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The limits of sending-state power: The Philippines, Sri Lanka, and female migrant domestic workers

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Abstract

Sending states have taken various measures to protect their female nationals serving abroad as domestics. A most-similar case comparison is constructed between the Sri Lankan and Philippine states' defenses of 'their' female migrant domestic workers (FMDWs), employing process tracing and relying on data from archival research, interviews, policies, and official statements. Existing explanations for sending-state actions stress dependence on remittances, receiving-country conditions, and the democratic incorporation of emigrants. Here, however, a stock of FMDWs with more highly valued human capital attributes, combined with a stronger civil society and greater gender equity, is shown to compel and enable the Philippine state to adopt a more assertive approach than its Sri Lankan counterpart in defending those migrants.'

Keywords

Female migrant domestic workers, sending states, the Philippines, Sri Lanka, diaspora institutions

Introduction

While scholars investigating migrant rights organizations and domestic worker activism have been busy exploring migration governance 'from below' (see Baird et al., 2017), there has been far less discussion about why and in which ways sending-states have attempted to manage the migration of temporary laborers like female domestics. Among the most vulnerable of migrant groups, female migrant domestic workers (FMDWs) perform a wide range of arduous, undervalued, and poorly remunerated tasks in private homes and are not usually covered by core labor protections in receiving countries.

The task of looking out for migrant contract workers' welfare abroad and evacuating those 'stranded' by conflicts and natural disasters has traditionally fallen to diplomatic and consular services (Gois and Campbell, 2013). In the past, they rarely prioritized FMDWs' needs. That situation

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has been changing. Although FMDWs would not seem to fit even a looser definition of ‘diaspora’ as ‘emigrants and their descendants,’ the burgeoning literature on diaspora institutions—as well as the International Organization for Migration (IOM)—has taken account of the ways in which those institutions in some sending countries have become increasingly ‘involved in the management of temporary labour export from their shores’ (Gamlen et al., 2013: 4, 7).

To understand sending-state responses to FMDWs, comparative process tracing is applied here to the actions taken on their behalf by the Philippine and Sri Lankan states, regularly included by international observers among the still small collection of countries exporting such labor to have relatively well-developed migration regimes (Baruah, 2016). The two states’ labor-exporting approaches are shown to have followed contrasting trajectories since the 1970s. After brief analysis of female migration from the two countries and existing explanations for sending-state actions, it will be argued that Philippine and Sri Lankan policy responses have reflected first and foremost the degree to which female workers’ skills and personal characteristics match demand for domestics in the global market. Filipina FMDWs’ stronger standing has emboldened the Philippines to mount a stronger defense of their interests. Moreover, whereas sending states most often appear as unitary actors in the diaspora literature (Gamlen et al., 2013), within-state actors can matter as well—as witnessed in the pertinent feminist literature (see Silvey, 2004) and in other contributions in this special issue (Burgess, Koinova). The Philippines has developed one of the world’s most extensive administrative structures for governing emigration, yet its state faces coordination challenges and exhibits some openness to civil society groups concerned about gender equality and FMDWs. The Sri Lankan institutional apparatus is more streamlined and insulated and has had a less prized cohort of FMDWs to oversee. Its activism in support of them has lagged in time, intensity, and perceived effectiveness.

FMDWs from the Philippines and Sri Lanka

The Philippines and Sri Lanka share key similarities and important differences relevant to this study (see Table 1). They are both considered lower-middle-income countries by the World Bank and have high literacy rates and economies that have come to rely more and more on remittances from migrant workers, many of them unskilled women (Coordination of Action Research on AIDs and Mobility [CARAM], 2013). During the past couple of decades, the Philippines’ overseas population has represented a fairly constant 9.5% (or 8.5m in 2009) of the domestic total (90.5m). That share has split evenly between permanent migrants and sea- and land-based temporary workers. Just over half of the land-based contingent is female; most of those women are in low-skilled service jobs. Until recently, over 70% of migrant service-sector employment has been in domestic work (Battistella and Asis, 2011: 5).

Women first outnumbered men among all freshly hired land-based Overseas Filipino Workers (OFWs)—their official designation—in 1992 and became predominant thereafter. Like the general population, domestics have overwhelmingly been Catholic, yet Muslim women from conflict-torn Mindanao have been disproportionately represented among migrants (particularly the unauthorized) to Malaysia and the Middle East. Filipina FMDWs are reputed to possess more human capital than their peers from other Asian countries: most have completed a high school education and have good command of the English language, a much appreciated asset in affluent households abroad with school-age children (Moors et al., 2009). Far fewer FMDWs from the country have attended university or gained pre-migration employment experience.

