Foreign Manpower Act, Ch. 91A, Statutes of the Republic of Singapore (revised ed. 2009), available at http://www.mom.gov.sg/publish/etc/medialib/mom_library/work_pass/files.Par.8149.File.dat/WP_S_Pass_Conditions.pdf.

³² As then Prime Minister Lee Kuan Yew declared, '[t]he basic difference in our approach springs from our traditional Asian value system which places the interests of the community over and above that of the individual': Address by Prime Minister Lee Kuan Yew, at the opening of the Singapore Academy of Law, Aug. 31, 1990, available in 2 SINGAPORE ACAD. L. J. 155 (1990).

by Singapore. The quid pro quo is the near-impossibility of a FDW securing extra-employment rights and privileges, such as Singaporean permanent residency or citizenship, as well as access to public resources such as subsidies and budgetary handouts.

The contractual approach taken to the FDWs obtaining legal permission to work in Singapore further relegates the concerns of justice and fairness, moral rights, and access to political membership. Put simply, these concerns are marginal or excluded in such a contractual regime. Rights and responsibilities in employment are clearly delineated even before the FDWs commences employment in Singapore. Issues of their being transient workers, with no expectations of full citizenship, are managed before they even enter Singapore to work. From a policy perspective, expectations are better managed, and all parties concerned are fully apprised of their contractual rights and responsibilities right from the outset.

While the policy is abundantly clear on the non-incorporation of FDWs into the Singapore polity through permanent residence or citizenship, the normative question persists whether FDWs ought to be given the opportunity to secure permanent residence or even citizenship in Singapore. In this regard, Joseph Carens and other political theorists argue that migrant workers ought to be entitled to citizenship if they had resided for an extended period (say, beyond five or ten years). As Carens put it,

Length of residence, not legal status, is the key moral variable. The longer the stay, the stronger the moral claim to most legal rights. In the end, relatively few legal rights may justifiably be attached exclusively to citizenship.³³

By virtue of working and living for an extended period in a state, a moral entitlement to rights of membership, including citizenship, is created. The migrant worker would have developed ties to the community he/she has lived and worked in. As Daniel A. Bell and Nicola Piper note, this is the trend in most Western liberal democracies, in which long-term residents are extended “most if not all the legal rights of citizens and improving the access to citizenship for the descendants of immigrants and immigrants themselves.” In contrast, in developed East Asian societies like Singapore, most migrant workers “work on short term contracts without the realistic hope that they will be equal members of the political community.”³⁴

³³ Joseph H. Carens, *Immigration, Democracy, and Citizenship*, in *OF STATES, RIGHTS, AND SOCIAL CLOSURE: GOVERNING MIGRATION AND CITIZENSHIP* 18 (Oliver Schmidtke & Saime Ozcurumez eds., 2008).

³⁴ Daniel A. Bell & Nicola Piper, *Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore*, in *MULTICULTURALISM IN ASIA* 196 (Will Kymlicka & Baogang He eds., 2005).

The Singapore case demonstrates the utilitarian approach taken toward immigration. Immigration is but a means to the end of economic vitality. Although assured of minimal rights, temporary migrant workers are conceived as mere functionaries meeting the manpower needs of the economy. Expectations by temporary workers, including those who work in Singapore for an extended period, of a plausible claim to citizenship or permanent residence are non-existent. This is perhaps not surprising at all, since the migration of such workers to Singapore is economically motivated as far as both the foreign workers and the Singaporean authorities are concerned. Singapore subscribes fully to the view that as a sovereign power, it has full autonomy to decide who to admit and on what terms, as well as who should be given political membership. Nevertheless, at issue is whether disqualification of FDWs from being granted permanent residence or citizenship reflects an immigration regime that is inherently instrumental and potentially unjust, through reifying stereotypes as well as contributing toward a mindset of denying basic respect to the rights of FDWs resulting in greater likelihood of their maltreatment.

Having described the overarching policy and legal approach to FDWs as a subset of the large pool of transient workers in Singapore, the following section examines in some detail the specific legal framework governing FDWs. The discussion highlights the pragmatic and regulatory mindset to which the employment of FDWs in Singapore is regulated. It will be observed that a rights-based discourse has been consistently avoided in the regulatory framework.

A. GOVERNING FDWs EXPEDIENTLY: COERCIVE REGULATION AND SURVEILLANCE

Singapore's laws governing transient, low-skilled migrants who are in Singapore for employment purposes, reveals the ideological, economic and socio-cultural underpinnings of such laws.³⁵ For instance, the physical transience of FDWs in Singapore is secured through the work permit system. Work-permit holders are not permitted to bring their spouses and children to live in Singapore. The FDW's work-permit is tied to her employer, and as such, she does not have the ability to enter the

³⁵ E.g., the "ideology of geneticism is manifested in the public discourse of 'economic rationality, investment strategy, and human resource management ...': see Vivienne Wee, *Children, Population Policy, and the State in Singapore*, in *CHILDREN AND THE POLITICS OF CULTURE* 184, 213-15 (Sharon Stephens ed., 1995). On the government's reticence and reluctance to regulate the work conditions of the FDWs, see Youyenn Teo & Nicola Piper, *Foreigners in Our Homes: Linking Migration and Family Policies in Singapore*, 15 *POP., SPACE & PLACE* 147 (2009).

local employment market as a free, autonomous agent. The employer can revoke the FDW's work permit unilaterally at any time, which would result in immediate repatriation. Unlike other work-permit holders, FDWs are excluded from Singapore's Employment Act.³⁶ While this legislation provides guidance, FDWs do not possess state-sanctioned rights with regards to standard employment conditions such as wages, regular time-off, and have no guarantees regarding working conditions.³⁷ The Manpower Ministry explains the particularistic regime governing the FDWs' employment conditions in the following terms:

This is because it is not practical to regulate specific aspects of domestic work i.e. hours of work, work on a rest day and on public holidays. It would also be difficult to enforce the terms of the Employment Act for domestic workers as:

- They work in a home environment; and
- The habits of households vary.

