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Gendered Aspects of Migration: Law and the Female Migrant

By JOAN FITZPATRICK and KATRINA R. KELLY

I. Introduction

While the saga of the female migrant is brave and intriguing, it is known to few. Its story has many divergent plots, but in each recital, gender powerfully shapes fate. The female migrant's compelling story has gone largely unheard, its quiet narrative drowned out by the clamor surrounding other migration concerns. However, globalization of the economy, easing of transportation barriers and continued disparities in wealth between the South and the North have stimulated migration and heightened its profile in both developed and developing states. Developed states apply harsh measures to stem the flow of undocumented aliens—both labor migrants and those seeking asylum—and reduce their hospitality to lawful immigrants. Developing states confront the social challenges posed by rural-urban migration, while becoming increasingly dependent upon remittances from overseas migrant workers. Yet, even as policy makers are preoccupied by the causes and consequences of migration, its gender-specific aspects remain obscured.

It is not surprising, therefore, that legal regulation fails to address the problems of women migrants, even with respect to migration issues that have a predominately female face. Although abuses against migrant workers, including women involved in the "maid...
generated some recent calls for improved legal regulation; legal policies at the national and international levels continue to be framed with inadequate knowledge of, and responsiveness to, the distinct experiences of female migrants. Indeed, legal regulation of female-specific migration streams tends to be perverse, frequently increasing risks to participants' physical integrity and economic welfare. Measures to regulate distinctly female migration streams, including those intended to protect female migrants from gender-specific threats to their physical, psychological and economic security, may assume forms that deprive these migrants of the liberating potentiality of the migration experience. Devising a role for legal norms and institutions to balance safety and freedom for female migrants remains an enormously difficult challenge. For migration regulation, the "woman question" could not be more pressing.

The primary aim of this article is to expose ways in which the legal regulation of migration reproduces and exacerbates the social and cultural inequalities that disempower female migrants. This will be achieved by examining predominantly female migration trends that reflect the neglect of the "woman question" in migration regulation. The maid trade receives greatest attention because of its rich implications for this analysis: the assignment to women of the duties of social reproduction marginalizes female labor. These trends also include: the implications of increasing participation of women, including mothers of young children, as solo migrant workers, and distinct gender-based patterns among migrants in remitting funds to family members; severe violations of the physical integrity and eco-

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1. The "maid trade" refers to lawful temporary international migration of Asian women to perform domestic labor (childcare, elder care and housekeeping) within households in the prosperous states of Western and Eastern Asia. See infra Part III. While "maid trade" is an evocative term, because of the negative connotations of the term "maid," the migrants themselves will generally be referred to in this article as migrant household workers.
2. This is especially true at the international level.
3. Katharine T. Bartlett, Feminist Legal Methods, 103 Harv. L. Rev. 829, 837-49 (1990) (suggesting that gender bias in law may be revealed by asking the "woman question," i.e., how the law affects women whose lives are shaped by gendered patterns.).
4. See infra Part II.
5. The term refers to the tasks of household maintenance, child raising and elder care, which remain disproportionately delegated to women in all cultures. See Arne L. Kalleberg & Rachel A. Rosenfeld, Work in the Family and in the Labor Market: A Cross-National, Reciprocal Analysis, 52 J. Marriage & Fam. 331 (1990).
nomic security of migrant household workers; the often perverse effects of legal regulation by the countries that send or receive immigrants (both through national laws and bilateral agreements); and the continuing inadequacies of international law to protect the vital interests of migrant household workers.

Several other migration trends are addressed in less detail. For example, consideration will be given to the internal migration of young women to export processing zones and the gendered aspects of the emerging legal regime of the globalized economy. The Article will also examine the continuing exclusion of many women migrants, both internally and internationally, from access to reasonably remunerative, non-degrading jobs in the formal economy. The result is economic vulnerability and exposure to violence and sexual exploitation. A recurring theme is the intersection between the predominant cultural association of women with the home and the migration experience. This intersection often influences the legal system, functioning to deprive female migrants of the benefits of the migration gamble.

It is important to recognize that the women in predominantly


female migration streams are not only reacting to circumstances beyond their control, they are often active participants who seek to shape their own destinies and better their lives. The choice to migrate is frequently a conscious attempt at self-determination. Although this Article will demonstrate that laws regulating migration currently serve to exacerbate the subordination of female migrants, we do not wish simply to contribute more evidence of the futility of legislation. Tentative first steps are being taken to address some of the more egregious abuses of female migrants, thus raising hope for a more constructive future for migration regulation. The journey to this future will be difficult and slow. The greatest challenge is to strike a delicate balance between protecting the female migrant from abuse while simultaneously liberating her to control her own destiny.

Part II of this Article explores the woman question and background issues related to the regulation of female migration. Part III examines one particular migration phenomenon with particular importance for women: the migration of lawful temporary household workers. Part IV considers the internal migration of women into “export zones” in developing countries and the impact of the globalization of the world economy upon this female workforce. Finally, we consider how regulation fails women migrants when they find themselves in the informal (unregulated) economy. Part V of this Article thus briefly considers sweat shops, petty trading and sex work.

While awareness of the plight of the female migrant is increasing, the international response has been pious but ineffectual. The leverage wielded by female migrants and their champions remains minimal. We suggest that only through greater non-governmental organizational (NGOs) activism are sending and receiving states and international organizations likely to tailor migration regulation to be gender sensitive.

II. Gender-Specific Migration—The “Woman Question”

Before embarking upon an examination of the legal regulation of female migration streams, it is essential to explore the dimensions of the woman question in this field. First, how has academic literature treated female migration in the past? Second, what are the prevalent theories of migration, and how do they illuminate female migration? Third, which legal regimes affect female migration? Fourth, is there a common theme that helps shape the migration ex-
A. Academic Treatment of Female Migration

The failure of law to rectify the subordination of women is hardly a new development, but the reasons for this failure have not been adequately addressed in the context of gender-specific migration. Many feminist analyses of law are written from a narrow national perspective. While some feminist scholars discuss the situation of immigrant women, particularly those from subordinated racial and language groups, migration regulation is not often considered in feminist literature. Feminist critiques of international law tend to unmask masculine values embedded in prevailing notions of force, diplomacy and the state system, rather than to examine migration and the effects of globalization on the reallocation of wealth and policy influence among men and women.

Feminist theories can be adapted, however, to critique migration regulation. Catherine MacKinnon’s revelation of law’s role in perpetuating male power under the false guise of a “neutral” legal system provides an important deconstructive model to unmask the patriarchy of a legal regime. However, MacKinnon’s emphasis on the ubiquitous subordination of women by men has been criticized by

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11. For a noteworthy exception, see Feminism and Globalization: The Impact of the Global Economy on Women and Feminist Theory, 4 IND. J. GLOBAL LEGAL STUD. 1 (1996).
other feminists as deterministic, disempowering and silent concerning prospects for social change. In contrast, Carol Smart views law not only as reflective of social inequalities but also as a factor potentially facilitating social change. Smart presents a more positive, protective model for feminist legal analysis, which will inform this examination of the regulation of female migration.

On the whole, feminist theorists have failed to address the plight of the female migrant. The inattention to female migrants that remains the norm in feminist literature and the policy realm has, in the past, also characterized academic migration studies. Until recently, scholars depicted migration as a process dominated by young males, both in numbers and in decision-making authority. Women were regarded “either as non-migrants who wait in the sending areas for their spouses to return... or as passive reactors who simply follow a male migrant.”

This scholarly neglect has been rectified with the emergence of an impressive body of social science literature describing varied female-specific migration streams in all regions. These migration

16. Caroline B. Brettell & Rita James Simon, *Immigrant Women: An Introduction*, in INTERNATIONAL MIGRATION, supra note 7, at 3 (“[W]omen have essentially been left out of theoretical thinking about migration, whether internal or international, until quite recently.”).
17. Marion F. Houstoun et al., *Female Predominance in Immigration to the United States Since 1930: A First Look*, 18 INT’L MIGRATION REV. 908, 908 (1984) (“[T]he concept of the international migrant as a young economically motivated male has become so pervasive that it has overshadowed migration streams that are, in fact, dominated by females.”). Bilsborrow & Zlotnik, supra note 7, at 140 (“The problem of viewing women who moved mostly as associational migrants (i.e., moving as passive companions of other family members), while assuming that males were generally autonomous migrants or active decision-makers was recognized as a serious obstacle in advancing the understanding of the causes and consequences of female migration.”).
19. Silvia Pedraza notes that “anthropology, history, and literature have all been more profoundly transformed [by a gender perspective] than sociology, while psy-
streams involve astounding numbers of participants, many of whom are solo labor migrants. These flows are diverse: internal and international; contemporary and historical; permanent, circular and transitory; rural-urban, urban-rural and rural-rural; propelled by economic aspirations, family unification, violence or a combination of these factors.

This first step in a gender-sensitive analysis of migration makes visible the reality of women's unique experiences. Especially vivid is the anthropological literature relying upon participant observation, which places the writer within a migrant community and presents the voices of female migrants and the particularities of their lives. While these studies evoke the narrative style of feminist legal analysis, their anecdotal aspect impedes their usefulness as a basis for policy formulation. Data are frequently not separated by gender in crucial respects, and many female migration streams continue to flow underground, escaping the demographer's measurement. Nevertheless, the rich mosaic of female migration patterns depicted in the

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"The study of immigration is by its very nature interdisciplinary. A natural division of labor has arisen whereby sociologists attend most to contemporary immigration flows (the Latin American and Asian), historians are concerned with past flows (the Southern and Eastern European), and anthropologists relate to the impact of emigration and return on the sending communities in underdeveloped nations."

Pedraza correctly, if inadvertently, excludes migration law from the gender-transformed disciplines.

20. "Circular" here denotes repeated temporary migrations, primarily for purposes of work. These migrations may be to the same destination or to a series of destinations that offer similar work opportunities to the migrant.

21. Several studies involved academics either employing or impersonating, rather than simply observing, women involved in some of the more noteworthy female-specific migration streams. See, e.g., Nicole Constable, Maid to Order in Hong Kong (1997); Seung-Kyung Kim, Fieldwork with a 'Disguised' Worker in a South Korean Export Processing Zone, 11 ANTHROPOLOGY TODAY 6 (1995).

22. Lin Lean Lim, The Status of Women and International Migration, in INTERNATIONAL MIGRATION POLICIES AND THE STATUS OF FEMALE MIGRANTS 29, 30 (1995) [hereinafter INTERNATIONAL MIGRATION POLICIES]. "The lack of reliable and adequate data is a major drawback.... Researchers must therefore rely very often on less than ideal information, often obtained from participant observation and focused biographies which may offer depth but not breadth of coverage and usually lack representivity."
available literature presents a sufficient platform for launching a
critical inquiry into the failure of legal norms and institutions to pro-
tect and enhance women’s migration gains.

B. Migration Theories

Within the social sciences, various explanatory theories of migra-
tion are typically utilized, although application of these theories to
female-specific migration streams is a relatively new phenomenon.
There are primarily three theoretical models that attempt to explain
migration: the equilibrium theory, the structural theory and the
“household strategies” theory.

The equilibrium theory stresses disparities in wage rates and
tends to depict the individual migrant as a calculating rational eco-
nomic actor, responding to “push” and “pull” factors. This theory of-
ten bears the young male paradigm firmly in mind. For example, an
individual migrant may be “pushed” into migration by the loss of job
opportunities and/or the high cost of living in the sending state, while
simultaneously being “pulled” to migrate by the promise of a boomi-
g economy and the availability of work in the receiving state. Ac-


23. Everett Lee is often cited as a significant innovator of this push-pull ap-

24. Pedraza, supra note 19, at 307, briefly summarizes this approach. She also
notes the critique of “its tendency to obliterate people” and inattention to the

ture dimension of labor flows. Id. at 308. HONDAGNEU-SOTELO, supra note 7, at 6,
criticizes structural explanations for their neglect of “human agency or subjectivity”
and their depiction of migrants as “victims of structural forces.” She finds the equi-
librium approach deficient for presenting migrants as “robots computing cost bene-
fits of their moves.” Id.

25. Pedraza, supra note 19, at 308-09.
bines the micro and macro analyses of the other two and situates the migration decision within a context of kinship and social networks. Given the significance of family remittances in the behavior of female migrants, the household strategies theory seems particularly apt in illuminating female migration patterns. However, some scholars caution that the household strategies approach has a tendency to underestimate the weight of the female migrant's own preferences in the migration decision, depicting women as pawns in a patriarchal process. They stress that household strategies resulting in migration may require a substantial renegotiation of gender roles. This renegotiation would include greater gender equality between spouses, greater autonomy and status for female family members and lasting impact upon the migrants and their communities.

All three explanatory theories appear to have some validity in the analysis of female-specific migration streams. The push-pull factors motivating an individual migrant (e.g., the loss of an economic role for young unmarried women in rural Asia combined with the seductive dissemination of urban consumerist culture) must be examined in light of structural factors (e.g., sex-typing of job opportunities in developing Asian states and the growing attraction of cheap female labor in export manufacturing as fuel for globalization of the economy). Further, a household strategy formed around the prospect of remittance payments to non-migrating family members could play a substantial role in the same female migration scenario as it does in the maid trade.

26. See infra notes 48, 95, 99, 121-23, 229 and accompanying text.
27. HONDAUSEU-SOTELO, supra note 7, at 6-7.
28. Even where the daughter participates in the migration decision, the situation may appear inherently exploitative. Within some Thai households, rural daughters migrate to take up urban wage factory labor to pay their brothers' school fees (civil service employment being restricted on the basis of gender), sometimes remitting their entire income to their birth family. Anchalee Singhanetra-Renard & Nitaya Prabhudhanitisarn, Changing Socio-Economic Roles of Thai Women and Their Migration, in GENDER AND MIGRATION IN DEVELOPING COUNTRIES 154, 163 (Sylvia Chant ed., 1992) [hereinafter GENDER AND MIGRATION]. Notions of filial duty may also contribute to Thai rural-urban migration for the sex trade. Id. at 168.
29. See, e.g., Lamphere, supra note 7; Foner, supra note 7.
30. See infra notes 226-27 and accompanying text.
31. See infra notes 244-45 and accompanying text.
C. Legal Regimes Pertinent to Migration

An examination of legal regulation of migration necessitates a discussion of laws at several different levels. The transnational nature of much migration demands that a critique of its legal dimension examine not only national laws on the status and treatment of migrants but bilateral efforts to manage flows between sending and receiving states, as well as international initiatives to deter abuse of migrants and to improve their work conditions. In recent decades, the traditional role of diplomatic protection to insure the rights of aliens diminished as the international legal system increasingly regarded their treatment as a matter of international human rights. This article examines national laws in both sending and receiving states, as well as bilateral and international norms, demonstrating that, at all levels, the law generally fails to serve as a constructive force to protect or to improve the condition of female migrants.