Large-scale post-war labor outmigration from Sri Lanka began only a couple of years later than from the Philippines. Many of the early movements in the mid- to late 1970s were comprised of skilled workers like carpenters and masons, followed by ever larger numbers of unskilled laborers

Table 1. Basic case country indicators.

Country	Total population (2014)	GNI per capita (2014)	Female share of migrants (2015)	FMDW deployments: number and share of all migrants (2012)	FMDW deployments: top destination countries (2013)	Female literacy rate (2015)	World economic forum gender gap ranking (2015)
Philippines	99,140,000	\$3500	48.2%	155,831 (34.0%)	Saudi Arabia UAE Hong Kong Singapore Malaysia Bahrain	96.8%	7 out of 145
Sri Lanka	20,770,000	\$3440	47.7%	119,011 (42.1%)	Saudi Arabia Kuwait UAE Jordan Qatar Lebanon	91.7%	84 out of 145

GNI: gross national income; FMDW: female migrant domestic workers.

Sources: Data provided by the Commission on Filipinos Overseas, Sri Lanka Bureau of Foreign Employment, Caritas Sri Lanka; WEF (2015).

by the mid-1980s. In 2016, an estimated 1.8m Sri Lankans (8.7%) worked abroad, roughly two-thirds unskilled. Women have been dominant among the emigrant labor population. The female share rose from a third in the late 1980s to three-quarters in 1997. Most of the women (88.2% in 2010) have been employed as ‘housemaids.’¹ Typically in the 25–39 age group and married with children, Sri Lankan FMDWs mostly originate in poor, smallholder agricultural communities. Their English language skills and years of formal schooling lag those of Filipinas, even though women in Sri Lanka do have among the highest literacy rates in South Asia (World Economic Forum [WEF], 2015; see Table 1).

The majority of Sri Lankan FMDWs, like the population overall, have been Sinhalese Buddhists. Tamils have historically been underrepresented. However, the decline of plantation agriculture has produced increased outflows of Indian Tamils from the upcountry, and many widowed single mothers in heavily Sri Lankan Tamil areas of the north and east have taken up foreign employment since the civil war’s end in 2009 (Ministry for Foreign Employment Promotion and Welfare [MFEPW], 2013). Strong demand for Muslim domestic workers in the Middle East has meant that adherents of Islam – only about 7% of Sri Lankans – have normally made up about a quarter of the FMDW population (Gamburd, 2002). As in the Philippines, a substantial share of female domestic emigration has taken place outside official or legal channels.

Existing explanations

The remittances that FMDWs send home regularly receive mention in utilitarian or interest-based arguments for how sending states engage with diasporas (Koinova, 2010), which frame them as potential resources for development. The importance of those transferred funds to the Philippines and Sri Lanka has been identified as a major reason behind their states’ growing attentiveness toward FMDWs. In 2009, the money sent by OFWs amounted to US\$19 billion, which was 11.2% of the Philippines’ GDP (Vallecera and Ordinario, 2011). The corresponding figures have run somewhat smaller in Sri Lanka (US\$4.1bn and 8.2% in 2010) but have been building steadily (Irudaya Rajan and Narayana, 2010). Remittances form the single biggest net source of foreign exchange for the Philippine and Sri Lankan economies and a critical income source for recipient families. FMDWs are responsible for a majority of monies sent home from abroad and are proportionally more important in Sri Lanka than in the Philippines (MFEPW, 2013). Growing dependence on remittances has given states in both countries an equally intense and consistent impetus to control female domestic workers’ migration.

The literature contains two explanations accounting for the translation of that drive into initiatives to support FMDWs. Anthropologist Michele Gamburd (2009) maintains that economic and political-legal circumstances in receiving countries shape the Philippine and Sri Lankan states’ responses. Since the oil boom of the late 1970s and 1980s, when Filipina workers began to migrate in large numbers, they have gone primarily to the Middle East and East and Southeast Asia. Other prominent destinations like Cyprus, Italy, Spain, and, more recently, Canada, however, are characterized by generally more developed migrant labor laws and greater receptivity to sending-state calls for good treatment. Only a small minority of female Sri Lankan migrants has headed to southern Europe, with the lion’s share (over 90%) leaving for the Levant and the Persian Gulf. There, homeland officials’ lack of resources and leverage and the obligation to sustain favorable diplomatic relations with labor-importing countries supposedly hinder intervention (Samaratunga et al., 2012). This ‘external’ argument dovetails with the social-spatial explanations discussed in the introduction to this special issue, as the power that sending states exert on behalf of their nationals is affected by the context in which they are embedded.