For example, it would be hard to compute overtime payments as domestic workers' work/free time are difficult to define and regulate in the same way as employees working in offices or factories.³⁸

The law also does not require employers and their FDWs to have a written employment contract, although they are encouraged to do so.³⁹ The government requires employers of FDWs to post a SGD5,000⁴⁰ security bond for each FDW to

³⁶ Employment Act, Ch. 91, Statutes of the Republic of Singapore (revised ed. 2009).

³⁷ *Id.* However, § 67 of the Employment Act provides that the Manpower Minister may apply the Act to domestic workers:

The Minister may, from time to time by notification in the *Gazette*, apply all or any of the provisions of this Act with such modification as may be set out in the notification to all domestic workers or to any group, class or number of domestic workers and may make regulations to provide generally for the engagement and working conditions of domestic workers.

³⁸ See Ministry of Manpower, Employers' Guidelines: Employment Laws and Contracts, available at http://www.mom.gov.sg/publish/momportal/en/communities/work_pass/foreign_domestic_workers/employers_guidelines/Employment_Laws_and_Contracts.html.

³⁹ For a sample employment contract recommended by the sole consumer association in Singapore, see <http://www.case.org.sg/downloads/casetrust/110906-Standard%20Employment%20Contract.doc>. Given the generic nature of such standard contracts, limitations in terms of how they ensure fair and reasonable treatment of FDWs are evident, see Radha Basu, *Relook Maids' Pay and Benefits*, THE STRAITS TIMES, July 30, 2009.

⁴⁰ SGD5000 is equivalent to about USD3611 (USD1 = SGD1.38 as at Nov. 24, 2009). In a belated recognition in 2009 that employers have little control over foreign workers absconding on their own accord, the Manpower Ministry would forfeit only half of the security deposit, if the employer had made reasonable efforts to locate the missing worker.

ensure that employers are responsible for their complying with the conditions of her employment. Such an arrangement of tying the FDW's work permit to her employer, with the latter's ability to unilaterally revoke it, provides the employer with a lot of control over the employment fate of the FDW. It also ensures that employers of FDWs arrange for the orderly repatriation of FDWs at the end of their service contracts, rather than abandoning them. Notwithstanding the good intentions behind the security deposit requirement, this only heightens the tendency of employers of FDWs, on the pain of losing their security deposit, to excessively regulate the lives of their FDWs in order to engender good behavior. For instance, some employers retain the passports of their FDWs. Others may deny their FDWs time off from work (rest days in regular employment parlance) fearing that they may be in bad company or engage in activities that would breach the conditions attached to the work-permits. Consequently, despite the sizeable number of FDWs, they are rendered invisible: Not only are the FDWs "not 'seen' in public space ... their voices are seldom 'heard' in the thick of Singapore's embryonic but growing civil society."⁴¹

The regulatory framework governing FDWs also extends to surveillance of their physical bodies, and a limitation of their life chances, with specific reference to Singapore and its residents. For instance, FDWs are required to go for a biannual examination (6ME) by a registered Singapore doctor "to screen for infectious diseases and pregnancies." A FDW who fails this examination is immediately repatriated. According to the Manpower Ministry:

The 6ME helps ensure that FDWs do not carry infectious diseases such as HIV [sic] or TB, which might harm them or the people they come into contact with. This is especially important as FDWs work in a residential environment and may have contact with children. A pregnancy test is also required to screen against FDWs who might give birth in Singapore, as this would contravene the Work Permit regulations.⁴²

Another onerous condition governing the conduct of FDWs and which could potentially affect their life chances is the marriage restriction policy. Under this policy, a low-skilled foreign work-permit holder, including non-FDWs:

⁴¹ Brenda S.A. Yeoh & Kavitha Annadhurai, *Civil Society Action and the Creation of "Transformative Spaces" for Migrant Domestic Workers in Singapore*, 37 *WOMEN STUD.* 548, 550 (2008).

⁴² See http://www.mom.gov.sg/publish/momportal/en/communities/work_pass/foreign_domestic_workers/during_employment/6-monthly_medical.html.

shall not go through any form of marriage under any law, religion, custom or usage with a Singapore Citizen or Permanent Resident in or outside Singapore without the prior approval of the Controller [of Immigration], while he/she holds a Work Permit, and also after his/her Work Permit has expired or has cancelled or revoked.⁴³

Those who marry without approval or become pregnant during the course of their employment in Singapore will be repatriated and disallowed entry into Singapore. These conditions apply even *after* the foreign worker's work permit has expired or has been cancelled or revoked.⁴⁴ This draconian approach to the marriage restriction policy has been justified on the grounds of not infringing upon a human right of Singaporeans:

It is precisely because we have to control the population size of Singapore that we have to have this condition [marriage restriction policy] agreed upon when a foreign worker applies to work in Singapore. ... So imagine if every other ex-work permit holder were to marry a Singaporean, we would not be able to manage our social services and social system. ... Even though we want to increase our population size, we have to ensure that those who want to live and have families in Singapore can look after themselves, their children and their families. That is the basic premise that we all must understand. ... *Singaporeans do have human rights to be able to look after ourselves and manage our limited resources and to ensure that those legitimate Singaporeans would be well looked after and would not exact too much of our social system.*⁴⁵

This selective use of “human rights” is interesting: Although the human rights of “legitimate Singaporeans” (to be well looked after) are supposedly prioritized, the FDW regulatory regime consciously resists such a rights-based approach. On the contrary, low-skilled foreigners are portrayed as being likely to take advantage of

⁴³ See Ministry of Manpower's *Conditions for Work Permit/Visit Pass for Foreign Worker*, issued under the Employment of Foreign Workers Act, available at http://www.mom.gov.sg/publish/etc/medialib/mom_library/work_pass/files.Par.8149.File.dat/WP_S_Pass_Conditions.pdf.

⁴⁴ Of course, there is nothing to stop a former FDW from marrying a Singapore resident outside of Singapore. However, the prospect of the former FDW being allowed to reside in Singapore with her husband subsequently is practically non-existent. Where immigration control is concerned, the elaborate security effort in conjunction with dealing with terrorism threats, biometrics such as fingerprints, retina and iris analyses to verify the identities of persons seeking entry to Singapore—whether as tourists or not—can be easily applied to former work permit holders seeking entry into Singapore. To build such a capability, it was announced in 2009 that Singapore's Immigration and Checkpoints Authority would set up a Human Factors Laboratory at its land checkpoints.

⁴⁵ *Parliamentary Debates Singapore Official Report*, vol. 78, col. 666 (Sep. 21, 2004) per Senior Parliamentary Secretary of the Ministry of Manpower, Mr Hawazi Daipi (author's emphasis).

Singapore's social welfare system in the absence of controls. This is in fact used to justify the onerous marriage restriction policy through presenting human rights situation in Singapore as a zero-sum equation.

Despite the government's policy preference not to couch an elaborate rights discourse within the regulatory regime governing FDWs, the government does not tolerate any abuse or exploitation of FDWs. FDWs are provided with some protection under Singapore's laws, principally through the Employment of Foreign Manpower Act.⁴⁶ Employers are required to provide adequate rest and meals for their FDWs, and ensure work safety, proper housing and prompt salary payment. In 1998, in response to more "maid abuse" cases, the Singapore Parliament amended the Penal Code,⁴⁷ to provide that employers of domestic maids (regardless of whether they are local or foreign) and members of the employer's household who commit specified offenses against domestic maids will be liable to be punished with one and a half times the amount to which they would have otherwise been liable for those specified offenses. In moving the legislative amendments, the Minister for Home Affairs observed that:

Domestic maids are female, work within the confines of their employers' home for 24 hours of the day, and except during their time-off, are isolated from the rest of society nearly all the time, and depend on their employer for food and lodging. Maids are therefore more vulnerable to abuse by employers and their immediate family members, than any other categories of employees. All employers have an obligation to treat their maids humanly and decently.... Maid abuse runs counter to Singapore's aspiration to become a gracious and civil society. Abuse of foreign domestic maids can also damage our international reputation and bilateral relations. ...⁴⁸

The regulatory regime appears to suggest that appropriate treatment of the FDWs is more a means to the end of international comity rather than an end in itself.

B. A PUTATIVE JURISPRUDENCE OF DIGNITY AND RESPECT?

The Singapore courts have in recent years come out strongly in support of the government's stance in FDW abuse cases and have imposed deterrent sanctions

⁴⁶ Employment of Foreign Manpower Act, ch. 91A, Statutes of the Republic of Singapore (revised ed. 2009).

⁴⁷ Penal Code, ch. 224, Statutes of the Republic of Singapore (revised ed. 2008). The Penal Code is Singapore's primary criminal law legislation.

⁴⁸ *Parliamentary Debates Singapore Official Report*, vol. 68, cols. 1923-1924 (Apr. 20, 1998) per Minister for Home Affairs, Mr Wong Kan Seng.

against employers convicted of abusing their FDWs. In the very recent case of *ADF v. Public Prosecutor*,⁴⁹ the Court of Appeal, Singapore's highest court, reviewed the sentencing principles relevant to a person convicted of voluntarily causing harm to a FDW. For the purposes of this Article, of interest is the approach taken by the court. While the court did not engage in a discourse on rights, it is evident that the principles of human dignity and respect exerted a strong influence in the Court's determination of the outcome of the case and in meting out the punishment. In the leading judgment, Judge of Appeal VK Rajah stated that:

The courts in Singapore have consistently adopted a firm and uncompromising stance in cases involving domestic maid abuse. There is an irrefutably sound basis for this: a maid in agreeing to provide domestic services to a household has neither sold herself nor agreed to be treated as a chattel devoid of human emotion. No employer (or other household member) has the right to treat a maid as such. An agreement for the sale of services does not amount to a license to abuse and/or cause hurt. Domestic maids deserve to be treated with fairness, respect and dignity. A maid's role of servitude in a household does not mean that she is any less worthy of protection by the law. On the contrary, the susceptibility of domestic maids to abuse in such a patently unequal relationship with their employers warrants special protection. Not all cases of maid abuse come to light as the abuse is usually perpetrated in the confines and the privacy of the home. If and when such cases are detected and brought to the attention of the courts, judges are duty bound to impose deterrent sentences on all errant employers or members of their household. This will send an unequivocal and irrevocable signal that such conduct will not only be denounced but also severely punished.⁵⁰