D. Women and Cultural Association with Home

In discussing gender and migration, it is vital to avoid essentialism, to resist oversimplifying the complex differences among female migrants. There is no singular female migration experience. Some female-dominant migration streams are liberating and enriching for women, while others plunge women deeper into subordination and exploitation. The class, race, age, alienage and marital status of female migrants exert profound influences on their employment opportunities, physical safety, emotional well-being and chances for economic gain through migration.

Despite these caveats, however, the cultural association of women with "home" often emerges as a major shaping influence on female migration. This association may take extreme forms, such as the legally or religiously mandated physical seclusion of women in their homes. It may also impede autonomous female migration or prevent associational migrants from renegotiating gender roles in new locales. A universal manifestation of this cultural norm is the assignment to women of the primary burdens of child care and household maintenance. The magnitude of female migration to perform household work is one tangible sign of this cultural association, as is the continued discounting of migrant female wages premised upon

33. This term denotes women who accompany related, primary male immigrants.
the availability of a presumed or prospective male primary breadwinner.

Related political and psychological assumptions posit women as situated in the private sphere and inward-oriented. Because law inadequately deals with the public/private distinction, women's cultural association with home is a major explanatory factor in the failure of the legal regime to protect female migrants from extreme forms of exploitation. The displacement of migrant women into the informal economy is related: in this quasi-private sphere, as in the home, law tends to operate against women workers' interests, rather than empowering or protecting them.

Women migrants pose a cultural puzzle because women's perceived connection to the home depicts them as deeply place-bound. Migration inherently involves uprootedness and adjustment to the unfamiliar, a tearing away from home. Migration can be adventurous, a form of rebellion and a rejection of the familiar. Migration requires dramatic adaptation strategies—the creation of a new household, perhaps structured on an unfamiliar cultural model: faithful replication of the old household in a possibly anomalous setting; the maintenance of strong links to the original home and formation of only shallow, temporary attachment to the place of destination. Migration may occur, all too often, because of the destruction of home, either from external causes, such as armed conflict, or for internal reasons, such as family dissolution.

Migration has, in fact, long been an integral aspect of the female experience. In traditional patrilocal societies, moving to a husband's home is a near-universal and often a difficult and alienating experience for women. In recent years women began migrating longer distances, increasingly across international boundaries and often unaccompanied. At the same time, many women suffer from

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35. A classic example from American literature, highly masculinized if not frankly misogynistic, is Huckleberry Finn's determination to "light out for the territory" to escape the domesticizing influences of nineteenth century middle class women. MARK TWAIN, HUCKLEBERRY FINN 283 (1959) ("But I reckon I got to light out for the territory ahead of the rest, because Aunt Sally she's going to adopt me and civilize me, and I can't stand it.").

36. Bilsborrow & Zlotnik, supra note 7, at 148 (tracing female dominance of rural-rural migration in South Asia to marriage patterns and noting that the moves "were not conducive to an improvement in the status of the women concerned").
discriminatory restrictions on their mobility, both spatial and economic.

The cultural association of women with home is an important theme in this Article. Once exposed, it helps to shed light on why legal regimes regulating migration failed to tackle the concerns of female migrants.

III. The Maid Trade

The term "maid trade" describes the temporary legal migration of unaccompanied women from less developed Asian states to Western Asia (the Middle East) or to prosperous East Asian states (e.g., Hong Kong and Singapore) to take positions as live-in domestic servants. Work as a "domestic" takes on a striking "international" dimension in this heavily populated and problematic flow.

37. Women also migrate to North America and Europe to perform household work, sometimes as participants in legal non-immigrant programs that offer the prospect of acquiring permanent residence (e.g., Canada's Live-In Caregiver Program). Audrey Macklin, Foreign Domestic Worker: Surrogate Housewife or Mail Order Servant?, 37 McGill L.J. 681, 684-85, 757-60 (1992). While household work formerly served as a significant route for women, including undocumented migrants, to gain lawful permanent residence status in the United States, that strategy was rendered essentially moot by severe restrictions upon employment-based immigrant visas enacted by Congress in 1990 (reducing annual number of immigrant visas for "unskilled" workers from 27,000 to 10,000) and 1997 (further reducing the number to 5,000). M. Isabel Medina, In Search of Quality Childcare: Closing the Immigration Gate to Childcare Workers, 8 GEO. IMMIGR. L.J. 161 (1994); Fitzpatrick, supra note 7, at 34-37; Eric Schmitt, Day-Care Quandary: A Nation at War with Itself, N.Y. TIMES, Jan. 11, 1998, available in LEXIS, News Library, NYT File. Temporary visas to the United States for household workers are limited to servants accompanying certain prominent non-immigrants or to participants in au pair, "cultural exchange" programs. Id.; Fitzpatrick, supra note 7, at 34-36. Some Asian household workers migrate to European countries. See Odo Barsotti & Laura Lecchini, The Experience of Filipino Female Migrants in Italy, in INTERNATIONAL MIGRATION POLICIES, supra note 22, at 153 (noting that many Filipinas enter Italy on tourist visa; and then overstay and accept household employment without authorization); Marlise Simons, Belgium Holds Suspects in Immigrant Smuggling, N.Y. TIMES, Nov. 6, 1996, available in LEXIS, News Library, NYT File (reporting arrests of smugglers who brought 4,000 migrants from the Philippines to Italy, pressing the men into restaurant work and the women into either domestic service or prostitution). Although these migration flows bear some similarities to the maid trade among Asian states, they differ in significant respects (for example, the intended permanence of residence and the unlawful status of many participants). For these reasons, this Article will not address the migration of household workers to North America and Europe.

38. Participants in the maid trade are referred to in some of the literature as "foreign domestics," words that are often regarded as antonyms in international parlance. See, e.g., Mary Lou Alcid, Legal and Organizational Support Mechanisms
The maid trade provides a particularly rich field for exploring the gendered nature of migration. In astonishingly large numbers, women migrate great distances across international boundaries to engage in poorly remunerated labor. This labor isolates them in a subordinate position within a private realm and exposes them to acute risks of physical or psychological violence and expropriation of their economic gains. Revelation of the most exploitative aspects of the maid trade attracted the attention of international human rights bodies and activists. Some in the human rights field suggest that the maid trade should be regarded as a form of trafficking in women, as inimical to human dignity as that associated with the sex trade.68

Despite the articulation of these concerns, neither multilateral nor bilateral efforts to protect the fundamental interests of women in the maid trade have borne much fruit and few beneficial protections exist at the national level.

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39. The magnitude of the trade is difficult to estimate, but appears to range between 477,000 and 981,000 women. Noeleen Heyzer & Vivienne Wee, Domestic Workers in Transient Overseas Employment: Who Benefits, Who Profits, in TRADE IN DOMESTIC WORKERS, supra note 38, at 31, 39. In 1994, around 70,000 women immigrated to Malaysia alone to perform domestic work. Christine B. N. Chin, Walls of Silence and Late Twentieth Century Representations of the Foreign Female Domestic Worker: The Case of Filipina and Indonesian Female Servants in Malaysia, 31 INTL MIGRATION REV. 353, 353 (1997).


41. A survey circulated by a non-governmental organization to assist the U.N. Special Rapporteur on Violence Against Women in investigating trafficking in women notes that:

The traditional concept of trafficking focuses only on prostitution and addresses mainly the 'procurement' aspect, based on concern for 'innocent' girls who should be protected against being lured into the brothels. Moreover, the traditional concept does not address the contemporary forms of trafficking, such as the traffic in women through commercial marriage bureaus and the trade in domestic workers.

(survey on file with author). This critique is supported by the fact that certain brokers are involved in trafficking women both as domestic servants and sex workers.
A. The Economic and Gender Dynamics of the Maid Trade

Before examining the legal regulation of the maid trade, it is important to understand the dynamics that lie behind this phenomenon. This section will examine the following: first, the economic disparity between sending and receiving states; second, the factors in receiving states that create a need for migrant household workers; and third, how cultural associations of women with the home impact the workers who are part of the household worker migration stream. Economic disparity and gender associations are interrelated forces behind the maid trade.

1. Economic Disparities and the Search for a Better Life

The internal rural-urban migration of women and girls to engage in domestic service is a long-standing pattern in many regions of the world. This pattern is so common that it results in disproportionate female ratios among urban residents in some countries. Rural girls, some very young, may migrate solo to enter urban domestic service. Economic disparities between rural and urban areas feed these internal migration flows. Working conditions are highly disadvantageous due to the "familial, 'naturally female' nature of the job-type" and "the isolation (both spatial and social) of servants in their employers' home."

The international maid trade similarly arises from structural economic disparities between the sending and receiving countries. In this transnational context the factors of alienage and racial differ-

42. United Nations statistics indicate that Latin America is characterized by the greatest differences in the gender composition of urban and rural areas, with 106 women per 100 men in urban areas and 90 women per 100 men in rural areas. The opposite pattern prevails in sub-Saharan Africa, with 95 women per 100 men in urban areas and 106 women per 100 men in rural areas, reflecting internal migration patterns linked to gender-specific economic opportunities in the two regions. United Nations, The World's Women 1995: Trends and Statistics 41 (1995) [hereinafter The World's Women].

43. Sarah A Radcliffe, Mountains, Maidens and Migration: Gender and Mobility in Peru, in Gender and Migration, supra note 28, at 30, 44. In Ghana, girls from poor, rural backgrounds and who are often under ten years old are sent to "foster homes" in the city where they perform domestic work. Roger Sanjek, Maid Servants and Market Women's Apprentices in Adabraka, in At Work in Homes: Household Workers in World Perspective 35, 53 (Roger Sanjek & Shellee Colen eds., 1990).

44. Radcliffe, supra note 43, at 44.

ence aggravate the power imbalance between employer and employee.

The migrant household workers typically originate in countries where economic mobility for women is constrained because of sex-typing of jobs, lack of education and general underdevelopment. Major source countries for the East Asian maid trade include the Philippines, Indonesia, Thailand and Sri Lanka. Even many comparatively well-educated women from source countries such as the Philippines often find few opportunities for economic advancement in their states of origin. The gendered nature of the international labor market channels them into domestic service, even though many are overqualified.

The maid trade presents attractive options for many workers. Wages are high relative to job opportunities in the sending states, and a large proportion of income can be saved or remitted to family members at home. For Muslim women, a job contract in the Gulf states may offer an otherwise unattainable opportunity to make a pilgrimage to Mecca (the haj), an important life experience. Muslim women from Bangladesh, Indonesia and the Philippines are particularly in demand as household workers in Western Asia on the assumption that they are less likely to bring disruptive influences into the household. Nonetheless the cultural and economic gulf between employers and employees can be enormous, despite religious affinity.

46. One study of household workers from the Philippines found that many had been teachers or health workers prior to migrating. Carolyn Medel-Afonseca et al., Filippina Domestic Helpers in Hong Kong and Singapore, in THE TRADE IN DOMESTIC HELPERS: CAUSES, MECHANISMS AND CONSEQUENCES 162 (1989) [hereinafter THE TRADE IN DOMESTIC HELPERS].

47. Labor migration to other Asian states from the Philippines is now characterized by a 12:1 female-male ratio, with many women joining the maid trade. Lean Lim, More & Better Jobs for Women: An Action Guide 11 (1996).


49. Hugo, supra note 48, at 181; Heyzer & Wee, supra note 39, at 46.

50. Hugo, supra note 48, at 182 (Indonesia requires women migrating as domestics to the Middle East to receive training in Arab culture and language).
the infusion of foreign maids into the intimacy of the household is a popular journalistic topic,\textsuperscript{51} despite this preference for Muslim workers. Since many Muslim women are conditioned to accept gender disparities and primary definition through household status and work, their reaction to the more oppressive aspects of their servitude may be muted or self-directed.\textsuperscript{52}

The pull factors of the maid trade are powerful enough to overcome the most severe constraints upon women's spatial mobility (i.e., the ability to cross international boundaries). For example, Bangladesh is a significant source country for domestic servants in Western Asia, despite its strong cultural tradition of female seclusion.\textsuperscript{53} The erosion of purdah is stimulated by severe rural poverty in Bangladesh and the growing inability or unwillingness of male relatives to sustain destitute female relations.\textsuperscript{54} In an increasingly market-oriented world, societies that culturally restrict women to social reproductive roles often fail to enforce the male part of the social compact by protecting women from the consequences of their lack of access to the cash economy. While norms of seclusion erode in Bangladesh,\textsuperscript{55} the continued subordination of women exposes them to danger if they opt for a migration strategy to improve their dire economic situation.\textsuperscript{56}

Despite notorious reports of physical abuse of migrant house-

\begin{itemize}
\item 51. Sharon Stanton Russell, \textit{Policy Dimensions of Female Migration to the Arab Countries of Western Asia}, in \textit{International Migration Policies}, supra note 22, at 253, 263.
\item 52. See infra note 127 and accompanying text (discussing attempted suicide by Asian household workers in Western Asian states).
\item 53. A short time after Bangladesh lifted its ban on female migrants, at the request of Kuwait, 2,000 women were reportedly recruited as domestics. Heyzer & Wee, supra note 39, at 41.
\item 55. Rural poverty has driven increasing numbers of women into visible positions as laborers in the Bangladeshi countryside, for example in public works projects. Since working within sight of village neighbors may be more shameful, women have a particular incentive to migrate for work once they can no longer depend on support from male relatives. \textit{Id.} at 141.
\item 56. See infra notes 105-08 and accompanying text (discussing the temporary ban imposed by government of Bangladesh on migration of female household workers in reaction to reports of sexual violence against them and emergence of brokers to evade the ban). The continued requirement of a dowry to contract a genuine marriage may contribute to the success of brokers in gaining access to girls for trafficking. Heyzer & Wee, supra note 39, at 49.
\end{itemize}
hold workers, the prospect of economic gain continues to attract women into the maid trade. Unfortunately, maids risk exploitation, even to the extent of complete loss of their earnings, at all stages of the migration continuum—from dealings with labor contractors and travel agents, to interaction with abusive and dishonest employers, to contacts with untrustworthy or extortionate couriers of remittance payments, to disappointment upon return with family members who have squandered remittances. While the economic value of each maid's efforts is marginalized by its submergence in the private informal economy of the employer's household, the combined value of these maids' labor is so great that it has not only enriched a variety of brokers but has become the single greatest source of foreign exchange for several major sending states.


58. Other pull factors, generally of lesser significance, include the opportunity to live in a more stimulating setting and the possibility of permanent migration. Only about 7% of Filipina and Sri Lankan domestics indicate a desire to work abroad indefinitely. Josefa S. Francisco, Domestic Helpers in the Middle East, in THE TRADE IN DOMESTIC HELPERS, supra note 46, at 153. Push factors include an oppressive or violent home situation and the inability to maintain even bare subsistence in the country of origin.

59. Heyzer & Wee, supra note 39, at 84-85.

60. Id. at 67-71; Geertje Lycklama à Nijeholt, The Changing International Division of Labour and Domestic Workers: A Macro Overview (Regional), in TRADE IN DOMESTIC WORKERS, supra note 38, at 3, 40-42.


62. Hugo, supra note 48, at 184, notes that brokers earn a commission of $300 per domestic worker, triple the rate for placing a male migrant.