Political scientist M Scott Solomon (2009), on the other hand, stresses an ‘internal’ factor to elucidate sending-country reactions: the degree to which FMDWs and other emigrants have been incorporated into democratic processes. Constitutionally disallowed from running for a third term and facing widespread civil unrest, a Maoist guerrilla insurgency, and armed Muslim separatists on Mindanao, President Ferdinand Marcos of the Philippines declared martial law in September 1972 (until January 1981). He seized control of the military and suppressed the political opposition and civil liberties. The popular demonstrations of the People Power Revolution led to his 1986 ouster, restoring democracy and, per Solomon’s argument, making it necessary thereafter for the state to win democratic legitimacy and consent for its policies from overseas citizens and their families. This obligation ultimately resulted in new protections and rights for them, including overseas absentee voting and a discourse hailing them as sources of local pride. Sri Lanka’s emigrant workers won no such privileges. Its ostensibly democratic regime, rendered illiberal over the course of the Tamil conflict (1983–2009), would thus not be expected to embrace as active a stance in their favor.

Research design and methods

This article aims to determine the explanatory power of the aforementioned external and internal explanations. It demonstrates that as both of those approaches would expect, the Philippine state has been more forceful and successful than its Sri Lankan counterpart in defending overseas workers, particularly female domestics. Yet the causes have more to do with factors other than FMDWs’ destinations or their democratic incorporation: namely, the nature of global demand for that country’s FMDWs, as modulated by the impact of pro-migrant civil society actors and prevailing gender relations and attitudes.

The analytical approach followed here is a variant of comparative process tracing that both tests and builds theory (Kay and Baker, 2015). A form of historical institutional analysis long used in political science and sociological research, process tracing entails showing why certain options were chosen and others eschewed during short periods of time when significant policy change was possible. Table 2 presents the critical junctures relevant to the measures adopted by the Philippine and Sri Lankan states concerning FMDWs.

Between the phases of institutional flux, the path-dependent stability of social and political processes is assumed to hold (Bengtsson and Ruonavaara, 2011). Examining crucial decision points, relating policy (non-)decisions to existing theories, and tracing and comparing sequences across cases all make it possible to infer causality. Process tracing requires collecting large amounts of data from a wide range of sources – archives, secondary historical research, semi-structured interviews with key policymakers and civil society organizational leaders, legislation, speeches, and official statements – so as to avoid validity issues.

Critical junctures in the Philippines

Economic crisis (early 1970s)

The authoritarian Marcos regime, ruling by decree after 1972, created a labor-intensive and export-oriented national economy, drawing on the South Korean developmental state example (and aping its corruption and cronyism). The Philippines’ labor migration program was announced as a temporary measure to export young men made unemployed by economic stagnation, defusing social unrest and boosting foreign currency reserves. Marcos cast labor export as the official ‘overseas employment program’ in the Labor Code of the Philippines in May 1974 (Presidential Decree No. 442). The code relegated private recruitment agencies to a supporting role and prohibited the direct

Table 2. Critical junctures.

Decade	The Philippines	Sri Lanka
1970s	Economic crisis State-led labor export system overwhelmed	Economic crisis and political transition
1980s		Liberal labor export system overwhelmed
1990s	Abuse scandals	
2000s		
2010s		Abuse scandals

hiring of migrant workers, who were eventually required to send remittances from their earnings. To facilitate migration, three new institutions were created within the Ministry of Labor: the Overseas Employment Development Board (OEDB), the Bureau of Employment Services (BES), and the National Seamen Board (NSB).

State-led system overload (late 1970s)

Departures proved to be so numerous that by 1978, the overwhelmed regime opted to reinstate private-sector involvement in recruiting and job placement under strict governmental supervision (Presidential Decree No. 1412). The state's monopoly position gave way to 'high-profile regulation' (Ball, 1997), whereby the public sector retained responsibility for the overall management of labor migration. Concurrently, the Office of Emigrant Affairs was set up as a local support network for OFWs, and that mandate was expanded when the Commission on Filipinos Overseas (CFO) succeeded it in 1980.