Like the government, the judge adopted the contractual approach, characterizing the FDW-employer relationship as an "agreement for the sale of services" even if the role is one "of servitude in a household." However, the judge acknowledged "the susceptibility of domestic maids to abuse in such a patently unequal relationship" which "warrants special protection" for the FDW. The considerations of "fairness, respect and dignity" were given judicial cognizance. This consideration was echoed by Judge of Appeal Andrew Phang's emphasis on the "common humanity" in "all

⁴⁹ *ADF v. Public Prosecutor*, [2010] Sing. L. R. 874.

⁵⁰ *Id.* at para. 159.

civilised societies.” Justice Phang noted the principal societal concerns in maid abuse cases in which:

the existing relationship between an employer and an employee has not only broken down but has deteriorated into one where the former abuses the latter in a manner that is repugnant to all notions of common humanity. That this is a situation which is abhorrent to all civilised societies is a proposition which is self-evident and rests on the premise that *all* human beings are worthy of dignity and respect. Looked at in this light, no complex theory is needed to justify the need for employers to treat their maids with dignity and respect, and to refrain (on pain of legal sanction) from abusing them. Put simply, *all* human beings in *every* society are worthy of dignity and respect, and they therefore cannot—and must not—be subject to any form of abuse whatsoever (whether it be physical or non-physical). This is an irreducible and non-negotiable proposition.⁵¹

Noteworthy is Justice Phang’s attention to a person’s intrinsic right to “dignity and respect” which coheres with Justice Rajah’s requirement of “fairness, respect and dignity.” These criminal cases are widely reported in the local media for deterrent and educational purposes. Further, all convicted employers and their spouses are permanently barred from employing FDWs. As the Court of Appeal rightly noted, however, the regulatory regime has its inherent limitations and reach since the cloistered domestic setting does not always facilitate the enforcement actions that can prevent mistreatment of the FDWs.

C. PRE-EMPTING CONTESTATION OVER RIGHTS, PRIVILEGES, AND ACCESS

Singapore’s instrumental acceptance of transient workers, on the condition that they leave the country at the end of their work contracts, should not be mistaken for the state’s relinquishing control of and influence over rights, privileges and access flowing from such movement of people. The openness to immigration, for demographic, economic and political imperatives, co-exists with an extensive surveillance system meant to ensure, *inter alia*, that transient foreign workers comply with the conditions of their work permits and do not become permanent residents or citizens. As discussed earlier, Singapore does not subscribe to the principle that a foreigner, by virtue of having worked and lived for an extended period in Singapore, acquires a moral entitlement to rights of membership, including citizenship.

⁵¹ *Id.* at paras. 219–20 (emphasis in the original).

Unlike Western liberal democracies, according the rights of citizenship or permanent residence is considered a prerogative of national sovereignty, not one of moral equity earned by migrants or conferred benevolently upon them. As such, borders are “central places of anxiety about control and sovereignty,”⁵² and play a critical role in affirming the contours of a state’s immigration policy and regime, informing us why and how a state governs access to and control over matters such as employment, family unification, residency, citizenship and the like, which many citizens take for granted.

To prevent their transient employment in Singapore from morphing into a substantive connection with Singapore, the thrust of the legal agreement the FDWs enter into to secure work-permits, draws a bright line as to their unsuitability to be inducted as part of Singapore’s citizenry and society. The basic suite of rights is provided, although ensuring that such rights are given effect to and the enforcement of actual working conditions, remains a perennial challenge since the FDW’s place of employment and residence is also the employer’s home. While most transient workers in Singapore are not preoccupied with making Singapore their permanent home, the expectations of transient workers are nonetheless adroitly managed from the outset. The conditions attached to their work permits ensure that the FDWs are alive to this reality through a contractual undertaking that they will not be able to secure full membership in the Singapore polity.

Take, for instance, the marriage restriction policy discussed earlier. Its primary objective is to ensure that temporary labor migration of low-skilled workers does not become permanent through subsequent marriages with Singapore residents. The policy reifies the stereotype of the low-skilled foreign workers as preferring to be dependents of the state and their Singapore spouses. The pervasive reach of this onerous employment condition even *after* the period of employment emphatically marks this group of workers, especially female domestic workers, as being “unacceptable” for inclusion into Singapore society.⁵³ This elitist and, arguably, eugenic-accented mindset means that the particularist immigration and employment regulations effectively operate as a *de facto* marriage/family law and citizenship law.

⁵² Kathy E. Ferguson, Sally Engle Merry & Monique Mironesco, *Introduction*, in *GENDER AND GLOBALIZATION IN ASIA AND THE PACIFIC 7* (Kathy E. Ferguson & Monique Mironesco eds., 2008).

⁵³ Brenda S.A. Yeoh, *Bifurcated Labor: The Unequal Incorporation of Transmigrants in Singapore*, 97 *TUITSCHRIFT VOOR ECONOMISCHE EN SOCIALE GEOGRAFIE* 26 (2006). On the apparent lack of concern with the ‘permanent second-class citizenship’ for foreign domestic workers in Singapore and Hong Kong, see Bell & Piper, *supra* note 32, at 281-322.