63. HRW GLOBAL REPORT, supra note 40, at 298 (noting dependence of Sri Lanka and the Philippines on remittances by overseas domestic workers).
2. The Need for Migrant Household Workers in Receiving States

Women are not only propelled into the maid trade by the push-pull factors of economic disparity. Receiving states in both Western Asia and East Asia actively seek to attract female migrants to perform household duties.

The oil-rich Gulf states of Western Asia have long attracted labor migrants from developing nations. Traditionally, these sojourners were primarily male and employed in such industries as construction and natural resource exploitation. The past decade, however, witnessed a strong trend toward the feminization of migrant worker flows to this region. At the time of the Gulf War, almost seventy percent of foreign labor migrants to Kuwait were female, and the vast majority of them were engaged in domestic service. While the Gulf War caused displacement of foreign workers, its quick termination led to massive return flows, reportedly including 140,000 foreign maids into Kuwait in 1991 alone. Gender ratios among Indonesian contract workers in Western Asia underwent a remarkable transformation, from 141 men per 100 women in 1983, to 29 men per 100 women in 1988.

The surge in demand for domestic servants in Western Asia stems from two trends: the modest but increased entry into the paid labor force of educated native women and changing attitudes among prosperous housewives. In psychological terms, these housewives' demands for household help may reflect their internalization of the social devaluation of the mundane aspects of social reproduction. In the sardonic view of one Philippine newspaper, "[f]or the newly affluent housewives in the Middle East, Asian housemaids have become as much a part of life as Japanese cars, American fast food and European fashion." The social mobility of these housewives trig-

64. Francisco, supra note 58, at 154-55.
67. Hugo, supra note 48, at 181 (reporting that most of the women are employed as domestic servants, especially in Saudi Arabia).
68. Russell, supra note 51, at 261.
69. Nijeholt, supra note 60, at 10.
70. Francisco, supra note 58, at 153 (quoting the Philippine Star, Mar. 19, 1987).
gendered the large-scale spatial movement by Asian women labor migrants.

Similar trends exist in East Asian receiving states such as Singapore, Malaysia and Hong Kong. In these countries, the increasing entry of educated women into formal sector employment heightened demand for migrant household workers, although many are also employed by prosperous housewives. Professional women lack the requisite time to discharge the tasks of social reproduction, including child care and care of elderly or disabled relatives. East Asian receiving states, recognizing the advantages of labor force participation by educated women, acted affirmatively to facilitate entry of migrant domestics.

The workforce participation by educated East Asian women apparently did little to motivate male household members to assume a greater share of the social reproduction burden or to pressure the state to provide relevant public services. A carefully controlled program of temporary labor migration, channeling foreign women into private homes, was the legal response to this economic change. The maid trade, which can be terminated with relative ease, keeps the social reproductive roles of women intact and retards any cultural evolution in male-female roles. Moreover, East Asian states avoid any alteration in the state’s responsibility for the care of children and the elderly, preserving cultural norms that stress private family responsibility and place the practical burden of these tasks on women.

Although Hong Kong has a long tradition of migrant household workers, the racial composition of these workers changed dramatically in recent decades. The *mui tsai* of the past, ethnically Chinese indentured girl migrants, often suffered the disadvantages of being "part of the family"—low or nonexistent pay and concubinage or forced marriage at the end of their servitude. The skilled *amahs*, at

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the other end of the servant spectrum, commanded premium wages and banded together in mutual assistance sisterhoods in the tradition of Chinese overseas communities. Today, however, women from the Philippines predominate among Hong Kong’s household workers. Hong Kong residents display significant intolerance toward these workers, both in harsh treatment inside the home and in criticism of the workers’ tendency to gather in public places during their rest day. The workers’ gendered association with the private household realm and their subordinated racial status doubly disadvantage them in the perception of Hong Kong’s elite.

This equivocal attitude toward migrant household workers is also perceptible in Malaysia and Singapore. In Malaysia, the employment of a domestic worker is regarded as a necessity for the middle and upper classes. As Malaysian men are unlikely to share in domestic chores, the employment of a domestic worker mitigates the domestic burden on Malaysian women, allowing such women to pursue a career outside the home. However, the Malaysian media portray foreign female workers in a negative light, and they are widely regarded as criminals, prostitutes and “little more than girl-slaves.” These women are often treated as commodities by domestic employment agencies and are unprotected by labor regulation.

74. *Amahs* are women who traditionally took vows of spinsterhood or who were widowed or unmarried and dedicated their lives to domestic service. Constable, supra note 21, at 50.

75. The dedication and subservience of the amah is idealized in Hong Kong. Id. at 40. As a result, the few remaining amahs can demand higher wages and better conditions from their employers. Constable, supra note 21, at 56. In contrast, Filipina workers are viewed as overly demanding and as “loud, aggressive, boisterous and brash,” id. at 58, and as inferior in loyalty. Id. at 40.

76. For example, employers often strictly regulate Filipina workers’ bathing schedule, give them inadequate food to eat, impose curfews and regulate the clothes they wear. Constable, supra note 21, at 89-103.

77. The workers, who are isolated in private homes for six days of the week, seek each others’ company on Sundays for religious worship, petty trading, especially in Filipino foods, companionship and transfer of remittances. Constable, supra note 21, at 1-3, 166-70.

78. Constable, supra note 21, at 38-39.

79. Chin, supra note 39, at 373, 380.

80. Id. at 373.

81. Id. at 374.

82. Id. at 375.

83. Id. at 377-78.

84. Id. at 369
Singapore imposes an onerous tax upon employment of foreign maids to limit their services to the most prosperous working women. This tax generated $146 million per year as of 1992, but the revenues neither provide services to maids nor substitute government-subsidized child care for employers. For the receiving state in the maid trade, "development processes are being subsidised by a genderised international class structure" in which the financial and physical contributions of employer and employee relieve the state of the need to invest in the care of children, the elderly and the disabled, while allowing it to reap the rewards of the labor force participation by its educated women.

3. Cultural Association of Women with Home and the Impact on the Maid Trade

The tasks of social reproduction are necessary to sustain human existence. The traditional allocation of these tasks to women has important and disadvantageous consequences for participants in the maid trade. Housework and child care were traditionally treated as a non-economic activity because those tasks were often discharged by housewives who do not receive cash wages. Even when unrelated women migrate to assume these tasks, the traditional devaluation of the work depresses wages and working conditions, to an extent that sometimes results in total nonpayment of cash wages. Moreover, where the maid becomes a resident member of the household, she may face physical and psychological violence and subordination, including demands for sexual services, which replicates the general phenomenon of domestic violence.

Most employers demand that migrant domestics reside within

85. Heyzer & Wee, supra note 39 at 60-61.
86. Id. at 60. The Singapore Council of Women's Organisations protested this levy in a letter to the Straits Times on July 23, 1992, urging that a “portion... should be used for the welfare of maids and support services for working parents.” Id.
87. Id. at 45.
88. This term refers to the tasks of household maintenance, child raising and elder care, which remain disproportionately delegated to women in all cultures.
89. See, e.g., Radcliffe, supra note 43, at 44 (13% of female live-in domestics in Cuzco receive no remuneration); Constable, supra note 21, at 45-48 (describing earlier forms of bonded servitude in Hong Kong of Chinese girl migrants (mui tsai or muijai), who were often sold by their families as young as eight or ten); Sanjek, supra note 43, at 41-42 (in Ghana, young girls from rural backgrounds are “given” by their families, sometimes in exchange for a cash payment, to urban families where the girls become domestic servants.)
their household, to insure full-time availability at their convenience. The excessively long hours worked by many migrant domestics are another reflection of the gendered discounting of household labor as a form of work. On call at all times, without remuneration for added tasks, migrant domestics encounter a gendered standard of sacrifice and selflessness similar to standards of conduct set for housewives. Migrant household workers are both women and servants, placing them under a heavy cultural expectation of self-abnegation.

The irony for women engaged in migrant domestic work is that, at the same time their employment equates them with the home and domestic duties, the fact of their migration often fractures their own family ties and home life. The maid trade increasingly attracts women with dependent children, overcoming another historical constraint on solo female labor migration. One survey indicated that Filipina migrant household workers support an average of three minor children at home as married women and mothers of minor children increasingly join the maid trade, they must transfer their burdens of social reproduction to others, typically close female relatives, in order to take on similar tasks in the employer's household. The sending states and husbands of the migrant domestics, like the destination states and husbands in employing households, appear unwilling to assume any substantial portion of the social reproductive tasks that are the impediment (at the sending end) and also the magnet (at the receiving end) of the maid trade, "[T]he problem of sustaining family life multiplies down the line and continues to be seen as the sole responsibility of women—across national boundaries—rather than as a responsibility to be shared by men and women or by the family and the State." 

90. Constable, supra note 21, at 60.
91. Many migrant household workers complain bitterly that employers impose tasks that were not specified in the employment contract, such as gardening and car washing. Constable, supra note 21, at 44. The fact that many of these protested tasks were traditionally sex-typed as male perhaps suggests that household workers have internalized gendered expectations.
92. Heyzer & Wee, supra note 39, at 46 (survey of Filipina workers in Hong Kong).
93. Minimum age limits on migrant domestic workers are sometimes imposed to insure greater individual agency in the transaction and possibly to reduce the risk of sexual abuse. See Hugo, supra note 48, at 182 (Indonesian female migrants to the Middle East are required to be at least 30 years of age). An unintended side-effect may be to increase the percentage of migrants who leave behind minor children.
94. Heyzer & Wee, supra note 39, at 37.
Separation from one's own children has long been the fate of domestic servants, particularly those required to live in the employer's home. But the distances separating these migrants and their dependent children add a new and troubling dimension to this pattern. The high level of remittances that maids typically send home suggests that, far from abandoning their offspring, these domestic workers are striving within gendered limits to improve the life chances of their children, by securing funds for school fees or other advantages.55

Their dedication to their children's future motivates them to transfer their nurturing functions to surrogates and deprives them and their children of the pleasures and emotional benefits of intimate association. It is far from clear that the unsure economic rewards of the maid trade actually bring lasting benefit to most participants and their families, while the cultural impact of extended long-distance separation of the mother-child dyad, the paradigmatic embodiment of "home,"56 is only beginning to be assessed.

B. Law and the Maid Trade

Because of its transnational nature, the maid trade is susceptible to regulation by the national laws of sending and receiving states, by bilateral agreements and by international treaties or customary law. Legal norms affecting the trade already exist within all these legal systems, but they do remarkably little to benefit the migrants and, in general, operate to their significant disadvantage. The challenge is to create a regulatory scheme that eliminates the worst abuses without destroying what many women obviously regard as their best opportunity for economic gain.

95. Ninety-five and a half percent of Filipina domestics in Malaysia send remittances to family members. Caridad Tharan, Filipino Domestic Helpers in Malaysia: Causes, Mechanisms and Consequences, in PROCEEDINGS OF THE INTERNATIONAL COLLOQUIUM, supra note 72, at 373, 387. One Filipina maid in Malaysia indicated that she hoped her wages as a migrant domestic would enable her daughter to become a doctor. Caridad Tharan, Filipina Maids in Malaysia in THE TRADE IN DOMESTIC HELPFERS, supra note 46, at 272, 277.

96. Kerry Richter, The Impact of Rural-Urban Migration on Child Care and Family Structure in Thailand, in PROCEEDINGS OF THE INTERNATIONAL COLLOQUIUM, supra note 72, at 44 ("the mother-child dyad remains a basic building block of family life even in 'post-modern' societies").


1. **Sending State Regulations**

Sending countries reap enormous benefit from the maid trade for several reasons. Migrant household workers are primarily circular or transient migrants, who direct their earnings to the improvement of conditions at home, but do not intend to remain permanently in the destination state. 97 Women involved in the maid trade find that their ties to home exert a strong pull animating their return. 98 Female migrants often have higher rates for sending remittances to relatives than male migrants. 99 Remittances from migrant workers have become a major source of foreign exchange for sending states, a commodity that is increasingly vital to development. Indeed, one can predict that the recent currency and debt crises in sending states such as Indonesia, Thailand and the Philippines will fuel the maid trade, as recession affects domestic employment opportunities and imperils family economic survival. 100

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97. Nijeholt, supra note 60, at 46-47; Heyzer & Wee, supra note 39, at 49 (desire to renovate family home propels migration of married Indonesian women).

98. In contrast, domestic workers migrating to the United States are typically settlers rather than sojourners. The same is true of women entering Canada in a special status for domestic workers. See Macklin, supra note 37. These women often embark on their labor migration with the intent to relocate permanently to the destination state, to achieve upward economic and social mobility not available to them in their state of origin. In this respect, their patterns are similar to classical male migration to major countries of immigration such as the United States, Canada and Australia. Some migrant women enter domestic service because of sex-typing of job opportunities and gender discrimination in their access to education and training. For example, a survey by the Rand Corporation published in 1994 reported that 42% of female Salvadoran immigrants to the United States were employed in private household service, in contrast to 0% of surveyed Salvadoran male immigrants. Strikingly, only 1% of the surveyed Filipina immigrants was employed in private household service, while 31% were employed in the more highly remunerated "managerial/professional/technical support" category and 32% in the "administrative support" category, reflecting the higher educational attainments of Filipina migrants. JULIE DAVANZO ET AL., SURVEYING IMMIGRANT COMMUNITIES: POLICY IMPERATIVES AND TECHNICAL CHALLENGES 44 tbl.5.3 (1994).

99. Sylvia Chant & Sarah A. Radcliffe, Migration and Development: the Importance of Gender, in GENDER AND MIGRATION, supra note 28, at 1, 17, 28. Migration of Filipina household workers to Italy, unlike the maid trade to Western and East Asia, is largely irregular. A field study of Filipina household workers and Senegalese male migrants in Turin, however, revealed a sharply divergent pattern in remittances, with Filipina women being more likely to send remittances home to their families than Senegalese men, despite the fact that incomes were roughly comparable among the two migrant groups. Barsotti & Lecchini, supra note 37, at 158.

100. Recession in major receiving states (such as Singapore, Malaysia and Hong Kong) would, however, dampen demand. Malaysia has already moved aggressively
Although sending states have the most obvious incentives to protect the interests of participants in the maid trade, legal regulation of the maid trade by sending states often adds to the migrants' burden without serving a genuine protective function. Sending state regulations take various forms, such as: (1) exit restrictions that limit the number, age or other characteristics of the migrants or impose substantial fees; (2) required training classes; (3) licensing of brokers and travel agents; (4) obligations to remit a portion of foreign earnings; and (5) provision of consular services to migrants in the receiving states.

Not all sending states regulate the emigration of women participating in the maid trade to the same degree. Some sending states, such as Sri Lanka, adopt a relatively laissez-faire attitude, imposing no exit restrictions. Others restrict participation on the basis of factors such as age, which are imagined to reduce the risk of sexual abuse and economic exploitation. At the far end of the spectrum, states such as Pakistan prohibit solo migration by unskilled women and few if any Pakistani nationals participate in the maid trade. In the middle of the spectrum of exit restrictions are several of the major sending states, which impose substantial fees upon participants (for example, to secure travel documents) and have occasionally imposed temporary bans on the trade.