Labor emigration was becoming vital to the national economy, and private recruiters' demonstrated inability to defend overseas workers' interests was threatening to reduce its appeal and thus its benefits to the state. Such concerns were expressed by the Department of Labor and Employment in a White Paper in 1977, and they led President Marcos to establish a welfare and training fund for overseas workers to provide insurance coverage, social work assistance, legal assistance, and cultural and remittance services. The fund became the Welfare Fund Administration in 1980. Two years later, the state solidified its status as the primary policy, programming, coordinating, and administrative actor in labor and employment with Executive Order No. 797: the OEDB, BES, and NSB were consolidated into the Philippine Overseas Employment Administration (POEA).

It is difficult to attribute this turn by the Philippine state toward protection in the late 1970s to the external factor of which countries served as destinations for Filipina FMDWs. Whether or not officials in Manila always backed up their words with deeds, they took positions vis-à-vis receiving-country governments of all stripes that could rightly be described as 'bold' (Battistella and Asis, 2011: 10). The state displayed little reticence about engaging with those Southeast Asian and Persian Gulf receiving countries where labor conditions were the harshest.

These developments *preceded* democratization, furthermore, and the transition to a democratic regime in the late 1980s 'did not change public policy' related to migration to any significant degree (Bach and Hof, 2012: 3). Only minor alterations ensued: after the People Power Revolution and the promulgation of the 1987 Constitution, the state made social security voluntary for overseas workers employed by Filipino firms, mandated employers to provide insurance to most OFWs, and reorganized the POEA and other government agencies to a certain degree. The Welfare Fund Administration became the Overseas Workers Welfare Administration (OWWA).

Alongside military intervention, civil society organizations like the militant Bayan alliance had contributed to Marcos' ouster (as they would again to President Joseph Estrada's fall in 2001). Soon after President Corazon Aquino oversaw the return of democracy to the Philippines in 1986, several pieces of legislation favorable to civil society's expansion were passed. NGOs grew in number and vibrancy, marked by high levels of political activism and an independence standing in sharp contrast to the restrictions and cooptation by the state and political parties that characterized such groups in Sri Lanka (United States Agency for International Development [USAID], 2014). Civil society organizations' democratic space in the Philippines widened or constricted thereafter depending on the regime in power, though, leaving NGOs' influence weakly institutionalized and variable in its impact.

Abuse scandals (mid-1990s)

Increased private sector involvement in recruitment resulted in fraudulent and unscrupulous practices (Ali, 2005). Official and employer abuse of OFWs abroad, especially women in domestic service, became commonplace. A rash of shocking rights violations affecting FMDWs made them the target of special concern in the mid-1990s and spurred Philippine NGOs to unified action. In 1995, Flor Contemplacion, a 42-year-old Filipina domestic worker, was executed by hanging in Singapore for the 1991 murder of a child in her care and another FMDW. Also in 1995, Sarah Balabagan, a 15-year-old Filipina, was found guilty of the premeditated murder of her employer in the UAE and sentenced to death by firing squad. Both cases provoked harsh domestic criticism of the Philippine government's inability to rescue its nationals.²

Temporarily unified and able to attract media attention to the harsh treatment meted out to OFWs, civil society organizations succeeded in affecting the policy trajectory. Migrant workers' civil-society allies and their own associations like Philippine Migrants Rights Watch and Migrante – which started forming in 1995 and came to number over 40 – championed protective legislation and urged the state to assume more responsibility for FMDWs. Adding to the force of this associational pressure, the participation of women in wage employment, parliament, and senior corporate management, and gender sensitivity in general have been higher in the Philippines than in many other Asian countries (see Table 1).

In the furor, the Philippine Congress enacted the landmark Migrant Workers and Overseas Filipino Act of 1995 (Republic Act (RA) No. 8042). The legislation, sometimes referred to in discussions of OFWs as the 'Magna Carta,' was aimed at 'establishing a higher standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress' (Scalabrini Migration Center [SMC], 2010: 552–553). It expanded the POEA's mandate to include promotion of OFWs' return and reintegration. Labor export remained imperative but was no longer depicted as an integral part of a national economic development plan; it was rather to be 'encouraged' as a rational choice made by informed individuals. The law ended up confirming the state's managerial role (Acacio, 2008: 114).