The fear of migrants as potential burdens to and parasitic of Singapore society, is therefore managed through a rigorous gate-keeping function whereby the granting of “citizen” or “permanent resident” status is a means of determining who gets to enjoy government subsidies and grants. Even foreign spouses of Singaporeans, if they are not Singapore citizens or permanent residents, do not enjoy subsidies for the use of medical services, education, and public housing.⁵⁴ In response to societal concerns that Singapore citizenship carries no obvious pecuniary advantage, the policy approach in recent years has been to differentiate more clearly between citizens, permanent residents, and non-citizens and non-PRs.

The marriage restriction policy can be understood as an attempt by the state at institutional control over citizenship grants, in tandem with its policy objectives and concerns in the areas of population, talent attraction and the all-important economic objectives. At the same time, through the marriage restriction policy, the state effectively generates a hierarchy of international marriages characterized by their relative potential contributions (especially economic) to Singapore, their ease of social integration, and by their perceived demand on the public welfare and social system.

The Singapore government is aware of the potential of international marriages becoming an arena of contention over rights, privileges, and access to employment, government services and assistance. It ensures that contestation is reduced, if not preempted, by resolutely maintaining a marital union regime that characterizes marriages involving Singapore residents and FDWs as “problematic” and not to be encouraged. Thus, immigration and citizenship laws and regulations in Singapore retain their utility as a strategic tool to exclude, to maintain differentiated status, and to enforce hierarchies. It emphasizes the residual but still potent power of the Singapore state in placing severe limits on the Singapore citizen or permanent resident’s choice of life partner, especially where it involves a foreign worker with a work permit working in Singapore.

The discriminatory attitude and the instrumental regulatory framework toward the foreign workers in general, may have spawned the unfortunate cases of foreign workers being poorly treated over the years. Such cases are deplorable to say the least. Reports of foreign workers being unpaid, abandoned or housed in poor conditions are regularly covered in the local media.⁵⁵ They reflect the dark side of a prosperous

⁵⁴ There is a recent move to further distinguish the benefits and privileges for citizens and permanent residents, with the intent of giving citizens preferential treatment over permanent residents.

⁵⁵ See, e.g., *No Wages, No Work, Poor Living Conditions*, THE STRAITS TIMES, Dec. 28, 2008; *Sick Foreign Workers Have It Tough*, THE STRAITS TIMES, Jan. 4, 2009; *Crack Down on Abuse of*

society. Indeed, the conditions attached to a FDW's work permit would strike many as unfair, unjust, and discriminatory. However, there is no public clamor as yet for removing such onerous conditions of employment. At one level, it may reflect the callousness of such an immigration policy and the apathy of the average Singaporean toward the low-skilled foreign worker's basic employment rights and living conditions. At another level, however, it may well reflect a situation in which all parties, including the FDWs and the authorities, are fully aware of their legal standing. Any notion of rights is focused almost exclusively on contractual rights and its valorization. The promotion and protection of human rights vis-à-vis the FDWs do not enter the public discourse in Singapore in any significant way.

III. KEEPING RIGHTS ALIVE, INDIRECTLY: CIVIL SOCIETY ORGANIZATIONS

The impoverished conception of rights for FDWs in Singapore has, however, resulted in local non-governmental organizations filling the gap, since organized labor in the FDW sector is non-existent. The formal and procedural legality of the regulatory framework of FDWs is taken for granted. Civil society is the dominant player in giving FDWs a voice and in creating awareness of the challenges that FDWs face in coming to work in Singapore. At a fundamental level, the civil society organizations concerned with the welfare of FDWs are focused on generating rights consciousness, rather than a robust assertion of rights, within the Singaporean general public. Shunning an aggressive approach, this calibrated effort to make rights real and meaningful for vulnerable workers is premised on the explicit understanding that legal mobilization for and on behalf of a non-unionized, immigrant workforce secures no traction with the authorities and the employers of the FDWs. Not surprisingly, the advocacy and rights promotional efforts have not extended to claims-making such as the claim to permanent residence or citizenship. Instead, they have focused on the imperative to urge employers and the authorities alike to provide FDWs with a basic suite of rights and protection. In short, a more pragmatic approach in rights promotion is adopted.

Given the state of politics and the civil society in Singapore, contestation would be too emphatic a description for the persistent civil society efforts to provide FDWs

Foreign Workers, THE BUSINESS TIMES (Singapore), Jan. 7, 2009. See also H. R. WATCH, *Maid to Order: Ending Abuses against Migrant Domestic Workers in Singapore* (2005), available at <http://www.hrw.org/en/reports/2005/12/06/maid-order-0>, which drew a strong response from the Singapore government, see Ministry of Manpower's response, available at http://www.mom.gov.sg/publish/momportal/en/press_room/press_releases/2005/20051206_MOMresponsetoHRWreport.html.

with better protection. Even though international marriages are now increasingly popular in Singapore, issues related to international marriage—such as citizenship, rights, privileges and access to public services and benefits for non-Singaporean spouses—have not featured nor have been contested in any significant way. What is clear is that the advocacy by civil society groups concerned with the FDWs’ well-being, articulates the FDWs’ interests in the language of welfare, humane treatment and dignity (as opposed to a rights discourse).⁵⁶ At the same time, there is also restraint and caution exercised by these groups in bringing transnational pressure and norms to bear on the government. This is a necessary adaptation to a government that frowns upon a rights-centered advocacy and activism by civil society organizations.