There follows a description of three areas of regulation by sending states that are problematic for female participants in the maid trade, namely (1) sending state bans on the maid trade; (2) regulation of brokers and (3) forced remittances. At present, regulation in each

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102. Lim, *supra* note 22, at 36.


104. Lim, *supra* note 22, at 36.
of these areas often places increased economic burdens on the participants and facilitates exploitation. It is not suggested that sending states should cease regulating the emigration of these women but rather that such regulation should be carefully targeted to safeguard, not compromise, their interests.

a. Sending State Bans on the Maid Trade

Bans on the emigration of participants in the maid trade by sending states represent an extreme and untenable response to notorious reports of abuse of migrant household workers. Such bans are problematic because they block access to economic opportunity and may channel economically desperate women into underground migration streams that expose them to even greater risks of exploitation. The government of Bangladesh reacted to reports of sexual abuse of Bangladeshi maids by banning the trade in 1982, making an exception for women migrating with husbands. Brokers quickly created a market for sham marriages to Bangladeshi men to accompany migrant household workers on the first portion of the journey. Unfortunately, these brokers, known as dalals, are also engaged in other forms of trafficking in women, including sexual slavery in brothels. Bangladesh later lifted its ban in response to pressure from Kuwait, where the services of Muslim household workers are in demand.

The equally controversial temporary Philippine ban on migration by household workers suggests that exit restrictions may occasionally operate to the benefit of participants in the maid trade, although their primary effect is to deprive migrants of their freedom of movement and control over their labor. The unilateral Philippine ac-

107. Malsiri Dias, *Overview of Mechanisms of Migration, in TRADE IN DOMESTIC WORKERS*, supra note 38, at 135, 145-46. On the role of dalals in trafficking of women, see HRW GLOBAL REPORT, supra note 40, at 262-63; on their practice of duping girls into sham marriages as a prelude to confinement in brothels, see id. at 257-61.
108. See infra note 131.
tion had a keen impact on the intended beneficiaries. Following strong protests, including denunciation by non-governmental organizations seeking enhanced protection for migrant household workers and public demonstrations by members of Hong Kong's Filipina migrant community, the government of the Philippines gradually lifted the ban with respect to receiving states willing to enter into bilateral agreements. While these agreements are fairly weak, they do establish adjudication mechanisms and impose minimal requirements on employers in receiving states.

b. "Maid Brokers"

Though the maids typically work by themselves, the trade is quite organized, and an array of profitable enterprises exploit it, often to the extent of diminishing or even expropriating the value of the maids' labors. These middlemen include brokers who locate positions for migrant maids and who often make false or misleading claims about placements. They may also supply capital to overcome financial barriers to entry, the most significant of which is the cost of transport and travel documents. Brokers' fees, combined with the costs of complying with the sending state's exit regulations, typically place the domestic worker in debt at the very outset of her employment.

While some sending states license brokers, enforcement of their contracts is infrequent and weak. Migrant workers' debts deter

110. See id. at 188.
111. See id. at 189. See infra note 131 and infra Part III.B.3 for further discussion of bilateral agreements as a potential regulatory mechanism to deter abuse of migrant household workers.
112. See infra Part III.B.3.
113. Chin, supra note 39, at 362 ("Filipina and Indonesian domestic workers insisted over and over again that DOMs [domestic employment agencies] were proficient in the art of lying to potential female migrants and their families.").
114. Nijeholt, supra note 60, at 40-42.
115. For women traveling to Malaysia, the fees of employment agencies for "processing travel and work documents" range from RM800-1500 (for Filipina women) and RM1000-2000 (for Indonesian women). Chin, supra note 39, at 37b. In 1989-90, the average fee paid to a recruitment agency by a Filipina worker who migrated to Hong Kong was 18,542 pesos (US$850). Some women paid as much as 35,000 pesos. Many women financed this fee through expensive loans given by the agencies. Constable, supra note 21, at 73.
116. In Malaysia, domestic employment agencies are regulated by the Malaysian Ministry of Human Resources and by the Immigration Department. The purpose of such regulation is "to curb illegal and indentured labor migration and also to prevent
them from abandoning employment that falls short of promised conditions and benefits. While sending state governments do generally provide consular services to migrant household workers, these officials may encourage them to tolerate the extortionate demands of brokers and employers and to make the best of a bad situation.\textsuperscript{117}

Reducing the exploitation of maids by labor contractors requires establishment of non-exploitative alternatives for placement and loans.\textsuperscript{116} Participants may gradually form their own migration networks and become less dependent on brokers. Experienced domestic workers recruit new prospects from among their family members and village neighbors, in a pattern frequently encountered in maturing migrant labor streams.\textsuperscript{119} Another strategy is for the sending state government to monitor the reliability of recruitment agencies and to publish official lists of recommended and unreliable agencies, to assist potential migrants in protecting themselves against exploitation.\textsuperscript{120} Alternatively, government or non-profit agencies could supplant the brokers entirely, theoretically providing more reliable services at actual cost.

c. Forced Remittances

Some sending states, such as the Philippines, impose an obligation on migrant workers to remit a substantial portion of their wages.\textsuperscript{121} The maid trade is a significant development strategy for the loss of revenues to the [government] ... and licensed DOMs." Chin, supra note 39, at 376. Regulation is not focused on revoking the licenses of agencies that violate the rights of women migrants.

\textsuperscript{117} A Filipina worker criticizes the Philippine Embassy in Malaysia in the following terms: "The embassy? They cannot do anything. They don't care. You go now and see what they'll do for you? Nothing! If I have a problem, I won't go there." Chin, supra note 39, at 364. Filipino Workers Resource Centers of the Office of Workers' Welfare and Administration are attached to twenty-one consulates of the Philippines. Report of the Secretary-General, supra note 101, at para. 13. These resource centers provide counseling, legal and translation services, conciliation and physical shelter in priority cases, primarily to women. \textit{Id.} at para. 14. In Hong Kong and Singapore, they offer computer training classes to female migrants seeking to upgrade their job skills. \textit{Id.} at para. 15.

\textsuperscript{118} Heyzer & Wee, supra note 39, at 84-85.

\textsuperscript{119} Id. at 48 (describing recruitment patterns in Indonesia).

\textsuperscript{120} Lim, supra note 47, at 102-03. The Government of the Philippines adopted regulations that provide for the blacklisting of brokers and employers who have breached their contractual obligations to migrants. Report of the Secretary-General, supra note 101, at para. 11.

\textsuperscript{121} In 1982, the Philippine government introduced a law making it mandatory for
sending states, with remittances supplying a valuable source of foreign exchange. Despite this focal role for remittances in stimulating and sustaining the maid trade, however, participants face a serious risk of financial loss because safe avenues for remittance payments are often lacking. Having endured hard work and separation from family, many suffer substantial losses through corrupt and deficient systems for transferring remittances. Household workers often face the dilemma of extortionate charges by banks or informal and possibly insecure transport by acquaintances. Sending state governments may provide official remittance services, but their motives often mix revenue enhancement with protection of migrants' economic security. Less exploitative transfer services could be provided by non-profit organizations.

2. Receiving State Regulations

Although increasingly indispensable to efficient social reproduction in receiving states, migrant household workers are frequently disadvantaged by legal regimes that prioritize immigration control objectives or that immunize abusive or exploitative employers. The deficient legal systems of major receiving states in the maid trade reflect not only gender subordination but alienage and class bias.

a. Failure to Address Abuse Against Migrant Household Workers

Violent abuse by employers of participants in the maid trade attracts a good deal of international attention, sometimes to the exclusion of more mundane but pervasive abuses such as economic exploitation through underpayment of agreed wages and excessive fees. Receiving state regulations tend to impose onerous obligations on migrant household workers, while rarely punishing employers who violate the workers' physical integrity or who breach contractual promises. Regulation by receiving states takes a variety of forms, often explicitly gender-biased, ranging from discriminatory criminal punishment, to denial of protection against criminal abuse, forced seclusion in the household or denial of the right to leave the receiving

Filipino domestic workers employed abroad to remit 50% of their earnings through banks in the Philippines. Workers who did not comply were not eligible for passport renewal. Constable, supra note 21, at 164.

122. Nijeholt, supra note 60, at 41-42.

123. See Constable, supra note 21, at 164.
state, to linkage of lawful immigration status to employer satisfaction and pregnancy testing.

The notorious case of Sarah Balabagan, a Filipina household worker in the United Arab Emirates, brought to the world's attention the perverse treatment of sexual assault victims in Persian Gulf receiving states. Balabagan was prosecuted under laws that explicitly defined the crime in gender-biased terms within a procedural structure that prevented her from mounting an effective defense. The equally notorious prosecution of Flor Contemplacion in Singapore, under formally neutral criminal laws and procedures, suggests that the disadvantages faced by criminal defendants who are migrant household workers are not limited to de jure discrimination. Especially striking, even shocking, is the fact that states displaying only indifference to abusive and violent employers nevertheless find the legal resources to prosecute and imprison migrant household workers who seek to escape their misery by attempting suicide.

Prosecutions of employers who commit crimes against migrant household workers are extremely rare, despite substantial publicity given to this sexual violence. Sexual violence propels many women to seek shelter in the embassies and consulates of sending states. This gap in receiving state protection for migrant household workers, more than any other regulatory deficiency, prompted the temporary bans on the maid trade imposed by Bangladesh and the Philippines.

124. *Maid to be Flogged in Gulf Sheikdom*, N.Y.TIMES, Oct. 31, 1995, available in LEXIS, News Library, NYT File (describing Balabagan's initial conviction for manslaughter and seven year sentence for killing her employer, in an incident in which she claimed self-defense against sexual assault, followed by a new trial in which a death sentence was imposed, and finally, upon payment of blood money to the employer's family, a sentence of 100 lashes and a year in jail).

125. The *zina* ordinances punish the female participant in the sexual act; procedural rules discount the weight of female testimony.

126. See *supra* note 57. Flor Contemplacion was executed in Singapore after being convicted for the murders of another Filipina domestic worker and a four-year-old Singaporean child.

127. HRW GLOBAL REPORT, *supra* note 40, at 303.

128. Indonesian maids in Saudi Arabia are required to produce three eyewitnesses in order to maintain a prosecution against their employers for abuse. Hugo, *supra* note 48, at 183. Human Rights Watch detailed numerous cases of severe physical violence inflicted on domestic workers by Kuwaiti employers who went unpunished. HRW GLOBAL REPORT, *supra* note 40, at 286-90, 295-96, 300-05.

129. See sources cited *supra* note 40.

130. See *infra* note 153.

131. Bangladesh banned solo foreign labor migration by women in 1982 but lifted
The impunity many employers enjoy for sexual violence against migrant household workers is a manifestation of the general phenomenon of gender-biased, under-prosecution of domestic violence, aggravated by the subordinated alien and class status of the victims. Some states erect formal barriers designed to impede victims' access to legal protection, such as Saudi Arabia's requirement that a victimized migrant household worker produce three witnesses to the alleged crime. Zina ordinances in Western Asian states deter reports of sexual violence by imposing daunting, gender-biased evidentiary requirements on female victims and simultaneously threatening them with harsh prosecution for adultery or fornication based upon their allegations of sexual contact with their rapist.

More pervasively, receiving states impede access to criminal justice by failing to ask the "woman question" in devising their immigration regulations. Frequently, these administrative rules operate to reduce the prospect of criminal justice to a cruel illusion.

An instructive case from Hong Kong illustrates how migration regulations operate as a significant deterrent to the redress of sexual violence against migrant household workers, even in a setting where formal processes for the criminal prosecution of perpetrators exist and a culture favoring the rule of law is entrenched. Filipina household workers enter Hong Kong on temporary work permits requiring them to repay a month's wages to their employers if they abandon their posts without good cause. Under a controversial rule designed to impede their labor mobility and keep them under the control of brokers and employers, moreover, Filipino household workers must leave Hong Kong within two weeks after their employment con-
tract is terminated, whether by firing, quitting or expiration of the contract term.\textsuperscript{137}

Hong Kong is unusual in that it has established an industrial tribunal that adjudicates contractual disputes between migrant household workers and their employers.\textsuperscript{138} Household workers who have cases pending before this tribunal may seek extension of their leave to remain in Hong Kong for the pendency of their cases, but each extension requires payment of a significant cash fee to immigration authorities.\textsuperscript{139} The proceedings of the tribunal are protracted and equality of arms between household worker and employer is the exception rather than the rule.\textsuperscript{140}

Anastacia, a Filipina household worker whose remittances provided the sole support for her five minor children, was raped several times by her millionaire employer, a prominent figure in Hong Kong horseracing circles.\textsuperscript{141} The police declined to prosecute the first and second incidents because she lacked sufficient forensic evidence of the assaults. She remained in her employment because the above-described migration regulations, combined with her economic situation, seemed to deprive her of any meaningful alternative. When she fled to the police station with sufficient evidence upon the third assault, however, the authorities chose to initiate a criminal action. She thereupon left her employer and sought to remain in Hong Kong to pursue the criminal case and to seek compensation from the employer through civil processes.\textsuperscript{142}

In the end, the case serves as a cautionary tale of the perversity of the legal system's treatment of migrant household workers. While her employer was convicted of several counts of rape, his punishment was a paltry fine that sent a clear signal of effective impunity to the employer community in Hong Kong.\textsuperscript{143} In the meantime, the worker

\begin{itemize}
\item \textsuperscript{137} Id.
\item \textsuperscript{138} For an account of a hearing before a Hong Kong Labor Tribunal, see id. at 126-32.
\item \textsuperscript{139} In 1993, the extension fee was HK$115. Id. at 127.
\item \textsuperscript{140} The hearings are formal, and carried out in English. Id. at 123-29.
\item \textsuperscript{141} Id. at 148-49.
\item \textsuperscript{142} Id. at 149. Anastacia stayed in Hong Kong without a job, relying on friends for support. As a result, two of her children had to stop school. When she returned to the Philippines in 1990, she had collected only US$3,213 of the US$8,997 civil settlement that she had reached with her former employer. Id.
\item \textsuperscript{143} The millionaire was fined US$643 for each of the five counts of sexual assault. Id.
\end{itemize}
was prevented from taking alternate employment in Hong Kong, because her ability to convince the industrial tribunal that her abandonment of her employment was justified hinged upon facts within the jurisdiction of the protracted criminal proceedings.\footnote{144} After two of her children were forced to abandon schooling as the result of the loss of her remittances during her extended unemployment, she settled her civil suit against the rapist for a small sum and returned to the Philippines, much the worse physically, psychologically and economically for her migration gamble.\footnote{145}

\textit{b. Receiving State Control Over Maid Trade}

Receiving states may enact numerical or qualitative controls over the maid trade, to promote certain perceived public interests. Examples include Singapore's heavy tax on household workers,\footnote{146} designed to restrict their services to the most prosperous households, and Malaysia's ban on employment of migrant domestics by unmarried employers, a singularly inapt measure to deter sexual improprieties.\footnote{147} By restricting employment opportunities, such measures tend to operate contrary to the economic interests of prospective migrants.