Policies thereafter evolved along path-dependent lines. Dedicated to 'serving the recruitment industry and protecting workers at the same time,' the POEA's governing board approved a series of household service workers reforms in 2006 and successive amendments that enhanced the agency's powers and brought additional supportive mechanisms (POEA, 2011: 14). The minimum age for departing domestic workers was raised to 23 years (from 18 in 2001, but compared to 25 in 1994), a minimum monthly salary of US\$400 was set, and all workers were required to attend a pre-departure orientation seminar offered to domestic workers by accredited NGOs. Onsite resource centers for struggling OFWs were developed or beefed up in many destination countries. In 2007, Manila's Intramuros neighborhood became home to the National Reintegration Center for OFWs.

The Philippines had ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) back in 1981 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in 1995. In July 2009, RA No. 9422, an amendment to RA No. 8042 of 1995, allowed the deployment of OFWs only to countries where the Philippines had signed bilateral agreements or other mechanisms that guarded workers' welfare. Strongly encouraged by NGOs, the country would enter into two dozen non-binding memoranda of understanding (MOUs) and twenty binding memoranda of agreement with national and subnational governments in Europe, North America, Asia, and the Middle East by 2014 (Desiderio and Weinar, 2014).

In 2010, RA No. 10022 further amended RA No. 8042. Among its provisions was a call for Philippine foreign service posts to certify whether the country in which they served guaranteed the rights of OFWs and a stipulation that private recruitment agencies provide extra coverage – needed to relieve an OWWA hard pressed to cover workers' repatriation costs during the Lebanese conflict in 2006 and the global financial crisis from 2008. Each country with numerous Filipinos gained a Philippines Overseas Labor Office. Provincial 'help desks' back home matched skills with available jobs in country and abroad and offered advice on self-employment, in addition to special missions led by the Department of Labor and Employment to aid laid-off Filipinos in Taiwan and Dubai.

RA No. 10022 acknowledged that '[t]he State recognizes that non-governmental organizations, trade unions, workers associations, stakeholders, and other similar entities duly recognized as legitimate are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare' (Section 1h). Even so, timing shows that POEA chiefs have exaggerated when asserting that it is the internal factor of the Philippines' 'democratic environment' that has fostered measures to meet the challenges spawned by inadequate international safeguards (Achacoso, 2000: 10; Kessler and Rother, 2016). Since the early post-Marcos era, moreover, Philippine civil society has been characterized by fragmentation, fluctuation, and shifting alliances with the country's various power centers. OFWs did not receive absentee voting rights in national elections until 2003. Although the number of registered voters has increased over the years, turnout has declined: 65% in 2004, but merely 15% in 2013 (Sy, 2013).

From the beginning, the state's readiness to defend FMDWs has seemed most contingent on the human capital that FMDWs possess. Whenever the Philippine state has set standards for their treatment, imposed deployment bans, and recalled ambassadors, migration levels have dropped for a time. To some extent movements circumventing POEA procedures have compensated for those decreases. Simultaneously, market opportunities for domestic workers have soon emerged in new or formerly less important destinations. Not even major economic crises have seriously or durably weakened the desire for educated, English-speaking Filipina FMDWs, noted for their 'modern' appearance and professionalism (Moors et al., 2009: 153). The Catholic religious background of many has given them status in the Middle East and Asia even among Muslim employers, who have demonstrated a predilection for members of another Abrahamic faith over Buddhists or Hindus.

In September 2012, the country became the second in the world to ratify International Labour Organisation (ILO) Convention No. 189 concerning decent work for domestic workers and by January 2013 had passed the enabling *kasambahay* ('household helpers') bill. Philippine officials have been active proponents of the Convention at meetings held within the ambit of the Global Forum for Migration and Development, where the country has repeatedly been cited as an example of good practice. Its leaders have relished such praise, leveraging it to amplify the country's soft power (Gonzalez, 2011).