Simply put, the government does not see the issues facing the FDWs as involving fundamental issues of rights, or their resolution as requiring a conscious assertion of rights.⁵⁷ Instead, the policy perspective is that the management of such issues requires regulation and education of both the FDWs and employers, in dealing with the maltreatment of foreign workers.⁵⁸ Criminal prosecution is not shied from especially in egregious cases where physical harm and violence are inflicted on the

⁵⁶ See also Cheah Wui Ling, *Migrant Workers as Citizens within the ASEAN Landscape: International Law and the Singapore Experiment*, 8 CHINESE J. INT’L L. 205 (2009); Yeoh & Annadurai, *supra* note 41; Lenore Lyons, *Transient Workers Count Too? The Intersection of Citizenship and Gender in Singapore’s Civil Society*, 20 SOJOURN: J. SOC. ISSUES IN SOUTHEAST ASIA 208 (2005). For an interesting analysis of the Malaysian position that is quite similar to Singapore’s, see Juanita Elias, *Struggles over the Rights of Foreign Domestic Workers in Malaysia: The Possibilities and Limitations of ‘Rights Talk*, 37 ECON. & SOC. 282 (2008).

⁵⁷ Lenore Lyons, *Transcending the Border: Transnational Imperatives in Singapore’s Migrant Worker Rights Movement*, 41 CRITICAL ASIAN STUD. 89 (2009). See also exchange between Lenore Lyons & Yeong Chong Lee, *Migrant Rights in Singapore*, 41 CRITICAL ASIAN STUD. 575 (2009). For an example of how the strategic framing and the use of national identity by activists can expedite the mobilization of international norms despite cultural barriers, see Nora Hui-Jung Kim, *Framing Multiple Others and International Norms: The Migrant Worker Advocacy Movement and Korean National Identity Reconstruction*, 15 NATIONS & NATIONALISM 678 (2009). On the staging of protests by FDWs in Hong Kong, see Nicole Constable, *Migrant Workers and the Many States of Protest in Hong Kong*, 41 CRITICAL ASIAN STUD. 143 (2009). For a contrarian reminder of the limitations of NGOs vis-à-vis FDWs’ rights, see Aihwa Ong, *A Bio-Cartography: Maids, Neo-Slavery, and NGOs*, in MIGRATIONS AND MOBILITIES: CITIZENSHIP, BORDERS, AND GENDER 157 (Seyla Benhabib & Judith Resnik eds., 2009). See also Nicola Piper, *Temporary Economic Migration and Rights Activism: An Organizational Perspective*, 33 ETHNIC & RACIAL STUD. 108 (2010), on the need for an adaptive form of migrant rights activism centering on a transnational network perspective in order to better address migrants’ socio-economic and legal insecurities.

⁵⁸ See Manpower Ministry’s advice on how to “create and maintain a positive working relationship” at <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fdw/before-you-apply/Pages/default.aspx>.

FDWs. However, it is also worth noting that the primary concern for the welfare of FDWs provides a non-threatening segue for civil society groups to raise the issue of rights.

A fair assessment would be that the various civil society organizations, through their advocacy and educational programs, have contributed to the issues pertaining to FDWs being kept on the agenda of the relevant authorities. There have been improvements in the regulatory regime on the employment conditions of FDWs and a greater awareness of the basic rights of the FDWs. To be sure, there is still a long way to go, but significant progress has been made.⁵⁹ Notwithstanding the seemingly dismal picture for the FDWs from a rights perspective, there are developments and long-term trends that suggest the putative growing recognition and appreciation of the importance of rights for FDWs.

Given the significant number of foreign workers in Singapore, the Singapore government is concerned with the foreign policy dimension if these workers are mistreated. In recent years, the government has sought to educate Singaporeans and FDWs alike on their roles and responsibilities. For example, all first-time employers of FDWs, as well as those who change FDWs frequently, are required to attend a compulsory orientation program. This program emphasizes the obligations and responsibilities of the employers toward their FDWs.⁶⁰ Since January 1, 2005, the

⁵⁹ *Life Looking Better for Foreign Maids*, THE STRAITS TIMES, Dec. 12, 2009. The report noted that the number of maid abuse cases and deaths by accidents or suicides has declined although the number of FDWs working here has risen from 160,000 in 2005 to 190,000 in 2009. See also Theresa W. Devasahayam, *Placement and/or Protection?: Singapore's Labor Policies and Practices for Temporary Women Migrant Workers*, 15 J. OF THE ASIA PACIFIC ECON. 45 (2010) ("... any shift in labor policies and practices towards unskilled migrant workers tends mainly to benefit first the State, then the employer and, only last, the worker"). For a discussion of the best practices for each stage of the labor migration process, starting from recruitment and selection, in home and host countries, see Graeme John Hugo, *Best Practice in Temporary Labor Migration for Development: A Perspective from Asia and the Pacific*, 47 INT'L MIGRATION 23 (2009).