Perhaps the most significant way in which receiving states regulate migrant household workers is through immigration laws. Without her passport, a migrant worker is powerless and, in the eyes of the system, without legitimacy. This makes her vulnerable to her employer, as is demonstrated by the practice of passport seizures. To avoid the expense of replacing a dissatisfied migrant domestic, many employers will seize her passport in order to insure that she does not prematurely terminate her labor contract.\footnote{148} Instances of migrant household workers being locked in the home also occur.\footnote{149} Women who are amazingly mobile, being long-distance solo labor migrants,

\footnotetext{144}{\textit{Id.}}
\footnotetext{145}{\textit{Id.} at 148-49. The situation of undocumented female migrants is even more acute, as an accusation of criminal violence against an employer in the informal economy may lead directly to the detention and deportation of the victim. See infra notes 269-70, 304-08.}
\footnotetext{146}{See supra notes 85-87 and accompanying text.}
\footnotetext{147}{Malaysia banned employment of maids by single parents, purportedly to protect the maids against sexual abuse. Heyzer & Wee, supra note 39, at 61. The acute needs of single working mothers, who pose little if any sexual threat to domestic workers, were deliberately disregarded in the development of government policy.}
\footnotetext{148}{HRW GLOBAL REPORT, supra note 40, at 292-93.}
\footnotetext{149}{Constable, supra note 21, at 103.}
thus ironically suffer an extreme loss of spatial mobility once they arrive at their workplace. The domestic setting appears to contribute to this restriction on mobility, as employers justify passport seizures on paternalistic grounds.\textsuperscript{150}

Because of this pervasive pattern of passport seizure, even where it is technically illegal, the immigration laws of some Western Asian states effectively impede access to the criminal justice system by victims of employers' violent acts. Migrant workers are often required, upon threat of arrest, to carry their passports whenever they step outside the employing household.\textsuperscript{151} As a result, maids facing dangerous or intolerable conditions have reason to fear, rather than to trust, the local legal authorities.\textsuperscript{152} For these women migrants, the added factor of alienage aggravates the gender, class and racial disadvantages they already experience. Even those brave or desperate enough to seek shelter in their country's embassy\textsuperscript{153} are often unable to repatriate without the cooperation of their abusive employer.\textsuperscript{154} The geographic remoteness of the Western Asian destination states and the indebtedness of the workers\textsuperscript{155} also impedes their ability to flee home from a violent situation. Legal processes do not exist by which victims can recover monetary compensation sufficient to make them whole for their out-of-pocket expenses or their lost profits.

c. Loss of Job Equates to Deportation

Even where migrant household workers are not in danger of

\begin{footnotesize}
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\item 150. HRW GLOBAL REPORT, supra note 40, at 293 (quoting Kuwaiti government official as justifying illegal passport seizures as device to prevent maids from losing them, as children might be prevented from losing something).
\item 151. "At the same time that the government [of Kuwait] tolerates the taking of the maids' passports, it rigorously enforces the Aliens Residence Law, which requires foreigners to carry their passports or other papers confirming their legal status at all times or be subject to immediate arrest and fine or detention." Id.
\item 152. Id. at 294 (interviews with maids in Kuwaiti detention).
\item 153. An average of 75 women per day seek shelter in the Indonesian embassy in Jeddah, Saudi Arabia. Hugo, supra note 48, at 181. Human Rights Watch reports that 2,000 foreign domestic workers per year seek shelter in embassies in Kuwait. HRW GLOBAL REPORT, supra note 40, at 283. In April 1995, over 200 domestic workers were sheltering in the Philippines embassy in Kuwait, while 150 were resident in the embassy of Sri Lanka. Id.
\item 154. HRW GLOBAL REPORT, supra note 40, at 294 (foreign workers cannot leave Kuwait without exit visa stamped in passport, which may have been seized by the employer).
\item 155. Hugo, supra note 48, at 183.
\end{itemize}
\end{footnotesize}
physical violence, immigration regulations may severely limit their bargaining power with respect to dishonest or exploitative employers. Because the worker’s right of residence hinges upon performance of the employment contract, an employer’s private act of firing the worker may be transformed into a public act of deportation. In Hong Kong, formal processes exist by which household workers may seek adjudication of wrongful termination or enforcement of contract rights (such as payment of the official wage rate). However, many workers suffer in silence because the proceedings are subject to substantial delay (while migrants are required to make repeated payments of immigration fees to extend the period of lawful stay) or because adjudicators tend to favor employers, who are more articulate in the legal setting and far more likely to be represented by counsel.

d. Use of Brokers as a Control Mechanism

While avoidance of exploitative brokers would be of advantage to participants in the maid trade, receiving states may impede this possibility. Receiving states may perceive that using brokers as a control mechanism assists them in deterring household workers from transforming themselves into permanent migrants. Brokers and employers function, in effect, as surrogate immigration officers, reducing administrative costs for receiving state governments.

The use of brokers also has advantages for employers, despite the added expense. Employers frequently manage to extract the broker’s fee from the worker. In one study of household workers, employers withheld monthly earnings for many months in order to recoup placement costs. The bargaining power of the employers is reflected in brokers’ advertisements offering guarantees for free “replacement” of defective or deficient maids. These ads not only indicate disrespect for the human dignity of the workers, they express the anxiety inherent in situations where hired workers perform intimate, emotional tasks such as the care of children.

156. Alcid, supra note 38, at 170-75 (noting, however, that fear of repercussions prevents many maids from invoking grievance procedures).
157. See supra text accompanying notes 136-45.
158. See supra text accompanying notes 118-19 for discussion of trend toward informal recruitment by experienced migrants.
159. Chin, supra note 39, at 376.
160. Heyzer & Wee, supra note 39, at 55.
161. Married female employers, who are burdened with the task of supervising
e. Lack of Voice in the Political Process

The isolation of the maids in their workplace tends to impede their ability to gain leverage over receiving state governments and employers by concerted action. The large potential supply of economically needy domestic workers and the short-term nature of the contracts further undermine prospects for improvements in wages or working conditions. While Filipina workers in Hong Kong established some lobbying and mutual assistance organizations, these groups do not yet engage in collective bargaining activities. One of the key aims of these groups is the elimination of Hong Kong’s regulation requiring household workers to depart within two weeks of terminating their employment. This immigration regulation empowers employers because dismissal may be tantamount to deportation, and unemployed workers have little flexibility to seek alternative, better-paying positions.

f. Facially Gender Biased Regulations

Some immigration regulations of receiving states are blatantly gender-biased. For example, Singapore subjects female migrant workers to medical exams and semi-annual pregnancy tests; detection of pregnancy brings instant deportation. The deportation of a pregnant household worker conveniently relieves the prospective father (whether employer or male migrant worker) from any financial or legal obligation to mother or child. Given that a large percentage of migrant household workers are engaged in child care, this punishment of maternity has a degree of irony. Giving birth in the receiving state, however, might transmute the intended short-term entry of the domestic workers, may be demanding, feeling pressure to keep household standards high despite being employed outside the home. At the same time, they may feel threatened that a live-in domestic will replace them in the affections of their children or husband. Purushotam, supra note 72, at 177-80. The foreign domestic faces a Catch-22 situation in which she “cannot work too well, but neither can she ever work well enough.” Id. at 180. On the other hand, the pressing need of professional women for high-quality child care offers perhaps the best prospect for improved wages and working conditions for domestic workers. The high standards of professionalism among the amahs commanded a premium in the market for child care workers. Heyzer & Wee, supra note 39, at 86-92.

162. Lim, supra note 47, at 102 (describing the Asian Domestic Workers’ Union, which has 1700 members, and whose primary role is to assist workers with grievance cases before Hong Kong tribunals and to provide telephone counselling).

163. Constable, supra note 21, at 164-65.

164. ENLOE, supra note 109, at 188.
foreign household worker into permanence, especially where the child's father is a citizen of the receiving state. Moreover, the immigration rule punishing pregnancy reflects employers' interests in insuring that the household worker's own tasks of family maintenance do not interfere with the employer's exclusive right to her services.

**g. The Failure of Regulation by Receiving States: Can NGOs Assist?**

Receiving states have little incentive to give a high priority to the welfare of their migrant household workers. Short-term migrant household workers are marked not only by their gender but by their alienage, class and race as politically powerless; their association with the private domestic sphere further diminishes their influence in the public political forum. Receiving states have, at best, an equivocal attitude toward the maid trade, regarding the workers as a necessary evil who pose a potential cultural menace. For receiving state policy-makers, abuse or legal unfairness that diminishes the flow of the maid trade or silences the voices of migrant household workers is tolerable, perhaps even welcome.

As a result, internal political pressure to improve receiving state regulation of the maid trade is rather weak. Employers and brokers have an obvious incentive to resist legal measures that would expose them to greater discipline or shift the balance of bargaining power with respect to wages and working conditions. Immigration officials are typically preoccupied with control over temporary labor migrants, fearing their transformation from sojourners into settlers and the economic and social consequences that might ensue. Even in Hong Kong, where the rule of law is entrenched, substantial protections for free expression have long been the norm, and migrant worker groups are unusually visible and active, campaigns against onerous immigration regulations have not yet been successful.

The failure of receiving states to protect the lives and economic security of migrant household workers is, however, subject to the incredible power of shame brought on by human rights organizations,

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166. Transition to Chinese rule might affect this climate of tolerance, but its specific impact upon the maid trade is not yet capable of assessment.

167. *See supra* text accompanying notes 162-63.
media and pressure groups in the sending states. The emergence of NGOs primarily concerned with human rights violations against migrant household workers is a sign that this strategy to change the domestic laws of receiving states is likely to be pursued actively. The gross patterns of violence that plague the maid trade are also being brought into the mainstream international human rights regime, as part of a broader trend toward recognition of the gender dimension of human rights violations. NGOs wield significant influence within the human rights regime; as advocates of gender justice, labor rights and migrant protection, they have an array of tools with which to pressure receiving states into reforming their legal systems to reduce violence and exploitation of migrant household workers. While external influences are less capable of achieving rapid and extensive legal reform within receiving states, the NGOs may compensate, to some degree, for the absence of a powerful internal political voice for migrant household workers.

3. Bilateral Agreements

Where the timidity of the sending state and the indifference of the receiving state can be overcome, bilateral agreements can provide a framework for monitoring recruitment and employment and for the enforcement of employer-employee contracts, in which specific gender concerns might be addressed. Bilateral agreements can install a framework for adjudicating disputes, establishing “arbitration or conciliation councils which include representatives of sending country officials” and worker’s associations. The successful negotiation of bilateral agreements between the Philippines and a number of receiving states is a positive indication that sending states do have

168. See infra text accompanying notes 173-212 for discussion of relevant international human rights norms and institutions.


170. See infra Part III.B.4.


172. Id. at 209.
some leverage over the wealthier receiving states and that competition among sending states does not necessarily impede such protective initiatives. However, the agreements secured by the Philippines do not eliminate exploitation and violence against Filipina participants in the maid trade, and dispute resolution mechanisms are not adequately developed yet.

4. International Norms and Institutions

Despite the transnational dimension of the maid trade, the international legal regime provides few effective protections for migrant workers and, until recently, paid scant attention to the particular needs of foreign female household workers. Abuse and exploitation of women involved in the maid trade implicate several fairly well-established sets of international norms: (1) the right to physical integrity; (2) the right to the equal protection of the law and to fair legal process; (3) freedom of movement and protection against forced labor; and (4) protection of labor rights such as collective bargaining, fair wages, decent conditions of work and security of earnings. The difficulty lies in overcoming the barriers that migrant domestic workers face in asserting their rights, because of their combined disadvantages of gender, alienage, class and race. It is in this context that NGOs can play a pivotal role, both by raising awareness of the plight of migrant female workers and by lobbying for change.

The notorious cases of Flor Contemplacion and Sarah Balabagan were instrumental in exposing the vulnerability of migrant domestic workers to abuse by employers and the harsh face of the criminal justice systems in receiving states. Where migrants are prosecuted for offenses against their employers, violations of the rights of fair trial and prohibitions on cruel punishment are clearly relevant. Moreover, gender-biased criminal penalties and procedural rules, such as those of the Persian Gulf states, breach anti-discrimination norms.

175. Id. at art. 7 (prohibits torture and cruel, inhuman and degrading treatment or punishment).
Interference with the freedom of movement of foreign domestic workers, as by seizure of their passports, violates the right to leave any country, as well as the right to return to their own country. Interference with the freedom of movement of foreign domestic workers, as by seizure of their passports, violates the right to leave any country, as well as the right to return to their own country. Where migrant workers’ spatial mobility is restricted in order to compel them to complete labor contracts against their will, prohibitions against forced labor or involuntary servitude are violated.

Somewhat more difficult to address from a human rights perspective is discriminatory denial of equal protection of the law through systematic refusal to prosecute violent or abusive employers. Violence against participants in the maid trade is a species of domestic violence, aggravated by the cultural divide between employer and employee and the subordinate alien status of the victim. Like domestic violence against family members, abuse of migrant household workers is traceable to disparities in power and the impunity associated with isolation in the private household realm.

Violence against female migrant workers was addressed in the U.N. Declaration on Violence Against Women, the Inter-American Convention on Violence Against Women, the Final Act and Platform for Action of the Fourth World Conference on Women in Beijing in 1995 and in resolutions on violence against women migrant workers adopted by various organs of the United Nations as well as in a report by the U.N. Secretary-General. The Special Rapporteur

177. ICCPR, supra note 174, at art. 12.
178. ICCPR, supra note 174, at art. 8(3); Convention Concerning the Abolition of Forced Labour, June 25, 1957, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS 1919-1981, at 618-19.
180. HRW GLOBAL REPORT, supra note 40.
Gendered Aspects of Migration: Law and the Female Migrant

on Violence Against Women expresses a growing consensus within the international human rights regime that receiving states must exercise "due diligence" to protect domestic workers against crimes of violence at the hands of their employers.\(^5\)

Unfortunately, the states in which the worst abuses of foreign household workers occur have abysmal human rights records and are among those most dismissive of the legitimacy of the international human rights regime.\(^3\) The abuse of migrant household workers may take a relatively low profile when the human rights records of these states are addressed by mainstream human rights organizations.

a. Migrant Workers Convention

Migrant household workers, even if they are fortunate enough to escape violence and bondage in their workplace, often suffer impairment of important economic interests without being able to secure adequate protection under international human rights standards. These interests include the right to fair wages and working conditions, the right to collective bargaining and protection against exploitation by labor contractors and other brokers. While the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted by the U.N. General Assembly in 1990,\(^5\) addresses

187. Saudi Arabia and Kuwait, for example, have dismal human rights records. See Rick Hooper, Kuwait: Recent Human Rights Developments (1990); Middle East Watch, Empty Reforms: Saudi Arabia's New Basic Laws (1992). Singapore took an aggressive posture in challenging the legitimacy of a universal human rights regime at the 1993 World Conference on Human Rights. See Statement by Mr. Wong Kan Seng, Minister for Foreign Affairs of the Republic of Singapore, World Conference on Human Rights (Vienna Conference), June 16, 1993. ("Forty-five years after the Universal Declaration was adopted as a 'common standard of achievement,' debates over the meaning of many of its thirty articles continue. The debate is not just between the West and the Third World. Not every country in the West will agree on the specific meaning of every [article]. Not everyone in the West will even agree that all of them are really rights."). Hurst Hannum, The Status and Future of the Customary International Law of Human Rights, 25 J. INT'L & COMP. L. 287, 333 (1995-1996).  
many of these concerns, it attracted few ratifications, has not entered into force and speaks only elliptically to the situation of foreign household workers.