Philippine governments have continued to direct the POEA 'to be more active in the protection of migrant workers' rights and welfare' (Bach and Hof, 2012: 3), and a clutch of other institutions also interact with migrant workers. Funded by a mandatory US\$25 membership fee – in theory paid by the employers or recruitment agencies but in practice usually by the migrants

themselves—and governed by a board appointed by the national president, the OWWA offers assistance to Filipino migrant workers and their family members (at home and abroad) in enforcing the contractual obligations of agencies, recruiters, and employers. The Office of the Undersecretary of Migrant Workers' Affairs provides legal assistance to OFWs. The Office of the President's CFO offers pre-departure orientation seminars and facilitates migrants' contributions for development projects in underserved communities across the archipelago.³ Dispute resolution is provided by the National Labor Relations Commission or, outside the Philippines, welfare attachés based at its embassies. It is not just visiting researchers who find it easy to get disoriented in the alphabet soup of agencies, bureaus, and organizations. Philippine migration policy has been plagued with inconsistencies, inefficiencies, and coordination problems (Aguilar, 2014).

Since the late 1970s, and above all since the mid-1990s, a defensive posture towards FMDWs has been viable because of their strong market position, and it has actually helped increase the state's clout and the competitive value of the country's 'brand.' Human capital advantages have allowed Philippine officialdom to answer robust, if fitful, civil society pressures in a context of relatively high gender sensitivity and to adopt a comparatively activist stance as regards the interests of even its most vulnerable nationals abroad. Among scholars, NGOs, and international organizations, Philippine governments have earned a reputation for being more willing to intervene with receiving-country officials than countries like Sri Lanka—even if their protective measures are often accused by activists of lacking teeth when it comes to enforcement and monitoring (Murray, 2012).

Critical junctures in Sri Lanka

Economic crisis and political transition (late 1970s)

The state's approach to FMDWs in Sri Lanka, as in the Philippines, has reflected their rising economic significance and human capital endowment, along with the nature of civil society and gender relations in the country. Under Prime Ministers S W R D Bandaranaike (1956–59) and his widow Sirimavo (1960–65, 1970–77), the Dominion of Ceylon and, as of 1972, the Republic of Sri Lanka espoused interventionist and import-substituting economic policies. Slow growth and high unemployment fed social unrest, propelling the political opposition into office after the 1977 parliamentary election. In sync with the export-oriented development model promoted by international financial institutions, the new pro-capital government liberalized the island's economy, relaxing travel and exchange restrictions, establishing free trade zones, and ushering in a powerful executive presidency.

As was the case with OFWs, numerous unskilled Sri Lankan workers were pulled in by the Middle Eastern oil boom starting in the late 1970s. The outflows soon took in women as well as men. Emigrants' first-year earnings were treated as non-taxable emoluments. Only belatedly did the state begin to consider the economic and social impact of remittances or the need to address issues related to the reintegration of returned migrants. Protection was not a priority.

Liberal system overload (early 1980s)

That lack of attention combined with the open attitude toward emigration to foster an environment conducive to exploitation. It was not long before charges multiplied of irregularities and mistreatment on the part of both private labor recruiting agencies and overseas employers. Stereotypes took root of the 'wicked, exploitative Muslim job agent' (Gamburd, 2002: 57) and ingratiating, duplicitous (and unregulated) village subagents. Sri Lankan labor laws were proving inadequate, jeopardizing an increasingly valuable font of foreign capital.

Policymakers' riposte was to shore up the value of 'Sri Lanka's main resource, its highly industrial and literate people,' and their remittances.⁴ The Foreign Employment Agencies Act No. 32 of 1980 authorized the Commissioner of Labour to license and monitor recruitment agencies, and the Ministry of Foreign Affairs instituted and reorganized embassies and consular sections across the Middle East to assist Sri Lankan nationals. Outmigration gained momentum with the outbreak of civil war between the Liberation Tigers of Tamil Eelam and the government in 1983. An additional push was given later that decade by a rekindled Marxist-Leninist insurrection that had first erupted in the Buddhist south in 1971.

The Sri Lanka Bureau of Foreign Employment (SLBFE) was inaugurated in 1985 under the Ministry of Labour to regulate and promote the recruitment of workers for employment abroad. A public corporation, the SLBFE received its financing from fees paid by migrant workers and commissions paid by recruitment agencies. Its 125 staff members were soon overloaded, and the 1985 act was amended in February 1994. The SLBFE's personnel doubled in number, branch offices were opened outside Colombo, and it became mandatory for workers to register with the SLBFE prior to departure when migrating through a private agency or personal contacts, and for private agents to secure job approval before undertaking any recruiting.⁵ The Sri Lanka Foreign Employment Agency (SLFEA) was established as a subsidiary in 1996 to act as the state manpower and recruitment agent for foreign companies.