⁶⁰ For a description of some of the measures taken in recent years by the government, see Singapore's Fourth Periodic Report to the UN Committee on CEDAW, March 2009, see especially paras. 70-77, available at http://www.mcys.gov.sg/MCDSFiles/Download/Fourth_Periodic_Report.pdf. See also the second *CEDAW Shadow Report* to the UN, May 2007 by the Association of Women for Action and Research (AWARE), available at http://www.aware.org.sg/downloads/CEDAW_2007-Report.pdf. AWARE is probably Singapore's foremost women's civil society organization. In their *Shadow Report*, AWARE urges the government to review its policies toward FDWs. See further the Manpower Ministry's guide to employers of FDWs, YOUR GUIDE TO EMPLOYING A FOREIGN DOMESTIC WORKER, available at [http://www.mom.gov.sg/publish/etc/medialib/mom_library/work_pass/files2.Par.80861.File.tmp/FDW%20EG\(Eng\)%20Std.pdf](http://www.mom.gov.sg/publish/etc/medialib/mom_library/work_pass/files2.Par.80861.File.tmp/FDW%20EG(Eng)%20Std.pdf).

minimum age requirement for new FDWs was raised by 5 years, from 18 to 23 years old. The Manpower Ministry explained that:

Older FDWs are generally more mature and better equipped to provide full-time domestic care for young children and elderly parents. They are also more likely to be able to take care of themselves, shoulder responsibility and pose fewer management problems for employers. This will benefit both employers and FDWs, and help reduce the likelihood of unnecessary friction in the employment relationship.⁶¹

In addition, new FDWs are required to provide documentary proof that they have had eight years of formal education before they are allowed to work in Singapore. The rationale is that better-educated FDWs can better understand basic safety instructions and have some numeracy and literacy skills to better perform household tasks.⁶²

In 2009, the government-linked umbrella trade union movement, the National Trades Union Congress (NTUC), finally took on the task of also looking after the interests and rights of migrant workers.⁶³ The Migrant Workers Centre, an initiative of the National Trades Union Congress and the Singapore National Employers' Federation, was launched in April 2009 "to address the management of foreign workers and ensure that they enjoy a harmonious relationship with the rest of Singapore society."⁶⁴ The Migrant Workers Centre hopes to achieve that through "educating foreign workers on acceptable norms of behavior in Singapore." At the same time, efforts will be undertaken to educate Singaporeans on the importance of foreign

⁶¹ See Press Release, Ministry of Manpower, Measures to Raise the Quality of Foreign Domestic Workers (FDWs) (Sept. 2, 2004), available at http://www.mom.gov.sg/publish/momportal/en/press_room/press_releases/2004/20040902-MeasuresToRaiseTheQualityOfForeignDomesticWorkers.html.

⁶² *Id.*

⁶³ On the role of trade unions vis-à-vis migrant workers in Asia, see *Migrant NGOs and Labor Unions: A Partnership in Progress?*, 14 ASIAN & PACIFIC MIGRATION J. (2006), a special guest-edited issue by Nicola Piper and Michele Ford; Nicola Piper, *Transnational Politics and the Organising of Migrant Labour in Southeast Asia – NGO and Trade Union Perspectives*, 20 ASIA-PACIFIC POPULATION J. 87 (2005). I am grateful to one of the anonymous reviewers who helpfully pointed me to the literature in this area.

⁶⁴ All quotes in this paragraph are taken from the speech by Mr Hawazi Daipi, Senior Parliamentary Secretary for Manpower and Health, at the Migrant Workers Carnival and Launch of the Migrant Workers Centre, Apr. 26, 2009, available at http://www.mom.gov.sg/publish/momportal/en/press_room/mom_speeches/2009/20090426-speech_by.html. It has been reported that the government provided seed funding for the MWC, see *Foreign Workers: Another Source of Aid*, TODAY (Singapore), Feb. 23, 2009. For a media fact sheet on the MWC, see http://www.mom.gov.sg/publish/etc/medialib/mom_library/corporate/files.Par.20393.File.tmp/COS%2009%20-%20Speech%203%20-%20Factsheet%20-%20MWF.pdf.

workers' contributions to Singaporean society and economy, and "how best to live, work and play alongside them." In addition, the Migrant Workers Centre will look into the welfare of migrant workers, and will provide "humanitarian assistance for workers who may suddenly be left stranded by rogue employers, even as government authorities swing into action to investigate and ensure that the employers fulfill their obligations." Although the mandate of the Migrant Workers Centre is ostensibly to work with migrant workers, the target audience is the foreign workers employed by corporate entities.

At the governmental level, the Ministerial Steering Committee on Foreign Worker Management, chaired by the Manpower Minister, coordinates the "whole-of-government" efforts in this area. In some respects, the government's efforts recognize that the ill-treatment of foreign workers undermines bilateral relations between the foreign workers' home governments and Singapore, as well as Singapore's international image and branding.⁶⁵ Even then, the government's response is indicative of the fact that if the legal regime governing FDWs were to be recalibrated, the focus would not be on advocating rights but rather on enhancing the regulatory framework, and appealing to the employers' sense of responsibility instead of fear of punitive sanctions for non-compliance. The following exhortation is revealing:

The way we treat migrant workers in Singapore reflects our maturity as a society. Migrant workers have traveled, sometimes thousands of miles, to a country with unfamiliar customs and languages, to create a better future for their families.⁶⁶

The approach outlined above coheres with the long-standing policy of education, regulation and enforcement, rather than one couched in coercive compliance and the emphasis on rights as a panacea. Alejandro Portes may well be right in observing that