The Migrant Workers Convention forbids distinctions based on sex, but it seems largely to envision the paradigm migrant worker as a man with a dependent spouse and children. It recognizes the migrant worker as a “social entity with the right of family reunification” and requires states parties to “take appropriate measures to ensure the protection of the unity of families of migrant workers.” The Convention specifically requires state parties to “take measures they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses” and “their minor dependent unmarried children.” Since participants in the maid trade typically are sojourners who intend to reunify with their families in their state of origin, these provisions are of little utility to them.

 Nonetheless, several articles might be construed to protect migrant women from exploitation and abuse: the prohibition against torture or cruel, inhuman or degrading treatment or punishment (article 10); the prohibition against slavery or servitude and forced or compulsory labor (article 11); the prohibition against arbitrary or unlawful interference with privacy or attacks on honor and reputation (article 14); the guarantee of “working conditions . . . in keeping with the standards of fitness, safety, health, and principles of human dignity” of those of the native population (article 70); and, most significantly, an entitlement “to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions” (article

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189. As of December 1997, nine countries have ratified the Migrant Workers Convention (Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Morocco, the Philippines, Seychelles, Sri Lanka and Uganda) and two others have signed (Chile and Mexico). Status of the International Convention on the Protection of the Right of All Migrant Workers and Members of Their Families and Efforts Made by the Secretariat to Promote the Convention, U.N., ESCOR, Comm. Hum. Rts., 54th Sess., Prov. Agenda Item 11, UN Doc. E/CN.4/1998/75 (1997).
191. Id. at 811.
192. Migrant Workers Convention, supra note 188, at arts. 44(1), (2).
However, indicative of the international community’s belated recognition of the situation of solo female labor migrants, no articles in the Migrant Workers Convention specifically address women’s vulnerability to prostitution and sexual abuse.\textsuperscript{14}

Migrant workers who are documented or in a regular situation\textsuperscript{15} enjoy the “right to form associations and trade unions in the state of employment for the promotion and protection of their economic, social, cultural and other interests” (article 40).\textsuperscript{15}\textsuperscript{16} The right to collective bargaining, along with the obligation to protect migrant workers against private violence under article 16, are of obvious value to exploited and abused participants in the maid trade, whose entry into the destination state is generally lawful. However, for that very reason, the Migrant Workers Convention is unlikely to be ratified by the receiving states in the maid trade.

\textit{b. Standard Setting and Monitoring}

The U.N. General Assembly has recognized:

the moral obligation of receiving or host countries to ensure the human rights and fundamental freedoms of all persons within their boundaries, including migrant workers. This obligation particularly applies to women and, in particular, women migrant workers, who are doubly vulnerable because of their gender and because they are foreigners.\textsuperscript{17}

The Special Rapporteur on Violence Against Women reported instances of abuse of household workers and presented, for potential adoption at the national level, model legislation on domestic violence that would specifically criminalize attacks upon “female household workers.”\textsuperscript{18}

The growing visibility of the phenomenon of violence against

\textsuperscript{193} Hune, \textit{supra} note 190, at 809-10.
\textsuperscript{194} \textit{Id.}
\textsuperscript{195} Article 5 of the Migrant Workers Convention defines migrant workers and members of their families as “documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party.” \textit{Migrant Workers Convention, supra} note 188, at art. 5.
\textsuperscript{196} \textit{Migrant Workers Convention, supra} note 188, at pt. IV.
\textsuperscript{198} Report of the Special Rapporteur on Violence Against Women, \textit{supra} note 40, at Agenda Item 9(a), at 7, 11.
women migrant workers led the U.N. Commission on Human Rights and the General Assembly to address it as a human rights concern in a series of resolutions, requesting the Secretary-General to gather comments and information from governments, intergovernmental organizations and NGOs for a report presented to the Commission in 1998. Governments are invited to pursue data-gathering on female migration and related violence, while the Secretary-General is requested to present a comprehensive follow-up report to the Commission session in 1999. More concretely, governments of sending and receiving states are urged to adopt penal measures against perpetrators of violence against women migrants and legal measures against smugglers; to provide counseling, legal and consular assistance and shelter for victims to allow them to be present during the prosecution of perpetrators; and to establish reintegration and rehabilitation schemes for returning female migrants.

Whether these initial steps to address the plight of women migrant workers within the mainstream human rights organs of the United Nations will advance beyond the data-gathering and hortatory stage remains unclear. The Commission suggested that a U.N. human rights treaty body, the Committee on the Elimination of Discrimination Against Women (CEDAW), consider developing a general recommendation on the situation of women migrant workers. Such a normative document might be a useful supplement to the non-gender-specific terms of the Migrant Workers Convention, applied by CEDAW in its review of state reports. A non-treaty thematic procedure was established by the Commission, the Working Group of Intergovernmental Experts on the Human Rights of Migrants. Its initial efforts were modest, involving the circulation of a questionnaire. It remains uncertain whether the Working Group will evolve

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201. Violence Against Women Migrant Workers, supra note 169.
202. Id. at operative paras. 5-6.
204. See Hune, supra at note 190, at 809-10.
into an effective monitoring body, vigorously addressing its concerns to receiving states that fail to respect and insure the human rights of women migrant workers.

c. International Labour Organisation

The mainstream international human rights regime is presently addressing violence against migrant household workers, and is less likely to give a high profile to the need for fair adjudication systems to protect household workers’ contract rights, for safe remittance avenues and for expanded freedom to bargain for improved wages and working conditions. Increasing interest in the phenomenon of the maid trade within the International Labour Organisation (ILO) may compensate, to some extent, for neglect by bodies such as the U.N. Commission on Human Rights.

The ILO has a sophisticated understanding of the impediments women face in achieving economic justice, in particular, the tension between protecting women against gender-specific threats (whether risks to physical security or failure to accommodate reproductive roles) and depriving them of economic opportunity (either by excluding them from employment or making them relatively more expensive workers).\(^\text{206}\) The ILO also realizes that global deregulation of labor markets to achieve higher profits for global capital imperils its historic mission to halt or retard the “race to the bottom,” through which prosperity is generated at the expense of the most desperate laborers.\(^\text{207}\) The ILO, whose unique tripartite structure has given it special ties to organized labor, also acknowledges that collective bargaining may elude migrant household workers. In contrast to male migrants who typically work in group situations such as construction gangs, migrant household workers’ “individualized work situations” produce “greater isolation and lower likelihood of establishing networks of social support and information.”\(^\text{208}\)

These structural problems marginalize the ILO’s formal treaty standards as a means of promoting justice for maid trade participants. Nevertheless, the ILO advocates practical measures that may reduce the worst abuses associated with the maid trade. These include closer regulation of brokers by sending states, redesign of migrant educa-

\(^{206}\) See generally LLM, supra note 47.

\(^{207}\) See id. at 26-27.

\(^{208}\) See id. at 32.
tional programs so that information concerning risks of physical harm and financial loss are communicated before the migrant incurs debt to secure a foreign position, a more vigorous role for sending state labor attachés in the receiving states and encouragement of the adoption of model labor contracts. The ILO promotes training programs for migrant workers, as in Sri Lanka where a project on “Rehabilitation of Returning Workers from the Gulf” included a skills training program for domestic workers. Training programs may inform migrants about their legal rights, impart skills for dealing with employers if a crisis should arise and provide alternatives to household work.

However, this approach may unrealistically place the primary burden on the migrant to protect herself against predictable harm. Given the economic need that propels these migrants (a need likely to be intensified by the recent financial crisis in some major sending states) and the economic and political leverage enjoyed by receiving state governments and employers, it is doubtful whether a strategy focused on encouraging self-protection will result in dramatic reduction of exploitation and abuse in the maid trade.

IV. Internal Wage Labor Migration

The highly feminized workforce of export manufacturing plants in the developing world offers another fertile field for analysis. Although the migratory aspect of this workforce is less obvious than in the case of the maid trade, many of the young female workers who staff these plants are rural-urban internal migrants. Examination of the role of these plants in economic development and the allocation of the financial rewards of such development illuminates important gender dimensions of globalization. The aim in this brief discussion is to highlight the gendered impact of emerging legal re-

209. See id. at 99-103.
211. Hossain, supra note 171, at 203.
212. See infra notes 250-258 and accompanying text.
213. Women comprise up to 80% of the workforce in export processing zones (EPZ’s), according to ILO estimates. See Lim, supra note 47, at 11, 50.
A. The Gendered Nature of Migration to Export Zones

Asian and Latin American women have long engaged in solo internal migration for wage labor. Previously, many female internal migrants entered domestic service, but in recent decades they have been drawn increasingly to manufacturing and commerce. This migration is of such substantial dimensions that urban gender ratios are often heavily female. In South Korea, for example, gender ratios have been skewed by solo migration of young women to manufacturing jobs for several decades. The expansion of export manufacturing zones in states such as Indonesia and Mexico greatly accelerated and broadened this trend.

These internal migrations are highly gendered. Employers prefer young, single, childless women because of their expected productivity, docility, and willingness to work for minimal wages. A month's work by young women sewing athletic shoes in Indonesia earns them less than the retail price of a single pair of those shoes. These female employees provide the competitive advantage that attracts foreign manufacturers and have served as a major engine for the rapid economic growth of their countries. Employers and governments have a strong interest in forestalling significant improvement in wage rates and working conditions for this workforce and seek workers whom they believe unlikely to join effective labor unions.

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216. See discussion infra Part V.
217. See THE WORLD’S WOMEN, supra note 42.
219. See Sassen, supra note 215.
221. See Keith B. Richburg & Anne Swardson, Nike’s Indonesia Shoe Plant: Boon or ‘Sweatshop’?, SEATTLE TIMES, Aug. 28, 1996, at A03.
222. Philip Guest, Gender and Migration in Southeast Asia, in PROCEEDINGS OF THE INTERNATIONAL COLLOQUIUM, supra note 72, at 1, 10:

A major factor in the transformation of the female labour force structure of Southeast Asian countries has been government policies which have pro-
erant of the conditions that prevail in these export factories.223

Sex-typed employment in export factories provides an important pull factor stimulating internal female rural-urban migration in states such as Indonesia, Thailand and Mexico. Less obvious are the push factors that contribute to this stream. The loss of economic opportunity for women in rural areas is significant.224 For example, the introduction of mechanical rice-threshing technology in Indonesia in the 1970s eliminated the need for 125 million woman days of wage labor per year.225 Women in Thailand traditionally enjoyed a relatively high status, in part because of recognition of the importance of their economic contribution to family income. The loss of opportunity to perform useful farm labor or trading activities in rural areas stimulated not only the flow to urban manufacturing, but the influx of girls and women to the urban sex trade as well.226 Demoغرفic changes, such as decreased fertility in rural families, eased the burden of caring for siblings, freeing rural daughters to migrate to urban wage labor to contribute to the household economy.227 High rates of divorce in rural areas may also propel solo female rural-urban migration.228

Once women leave their families to work in export zone manufacturing, the cultural association of women with home operates dramatically to restrict their freedom and their earning power in several ways. First, the association devalues the women's work and depresses their wages. Female workers are perceived by employers and governments as secondary earners—supported by their fathers while contributing remittances to the natal family229 or awaiting their real

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223. Bilsborrow & Zlotnik, supra note 7, at 149. See FUENTES & EHRENREICH, supra note 6, at 13 (“As the personnel manager of an assembly plant in Taiwan says, ‘Young male workers are too restless and impatient to be doing monotonous work with no career value. If displeased they sabotage the machines and even threaten the foreman. But girls, at most they cry a little.’”).
224. Bilsborrow & Zlotnik, supra note 7, at 156.
227. Guest, supra note 222, at 8.
228. Id. at 6.
economic future as a wife dependent on a primary male wage-earner. Export zone manufacturing opportunities aimed at women are therefore designed to be short-term and thus "generally not conducive to the attainment of long-term economic independence ...." This "pin-money" theory of the export zone labor force becomes a rationale for low wages and economic insecurity, with higher-paying and longer-term positions systematically reserved for male workers. Since these factory jobs do not provide long-term financial security for women, rural-urban migrants tend to maintain close ties with their natal families, remitting a substantial portion of their earnings. These remittances express filial loyalty, but may also serve as a hedge against the need for eventual return to rural origins.

The second way in which the cultural association of women with home operates is to replace the control of women by male family members with control by the women's employers. Women who seek freedom from domination by men in the home by taking employment in export factories often find that their lives are highly controlled by their employers. Their working conditions are "deregulated" only from a determinedly external and legalistic perspective. Living conditions are often not dissimilar to those of the Victorian-era mill towns that fueled the industrialization of the United States. Workers generally reside in dormitories, perform repetitive labor for

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230. FUENTES & EHRENREICH, supra note 6, at 12 ("Women are considered only supplementary income earners for their families. Management uses this secondary status to pay women less than men and justify layoffs during slow periods, claiming that women don't need to work and will probably quit to get married anyway.").

231. Guest, supra note 222, at 8.

232. See Wolf, supra note 229, at 30 ("A young woman in Java is considered the dependent of her father or husband even if her financial contribution to the family economy is crucial .... Such gender norms are used to justify the wage structure ... [and] to justify paying male factory workers an average of ... 40 percent more than the average wage earned by the females.").

233. FUENTES & EHRENREICH, supra note 6, at 18.

234. Chant & Radcliffe, supra note 99, at 17 (patterns in Taiwan and the Philippines), 23 (Southern Africa), 26 (Costa Rica and the Caribbean).

235. Guest, supra note 222, at 7-8.

236. "Both old-time firms and multinationals use the family to reproduce and control workers." FUENTES & EHRENREICH, supra note 6, at 15.

237. Id. at 5.
lengthy hours and are subject to harsh discipline if they fall below production quotas.\textsuperscript{238}

Many export factories, in both Latin America\textsuperscript{239} and Asia,\textsuperscript{240} impose anti-pregnancy policies similar to those applied to participants in the maid trade.\textsuperscript{241} Some factories take this policy a stage further and actively encourage women to become sterilized.\textsuperscript{242} Such antinatal policies are not imposed upon male migrant workers.\textsuperscript{243} The cultural expectation that women will bear the burden of childcare operates to deny them the opportunity to combine work and family life and increases pressure on them to perceive their labor as only a short-term economic strategy.

Ironically, some studies suggest that female workers in the export processing zones are pulled by images of urban consumer culture, symbolized in much advertising by young, fashionable, Westernized women sporting the latest consumer trappings.\textsuperscript{244} Despite poor pay and onerous working conditions, female factory workers may spend substantial portions of their earnings on consumer ephemera. Their purchases frequently involve items such as fashionable clothing or compact disc players,\textsuperscript{245} products of two of the most highly feminized export manufacturing industries, garments and con-

\textsuperscript{238} See infra note 261, at A01.

\textsuperscript{239} HUMAN RIGHTS WATCH WOMEN'S RIGHTS PROJECT, MEXICO: NO GUARANTEES, SEX DISCRIMINATION IN MEXICO'S MAQUILADORA SECTOR (1996); John Rice, Group Asserts Firms Screen for Pregnancy, SEATTLE TIMES, Aug. 18, 1996, at A08. These reports were verified by an official investigation by the U.S. Department of Labor. BUREAU OF INTERNATIONAL LABOR AFFAIRS, U.S. DEP’T OF LABOR, No. 9701, PUBLIC REPORT OF REVIEW OF NAO SUBMISSION (Jan. 12, 1998).

\textsuperscript{240} Richter, supra note 96, at 64 (describing policies of Thai factories requiring dismissal of pregnant workers and requiring mothers to send their children away).

\textsuperscript{241} Constable, supra note 21, at 72.

\textsuperscript{242} FUENTES & EHRENREICH, supra note 6, at 13 (“In the Philippines' Bataan Export Processing Zone, the Mattel toy company, offers prizes to workers who undergo sterilization.”).

\textsuperscript{243} Heyzer & Wee, supra note 39, at 64 (describing AIDS and pregnancy tests imposed on migrant domestic workers by receiving states that do not monitor sexual activity of male migrants).

\textsuperscript{244} See Eisenstein, supra note 214, at 68 (“The fantastic anglo-western woman is marketed in and by the global economy as symbolic of the market's freedom. This contrasts with the subordination of women in the global market.”).

\textsuperscript{245} See Wolf, supra note 229, at 42 (factory workers' clothes and make-up are considered to be “statements of modernity.”); FUENTES & EHRENREICH, supra note 6, at 25 (“On payday, vendors are often let into the factories to sell cosmetics (promoted in company-sponsored cosmetic classes), jewelry and other luxury items.”).
sumer electronics.

B. The Gendered Nature of International Financial Regulation

The competitive advantages supplied by a docile workforce of migrant females fueled rapid growth in many Asian states, at least until the currency and debt crisis of 1997. But the legal regime of globalization, of which the export factories are a significant component, is gendered in ways that operate to the severe disadvantage of women. In essence, these developing states sold an absence of worker protection to international investors. The weakness of the laws regulating employment in the export processing zones was a major attraction to hypermobile global capital. Governments of developing states and economic elites, along with foreign investors, accurately gauged that the female labor force would achieve high levels of productivity despite meager rewards and legal neglect.

Saskia Sassen's incisive feminist critique of globalization exposes how law has shifted the profits of this process away from female workers.246 As Sassen notes, the stereotype of globalization as one of deregulation is false. The process actually involves the substitution of new legal regimes—notably those of the World Trade Organization (WTO) and the International Monetary Fund (IMF)—for traditional state sovereignty and exclusive territorial control. These international institutions achieved notable power to dictate social policy in debtor nations. Austerity measures imposed by the IMF in Indonesia, for example, created social unrest and intercommunal violence grave enough to topple President Suharto.247 In attempting to force the hand of President Suharto and his inner circle, who enjoyed long-time immunity from internal pressures to reduce their corruption,248 the IMF impinged upon the most vital internal concerns of the traditional nation-state—avoidance of civil conflict and preservation of the existing political regime. While the IMF's exclusive concern with financial stability has come under increasing criticism during the Asian crisis, it remains at a self-conscious distance from human rights

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246. See generally Sassen, supra note 215.
248. See Suharto Signs Reform Plan, supra note 247.
concerns.\textsuperscript{249} The governance of the new global economy prioritizes economic officials over those from other ministries.\textsuperscript{250} Predictably, officials from the U.S. Treasury and the IMF were the primary actors in resolving the Asian financial crisis, despite their incompetence in matters of security.\textsuperscript{251}

The erosion of the state, in many ways, is a promising development for feminists. The patriarchal state is the situs of much oppression of women, and the inter-state system tends to submerge the visibility of women and their capacity for transnational solidarity.\textsuperscript{252} But labor conditions are excluded from the concerns of the WTO, and the IMF privileges the financial security of foreign lenders\textsuperscript{253} over the economic privation of unemployed workers and the social needs of families.\textsuperscript{254} Provision of basic services and regulation of the labor market remain the primary responsibility of national governments, whose autonomy to set social policy is restricted by the competitive pressures of globalization and the dictates of international financial institutions.

For some years feminist scholars critiqued the gendered impact

\textsuperscript{249} The image of Mary Robinson, U.N. High Commissioner of Human Rights, looming with crossed arms over a complacent President Suharto as he signs an agreement that would restructure his government on democratic and gender-equal principles, remains unimaginable. However, despite the sensibilities of the Indonesian public, IMF Director General Michel Camdessus adopted such a pose in official photographs as Suharto formally accepted the IMF's economic dictates. David E. Sanger & Seth Mydans, Sudden Weakness Aside, Suharto Looks to Outlast Economic Crisis, N.Y. TIMES, Jan. 18, 1998, at A01.

\textsuperscript{250} See Sassen, supra note 215, at 17 (observing that globalization raises the profile of Treasury officials while diminishing profile of other ministers, such as those from departments of health, human services, education).

\textsuperscript{251} See Paul Blustein, U.S. Begins Mission in Asia, SEATTLE TIMES, Jan. 12, 1998, at A01 (describing Deputy Treasury Secretary Lawrence Summers as an economist, not a politician, and thus unlikely to raise with Suharto the issue of his successor).

\textsuperscript{252} Karen Knop, Why Rethinking the Sovereign State Is Important for Women's International Human Rights Law, in HUMAN RIGHTS OF WOMEN 153 (Rebecca Cook ed., 1994).

\textsuperscript{253} Thus, the funds from IMF bailouts for South Korea, Thailand and Indonesia will flow directly to foreign banks, whose loans were imperiled by the severe devaluation of the Asian currencies. IMF economic reform measures emphasize "transparency," with the aim of protecting foreign lenders from the risk of further bad investments. Peter Passell, Economic Scene, N.Y. TIMES, Jan. 15, 1998, at C02.

\textsuperscript{254} Structural adjustment measures typically require debtor states to reduce their spending on social programs and to eliminate subsidies for basic commodities. ENLOE, supra note 109, at 184-89. Moreover, the IMF generally requires that interest rates be increased, contributing to recessions that dramatically increase unemployment and thus reduce wage levels. Passell, supra note 253.
of such structural adjustment measures. Economic restructuring of the type being imposed on Korea, Thailand and Indonesia only works if women sacrifice their interests, even though the voices of women are largely silent in the policy-making process. Women must manage households with greater unemployment, lower incomes, higher prices for basic commodities and a reduction in social services. Some may be required to migrate in order to support their families through remittances in hard foreign currency. It is unsurprising but noteworthy that in the iconography of the Asian crisis, among those on the rice-lines, among those handing their gold jewelry over to the national treasury to appease international bankers and among those converting U.S. dollars into plunging Asian currencies, female faces predominate. Aside from Suharto's daughters, however, it is difficult to identify women who contributed to the economic misdeeds that created the crisis.

C. Moderating the "Race to the Bottom"

If export manufacturing is structurally based upon the economic exploitation of a gendered labor force and if the dominant international institutions exclude the welfare of this workforce from their concerns, what possibility is there for improving the situation of these workers? A variety of techniques exists for the people and governments of importing states to place leverage on the governments of exporting states to improve conditions for export workers. The most promising—consumer boycotts organized by NGOs—draw upon the

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255. ENLOE, supra note 109, at 184-89; Akua Kuenychia, The Impact of Structural Adjustment Programs on Women's International Human Rights: The Example of Ghana, in HUMAN RIGHTS OF WOMEN, supra note 252, at 422.

256. ENLOE, supra note 109, at 184-85; Lim, supra note 47, at 26:

It has been women's willingness and ability to adjust their own time, efforts, responsibilities and burdens and their flexible, relatively cheap and efficient labour supply which have provided the basis for structural adjustment programmes in developing countries and the transition to market economies in formerly socialist countries. But for many women, the costs to themselves, and often to their children, have been high.


258. See Shenon, supra note 48, at A01.
potential for transnational solidarity which globalization, and its erosion of the nation-state system, open up.

Stone identifies four techniques to prevent an erosion of labor standards as a result of freer international trade: harmonization of domestic labor standards between trading states; imposition of uniform labor standards by international governing bodies; establishment of adjudication mechanisms by which the importing state may monitor compliance with internal labor standards by the exporting state; and extraterritorial application of the importing state's own labor standards. These techniques have some obvious applicability in the context of trade between member states of the European Union and in North America.

The transferability of these mechanisms to trade relations between the United States and Vietnam or Indonesia is far from apparent. The disparity in wages and working conditions between developing states and prosperous importing states is the very raison d'etre for the adoption of the export manufacturing development strategy and the fuel that drives the trade. Policy makers in both exporting and importing states are committed to a vision of governance that accepts and even celebrates these disparities as a source of prosperity.

At the same time, public opinion in importing states is influenced by revelation of the degree of exploitation experienced by the female labor force in export processing zones. The Nike Corporation, for example, has been the target of especially pointed criticism, for the contrast between its high prices and profits and the low wages its subcontractors pay. Nike responded by promising to improve


260. For example, the U.S. Labor Department's investigation of anti-pregnancy policies in Mexican maquiladoras was launched as a result of a complaint filed by Human Rights Watch under the adjudication mechanism of the North American Free Trade Agreement (NAFTA). See supra note 239.

261. See, e.g., Steven Greenhouse, Nike Shoe Plant in Vietnam Is Called Unsafe for Workers, N.Y. Times, Nov. 8, 1997, at A01 (describing illegally long hours and low wages—65 hours per week for a total of $10—and the presence of carcinogens at 177 times the legal limit, discovered by inspection carried out by Nike's auditors, Ernst & Young). This plant is typical of export garment manufacturing, in that it is owned by a Korean firm with which Nike subcontracts. These subcontracting arrangements provide a degree of insulation from criticism, though multinational garment manufacturers have come under increasing pressure to impose and monitor codes of conduct on their subcontractors. This plant is also typical in that its work force consists primarily of women under age 25, many of whom suffered adverse health effects
safety conditions, limit child labor and open its subcontracted facilities to independent monitors, stopping short of a pledge to increase wages or to facilitate collective bargaining. Human rights organizations are becoming increasingly concerned with the capacity of multinational corporations to manipulate the apparatus of state power in developing countries and thereby become complicit in human rights violations, whether deprivations of civil and political rights or of basic economic rights. The willingness of prosperous people in importing states to use their economic leverage to insist upon improved conditions in export processing zones may be the key to influencing business and government elites to moderate the "race to the bottom."

Another possibility for tackling problems faced by female migrant workers is to harness the potential power of "strategic sisterhoods" spanning international boundaries. Such sisterhoods are fraught with cross-cultural issues and power imbalances that must be overcome for these sisterhoods to be effective. For example, Western women may wish to help end the exploitation of their Asian sisters in export zone factories by boycotting the goods produced in these factories. Such boycotts could result in many migrant females losing their jobs. Whether such a strategy promises a long-term improvement for women workers cannot be determined without an understanding of Asian culture, politics, perceptions and likely reactions of the workers. Nevertheless, concerned NGOs appear to be making advances in their leverage over multinational manufacturers through exposure of exploitative conditions for female export zone workers. This pressure operates outside the legal realm—whether national, bilateral or multilateral—and yet seems to promise more from exposure to toxins. Id.


263. At its 1997 International Council Meeting, for example, Amnesty International adopted several resolutions intended to increase its research and lobbying efforts with respect to multinationals, departing from a long tradition of focusing upon state actors and impartiality toward economic systems. Amnesty International, Reports and Decisions: 23rd International Council Meeting, AI Index: ORG 52/02/98 (1998).


265. "In order to support women's rights in . . . Asian countries, Western feminists must penetrate . . . layers of communitarian ideologies if they hope to understand the different dynamics, ideological construction, and handling of social conflicts." Id. at 121.
V. The Informal Economy: Notes on Sweatshops, Petty Trading and Sex Work

The last two sections demonstrated how legal regulation of the maid trade and export processing zones fails to adequately address the interests of the female migrant worker. Indeed, regulation in these areas often has a perverse effect by further adding to the burdens of such workers. This section briefly explores how legal regimes tend to propel women, particularly international and internal migrants, into the informal economy. The effects of globalization that created export-driven development strategies in Asia and Latin America likewise draw many immigrant women into the informal economy, including sweatshop workers who compete directly with cheap female labor in export processing zones. The informal economy also encompasses petty trading and sex work, and in these contexts as well, legal regulation tends to undermine, rather than advance, women’s economic and safety interests. We will not attempt a thorough treatment of these three phenomena. Instead, a brief description and analysis is offered to cast additional light on the failure of legal regimes to deter abuse of solo female labor migrants.

A. Sweat Shops

The re-emergence of garment sweatshops and home piecework in highly developed economies such as the United States reveals another face of globalization, which is as deeply gendered as the export processing zones in the developing world. The predominance of immigrant women among the labor force of these garment sweatshops, and even among the low-paid workforces of high-tech manufacturers in the formal economy, indicates that in these competitive

268. Karen J. Hossfeld, “Their Logic Against Them”: Contradictions in Sex. Race and Class in Silicon Valley, in WOMAN WORKERS AND GLOBAL RESTRUCTURING, supra note 229, at 149; Sassen, supra note 215, at 18-19 (noting that the edifices of international finance also rest upon an indispensable base of menial female, predominantly immigrant, labor, such as office cleaners and chambermaids in luxury hotels).
industries employers find survival dependent upon access to cheap female migrant labor.

The triple marginalization of these workers by gender, alienage and class deprives them of effective bargaining power. Many are undocumented; this status makes them especially attractive to smugglers and unscrupulous employers, as it decreases the likelihood that they will claim the worker protection rights which they formally enjoy. Immigration regulations frequently undermine the utility of processes intended to prevent exploitation of migrant labor. In the notorious El Monte case, for example, criminal penalties for slavery and forced labor and civil fines for violation of basic wage and hour standards were successfully pursued by the authorities against the smugglers and employers, but the enslaved workers were initially detained by immigration authorities and faced the risk of deportation. The need to offer a more secure immigration status as an inducement to cooperate in smuggling and slavery prosecutions is increasingly perceived by U.S. policy makers, who recently announced the creation of a task force to study the issue.

B. Internal Migration in Africa

Wage labor in the formal economy continues to be relatively inaccessible to women, even where they migrate within their own state. For example, while the situation for educated women in Africa is beginning to change, many uneducated rural women migrating to urban areas are deeply affected by exclusion from the formal economy and a lack of economic mobility. Women's social roles in sub-Saharan Africa are restructured in surprising ways as a result of migration in the context of highly gendered labor markets.