⁶⁵ The *Flor Contemplacion* case, which involved a Filipina FDW convicted of murder and was hanged, disrupted Singapore-Philippines bilateral relations. See, e.g., R.J. May, *The Domestic in Foreign Policy: The Flor Contemplacion Case and the Philippine-Singapore Relations*, 29 *PILIPINAS* 63 (1997); Anne-Marie Hilsdon, *What the Papers Say: Representing Violence against Overseas Contract Worker*, 9 *VIOLENCE AGAINST WOMEN* 698 (2003). For the Singapore government's position, see *FLOR CONTEMPLACION: THE FACTS OF THE CASE* (Singapore: Ministry of Information and the Arts, 1995). On the Philippines government response to reduce the vulnerability and empower their citizens in overseas employment, see Anna Romina Guevarra, *Managing "Vulnerabilities" and "Empowering" Migrant Filipina Workers: The Philippines' Overseas Employment Program*, 12 *Soc. IDENTITIES* 523 (2006).

⁶⁶ Speech by Mr Hawazi Daipi, Senior Parliamentary Secretary for Manpower and Health, at the Migrant Workers Carnival and Launch of the Migrant Workers Center, Apr. 26, 2009, available at http://www.mom.gov.sg/publish/momportal/en/press_room/mom_speeches/2009/20090426-speech_by.html.

“international migration flows receive far more attention for their real or imagined effects in receiving societies than for their effects in places of origin.”⁶⁷ All too often, governments of migrant-sending countries are preoccupied with ensuring that receiving countries continue to welcome their citizens as guest workers, as well as with the size of remittances sent by their migrant communities overseas.⁶⁸

CONCLUSION

For Singapore, immigration of talented people is often rationalized unilaterally as what is good for Singapore and its people. In contrast, FDWs are conceptualized and treated as being unsuitable for inclusion into Singapore society. Yet, because they are needed to ensure that the more glamorous engines of the economy can roar, a heavy reliance is placed on the contracts that FDWs have to enter into with the state and employer, regarding their macro-and micro-existence during the tenure of their employment. This abiding reliance on a FDW agreeing to the conditions that come with her work permit highlights the prominence of a market fundamentalism based on contracts. Furthermore, with the objective to exclude, the restrictions and surveillance mandated that flow from the issuance of the work permits can be described as the “governmentality of exclusion.” This extension of border control to the personal realm (for instance, through the regular medical examinations) and the extra-territorial reach (via the marriage restriction policy) suggests the prominence of control and discipline, highlighting the paradigm of exclusion through regulation. The likelihood of FDWs in Singapore being accorded the opportunity to convert their transient employment there to permanent residence or even citizenship, however, remains low.

The liberal approach, which advocates the granting of citizenship rights to foreign workers who have lived and worked an extended period, is untenable in Singapore.

⁶⁷ Alejandro Portes, *Migration and Development: Reconciling Opposite Views*, 32 *ETHNIC & RACIAL STUD.* 5, 17 (2009). For a conceptual discussion of the linkages between rights-based approaches to development and economic migration, see Nicola Piper, *The “Migration-Development Nexus” Revisited from a Rights Perspective*, 7 *J. HUM. RTS.* 282 (2008).

⁶⁸ On the role of remittances by migrant workers to their home countries, see Steven Vertovec, *TRANSNATIONALISM* 103-19 (2009). On the Philippines as a “labor brokerage state” that manages and sends its citizens to work abroad, see ROBYN MAGALIT RODRIGUEZ, *MIGRANTS FOR EXPORT: HOW THE PHILIPPINE STATE BROKERS LABOR TO THE WORLD* (2010) and ANNA ROMINA GUEVARRA, *MARKETING DREAMS, MANUFACTURING HEROES: THE TRANSNATIONAL LABOR BROKERING OF FILIPINO WORKERS* (2010). For how the dominant neo-liberal global regime enforces notions of women’s domesticity in migration for Filipina migrant workers and their families, see RHACEL SALAZAR PARREÑAS, *THE FORCE OF DOMESTICITY: FILIPINA MIGRANTS AND GLOBALIZATION* (2008).

Instead, what immigration policies and laws do is to circumscribe in fairly clear and rigid terms the place of migrants within the nation-state. The Singapore case demonstrates that contemporary immigration and globalization have hardly challenged the conventional thinking and understanding of citizenship, as well as notions of who belongs and who does not. This is notwithstanding that increasing international marriages and pervasive in- and out-migration for purposes of employment, study and family, make more pronounced the decoupling of citizenship and residence. Nevertheless, this transnational dimension sits uncomfortably with the state's imperatives of sovereignty, control, and jurisdiction.

However, "rights talk" is still largely absent, limited at best, even when activists working for the betterment of welfare for FDWs engage with the government. The government has steadfastly resisted framing the FDW issues as one of human rights. Instead, it has focused on the public-private distinction in the governance regime of FDWs, as well as on enhancing the regulatory framework. Public education rather than coercive law remains the preferred approach. Recognizing that there is a limit to what the law can do has only galvanized the pragmatic approach in which the informal rules of engagement in the domestic setting are deemed to be just as, if not more, important than formal law in securing the desired welfare for the FDWs. Like much of its East Asian neighbors, Singapore may well be an outlier for its "rights-lite" approach to dealing with the bulk of the non-resident workforce. Concerns of human rights and justice are largely peripheral in the immigration discourse, policy and objectives. In fact, justice and human rights are but secondary concerns where the quotidian care of earning a living remains a more fundamental priority for the foreign workers and their home countries' governments.