Since the colonial era, men dominated labor migration in Af-

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269. Authorities released the workers and then granted them work authorization as material witnesses in the criminal case. Kenneth Chang, Not Home Free: Thais Freed from Sweatshop Are Adjusting to Life in U.S., but the Future is Uncertain, Los Angeles Times, June 19, 1996, available in LEXIS, News Library, Majpap File.

270. Miryta Navarro, Group Forced Illegal Aliens into Prostitution, U.S. Says, N.Y. Times, Apr. 24, 1998, at A10 (noting that 20 victims were granted temporary legal status and work authorization for one year to secure their availability and cooperation). The Open Society Institute reports that Western European Governments, including the Netherlands and Belgium, similarly modified their immigration restrictions to secure the testimony and cooperation of Eastern European women trafficked to the sex trade. Trafficking Women from the Former Soviet Union, Forced Migration Monitor, Sept. 1997, at 1.
Rural-urban migration for wage labor resulted in urban population ratios that were heavily male; even domestic service in urban households was largely reserved to men. Women tended to remain in rural areas, and subsistence agricultural production became strongly feminized. However, women are increasingly joining African internal migration flows as survival through agricultural work becomes increasingly difficult.

Solo women migrants to urban Africa have long been stereotyped as prostitutes, both by rural African men and by Western anthropologists. "The dominant impression in the literature was that women who left rural areas on their own were up to no good: dissatisfied with rural life, they sought greener pastures in the 'bright lights' of the towns." Rural men sought to prevent solo female urban migration either directly through village edicts or by early marriage. However, scholarly research indicates that involvement in prostitution by female migrants is sometimes quite low.

In fact, the picture is complex, and the exclusion of African women from the formal economy pushes many into variants of the female social reproductive roles, in which forms of prostitution may be present. Solo female migration in Kenya, for example, presents an instructive example of the complex interaction between gendered patterns of economic and spatial mobility. A large number of Kenyan men have long migrated from rural to urban areas for wage la-

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272. Id.
273. Id. at 57, 58.
274. Tienda & Booth, supra note 271, at 57.
275. Id. at 57, 58.
278. Id.
279. Id. at 100 (only 3% of female migrants from rural Avatime region to urban Ghana ever engaged in prostitution).
bor, leaving wives to engage not only in social reproduction but also to assume the full burden of agricultural production. Because land titles are held by men and the legal system has undermined traditional land use rights of women, the circular migration of husbands and sons seeking wage labor has a negative effect upon the economic security of women. Until recently, agricultural extension services were withheld by the Kenyan government from farms without a resident male, severely disadvantaging women with absent husbands. An urban life of wage labor frequently undermines men's commitment to their rural families. These families often receive little or no financial support, face a risk of abandonment as men enter into urban sexual liaisons or are displaced by their male relative's decision to alienate the land in order to finance urban living costs.

Most solo women migrants in Kenya are unskilled and find that their migration produces little economic mobility. The traditional pursuits of these migrants are selling cooked food, beer-brewing and sex work. These services are provided primarily to male rural-urban migrants, in effect creating a type of "temporary wifehood." This pattern of resorting to an informal economy that replicates aspects of the female social reproductive role is common in the African context. Among urban female migrants in Uganda, for example, "[a]most all of the single women received income from brewing beer and trading, yet few were able to survive without initiating temporary sexual unions with men." To the extent that African governments attempt to regulate, their measures often operate to the disadvantage of female migrants. The Kenyan government, for example, favored the capitalist produc-

281. Id. at 126-27.
282. Id. at 129.
283. Id. at 127, 130-31.
284. Id. at 135.
285. Id.; see also D.W. Drakakis-Smith, The Changing Economic Role of Women in the Urbanization Process: A Preliminary Report from Zimbabwe, 18 INT'L MIGRATION REV. 1278, 1281-82 (1984) ("[M]any of the female economic activities represent extensions of their domestic 'services' to men and children viz selling cooked-food, child-minding, even to prostitution .... [M]uch female petty commodity activity actually involves the domestic location itself; for example, in the preparation of cooked food or in laundry work.").
287. Id. at 60.
tation of beer, leading to "the virtual destruction of this [female] informal sector industry through punitive police and court pressure." In Zambia, the government similarly marginalized beer-brewing by women, even though it constitutes a major survival strategy for female urban migrants, and also favored men in access to official stalls in marketplaces, pushing women into less secure or profitable informal trading activities.

Increasing educational opportunities in Africa mean that some female urban migrants are well-educated women taking positions in the formal economy. As a result gender ratios in urban areas are becoming less imbalanced. Interestingly, patterns of financial support of natal families among educated migrants indicate a gender disparity, with educated women who have pursued a rural-urban migration having a greater tendency to provide financial support for their parents and siblings. This is especially striking, since the common perception is that male urban migration is a mere temporary expedient, with the expectation of return to rural life, while female migration to urban areas was believed to mark a sharp break with rural origins. However, many female African urban migrants keep close contact with natal villages, including the practice of "granny-fostering" by which rural relatives care for their young children. These links are mutually beneficial, sustaining pathways by which urban migrants reserve the potential for rural retirement while young relatives gain contacts that can assist in their own urban migration.

C. Trafficking in Women

International trafficking in women also is driven by the relative lack of opportunity and autonomy for women in economies stratified on gender lines. Long the most visible type of female-dominant in-

289. Jules-Rosette, supra note 273, at 89-91 (noting that legal regulation of beer-brewing has profited male middlemen).
290. Brydon, supra note 276, at 103 (relatively well-educated Avatime women in Ghana finding formal sector jobs, though largely in female-dominant service positions such as teaching and nursing).
292. Id. at 131, 133.
293. Brydon, supra note 276, at 105.
294. Id.
295. A thorough treatment of international trafficking in women, which is the subject of much scholarly literature, is beyond the scope of this article. See generally
ternational migration, trafficking in women remains an acute human rights problem. Victims of trafficking may migrate virtually without choice, as in the case of girls sold by parents into sexual slavery. They may also be duped by traffickers offering less degrading and more remunerative employment or even false promises of marriage. In any case, they may suffer the expropriation of all or a large part of the value of their labor, endure severe constraints upon their spatial mobility once confined to brothels and face a grave risk of violence, including homicide.

The case of murdered Filipina entertainer Maricris Soison in Ja-
pan sparked concern similar to that provoked by the ordeals of migrant household workers, Flor Contemplacion and Sarah Balabagan. All three migrated because of economic underdevelopment and sex-typed job opportunities at home. Each found herself exposed to severe danger as a result of isolation in a highly gendered workplace, doubly victimized by severe defects in the receiving state's legal system.

The persistence of trafficking testifies to women's continuing economic and social subordination and indicates that spatial mobility does not necessarily mean freedom, especially for women. The effects of the penetration of global capital into Eastern Europe reveal deep linkages between privatization of the economy and the stimulation of international migration of women into the sex trade. The socialist governments of Eastern Europe formally embraced norms of sexual equality and provided a high level of social services to employed women. While political power was never equitably shared between the sexes in these states, the dramatic loss of economic opportunity and collapse of vital social services for women following the transition to a capitalist economy illustrates the dark, gendered side of privatization.

Employment opportunities in Eastern Europe are becoming increasingly sex-typed. From this situation of severe gender subordin-

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300. Balabagan and Soison in particular suffered from the receiving states' tolerance of gender-based violence. The claimed miscarriage of justice in Contemplacion's case hinged upon her comparatively low social status (the other suspect being a Singaporean male household employer).

301. This is true also in the case of internal trafficking, including a recent resurgence of the sale of "brides" in China and practices such as the "mail-order bride" industry. See Caught Between Tradition and the State, CHINA RTS. FORUM 22 (Fall 1995); The Property of Men: The Trafficking and Domestic Abuse of Women, CHINA RTS. FORUM 25-29 (Fall 1995). Internal female migrants in China, accepting sex-typed jobs as waitresses, may face rape and forced prostitution in their workplace. Rone Tempest, Waitress Leaps from Balcony in China to Avoid Prostitution, SEATTLE TIMES, Jan. 9, 1998, at A14. Although the paralyzed waitress in this case was hailed by official women's groups as a heroine, the employer who attempted to rape her (and who was running a brothel) received a light sentence of one year in a labor camp. Id.


303. LIM, supra note 47, at 29-30 (reporting a "high degree of overt discrimination
nation for young women, it is only a small step to fall into the hands of international sex traffickers, who lure them by promises of employment as waitresses or entertainers. The situation of Eastern European women trafficked to Israel follows paradigmatic patterns—the full force of the law is imposed upon the victims of the trade, who are unprotected against rape, destruction of passports, theft of earnings and false imprisonment, while being efficiently deported by the hundreds. Pimps, rapists and customers receive impunity, some reaping a huge profit. The immigration laws undermine the effectiveness of the criminal justice system, as is also true for many participants in the maid trade to Asian states. Trafficked women in Israel are held in immigration detention should they seek prosecution of their rapists and kidnappers. Those deported leave without financial gain from their sad immigration gamble, much diminished physically and psychologically.

Thus, the gendered effects of globalization may stimulate a great variety of female migration streams. Migration regulations that push women into the informal economy expose them to risks of physical violence and economic exploitation. At the same time, regulations may undermine these migrants' access to the formally available protections of the criminal justice system.

VI. Conclusion

Women are emerging from the shadows of migration studies to a position of some prominence as research subjects, with migration stories that are complex and varied. To a degree not yet recognized in migration regulation, women participate actively as solo labor migrants. However, one strong theme that weaves its way through many female-dominant migrations is the cultural association of women with home and the tasks of social reproduction. This association creates an anomaly at the very center of identity for female migrants, since they are women uprooted from their homes and yet typically deeply attached to their families and caregiving responsibi-
ties.

This link emerges with high visibility in the maid trade. In the maid trade, women from lesser developed Asian states assume the tasks of social reproduction in foreign households in order to improve the lives of their own families and because gender-segregated employment opportunities in their own states give them few other viable options. The economic and gender dynamics of the maid trade provide a rich source of analysis to explicate the gender-insensitivity and frequent perversity of the legal system's treatment of female migrant workers. The propelling factors behind the maid trade include the economic disparities between sending and receiving states, the absence or loss of economic security for women in sending states and the growing demand for paid assistance in the tasks of social reproduction within households in prosperous Eastern and Western Asian states. The tightly regulated maid trade involves short-term contracts with economically needy migrants whose work situations impede labor organizing and whose sending states are highly dependent upon their remittances.

These circumstances permit receiving states to reap the benefits of the labor force participation by their educated female citizens, without having to alter gendered patterns of household responsibility or increase the involvement of the state in providing services such as child and elder care. Migrant household workers face grave risks along the entire continuum of their experience, from recruitment fraud, to indebtedness at the outset of employment, to physical abuse and dishonesty by employers, to restrictions upon physical mobility at the workplace, to denial of legal protection by receiving states, to theft or waste of remittances by couriers and family members.

Because of its transnational nature, the maid trade is subject to legal regulation at four levels: by sending states, by receiving states, through bilateral agreements between sending and receiving states and by international treaties and customary law. While exposure of acute violations committed against migrant household workers is creating pressure for reform, legal regulation in each of these spheres tends to aggravate the subordination of migrant household workers, rather than to insure their physical and economic security. Sending states are taking modest steps to blacklist exploitative brokers, to provide consular services to nationals in receiving states, to empower migrants to protect themselves by means of required pre-migration training courses and to negotiate bilateral agreements that provide
avenues of redress against abusive and dishonest employers.

Receiving states continue to prioritize immigration control objectives over protection of migrants' safety and legitimate economic expectations, frequently imposing serious obstacles to migrants' access to the criminal justice system or to civil dispute resolution mechanisms. Employers and brokers may function in effect as surrogate immigration officers, empowered to transform a private act of dismissal from employment into an order of deportation. Migrant workers are among the most marginalized voices in the political process in receiving states, impeding their ability to press for legal reform.

As a result, international human rights and labor rights institutions play a pivotal role in the drive to secure greater respect for migrant workers' rights with the assistance of an emerging cadre of non-governmental organizations. While general human rights norms speak pertinently to many of the harms faced by migrant household workers, the receiving states in the maid trade are among the states most defiant and dismissive of the international human rights regime. The major normative instrument concerning migrant workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, provides inadequate treatment of several important gender-specific risks and has not yet entered into force.

In recent years, the U.N. Commission on Human Rights has taken up the specific issue of violence against female migrant workers, but its efforts have not yet progressed beyond the data-gathering stage. Moreover, it seems unlikely that the mainstream human rights bodies will address the economic rights of migrant household workers in the same manner that they have taken up grave violations against their physical and mental integrity. The ILO, in contrast, possesses a sophisticated understanding of the delicacy of the task of striking a balance between protection of women workers from gender-specific risks and avoiding the unintended consequence of depriving women of economic opportunity. Yet the ILO's studies of the situation of female migrant workers have not yet yielded a new and effective regulatory framework at the international level.

Internal migration of female workers to export processing zones in developing states mirrors many of the same phenomena of disempowerment as are experienced by maid trade participants. While globalization is depicted as a process of legal deregulation, this is true
only in the sense that export-oriented developing states attempt to attract global capital through denial of basic workers' rights to the highly feminized workforces in export factories. The lives of the workers themselves are highly regulated, with employers playing a distinctly patriarchal role. Moreover, as vividly illustrated by the recent economic and political crisis in Indonesia, international institutions intrude deeply into the internal affairs of these developing states, but not for the objective of protecting the basic human rights of their most vulnerable citizens. Policies of structural adjustment imposed by international financial institutions have deeply gendered consequences, which are only beginning to be acknowledged. Greater critical scrutiny of the gendered politics of globalization, coupled with increasingly effective activism to expose the abuse of female workers on the global assembly line, give rise to a modest degree of optimism that legal reform may follow.

Finally, patterns of displacement of female migrants into the informal economy similarly reflect the insensitivity and even perversity of the legal system as a source of subordination, rather than succor, for vulnerable women. The re-emergence of sweatshops in highly developed economies, competing with export zone factories and relying equally upon the cheap labor of female migrants, reveals that even democratic states may place female workers in a painful dilemma between invoking the protections of the criminal justice system and suffering the economically devastating consequences of harsh regulations of irregular migration. Some tentative positive steps were taken recently in the United States and European states to provide at least temporary lawful status to victims of gross human rights violations (for example, slavery and sex trading) in order to punish the perpetrators and to suppress smuggling rings. Yet, the general pattern is to channel resources into the control of migrants, leaving female migrants, both international and internal, in a situation where the legal system threatens to deprive them of the benefits of their migration gamble, without offering accessible protection of their most basic rights.

The encounters between female labor migrants and the legal system are generally unfortunate, even risky. Governments, intergovernmental organizations and NGOs must develop a more sophisticated understanding of the dynamics of female migration before the law can be transformed into a tool for insuring the physical and economic security of these numerous, but deeply subordinated, workers.