As the state moved to systematize and profit from the agency-migrant relationship, the SLBFE was now responsible for licensing recruitment agencies, organizing training sessions for would-be migrants, registering and monitoring those who left, and administering an insurance program for migrant workers and a welfare program for their families (Caritas Sri Lanka [CSL], 2011). Safe houses were set up across the Middle East; labor attachés were assigned to embassies in the most important receiving countries; and embassies began to offer medical services for runaway workers, repatriation, replacement of confiscated passports, and legal support to recover unpaid wages. 'From the passive and reactive stance of the pre-1985 era,' the director of a non-governmental South Asian research organization concluded, 'the state had changed its attitude to protect workers and provide for their welfare' (Ali, 2005: 99). That new position was maintained when popular weariness with civil conflicts and the state's repression of civil liberties precipitated election victories for a coalition of left-leaning parties in 1994 (until 2000).

Nevertheless, researchers judged the support that FMDWs received from 'the state, labor unions, feminist organizations, and migrant-oriented nongovernmental organizations' to be 'anemic' compared to that in the Philippines (Gamburd, 2009: 61). Sri Lankan officials confronted the necessity of protecting a more fragile market position that it could not afford to undermine. Sri Lanka's economy, like the Philippines', had grown heavily reliant on exporting labor, but lower educational qualifications, limited proficiency in foreign languages like English, skin color, and religious makeup all rendered Sri Lankan FMDWs less desirable to foreign employers.

Sri Lankan FMDWs and recruiting agencies adapted as they could to such circumstances: Hindu women passed themselves off as Muslims; Buddhist women, as Christians. Recruiters doctored passports to show different religions and ages, sometimes without telling their clients. Agents charged Muslims a lower fee, and one reason for high outflows to Saudi Arabia was that sponsors paid recruiters a US\$2000 commission and often up to \$150 to Muslim migrants to defray charges for passports and training. Exceptionally, employers paid the recruiting costs for those domestic workers (CSL, 2013).

The timing of the reforms of the 1980s and 1990s, which occurred even as democratic rights were being restricted, argues against a link between democratization and an improving state response. There was no absentee overseas voting available to expatriate workers, eliminating even the limited sway such suffrage has registered in the Philippines. Demands made by migrant workers' associations and allies for that right had little effect (Government of Sri Lanka [GSL], 2011).

Nor was civil society as influential in Sri Lanka more broadly. Notwithstanding the aforementioned weaknesses of its voluntary sector, the Philippines has received the strongest scores and Sri Lanka the weakest scores of the seven Asian countries canvassed by the Civil Society Organization Sustainability Index for Asia (USAID, 2014). NGOs focusing on human rights and gender issues multiplied during the Sri Lankan economic liberalization of the late 1970s and the civil war. Their reliance on overseas funding served as justification for tight state regulation of their activities. The Women and Media Collective, a prominent Colombo-based feminist organization, encouraged twenty community-based organizations to join in the Action Network for Migrant Workers in 1999 that lobbied, critiqued, and occasionally worked with the SLBFE and other state agencies (Ali, 2005).

The same mix of outside pressure and inside collaboration defined Caritas. Founded in 1968 as the social arm of the Catholic Church in the country and part of a worldwide confederation, it was fully engaged from an early date in pastoral care for FMDWs.⁶ In interviews, Caritas and other FMDW advocates pointed to gender relations in Sri Lanka as a factor blunting the state's interest in their plight. As noted above, Sri Lankan women trailed Filipinas in labor participation and political access (see Table 1), and gender-based discrimination and inequality were rife. Prospective FMDWs had to submit to pre-departure medical testing, at times without their informed consent or access to results. Those testing positive for HIV or pregnancy were declared 'unfit' (Turner, 2007: 38–39).

Trade unions played a bigger role than NGOs in all stages of Sri Lankan migration policymaking. Unions were at the forefront of the independence movement before 1947, but most of them ended up penetrated by political parties to the point of becoming part of the state machinery (Gunawardana, 2014). They were slow to take up issues affecting female migrant workers. In 1994, the National Workers' Congress—associated with the major right-leaning party in Sri Lanka—established a Migrant Services Centre (MSC) near Colombo to help prepare migrant workers for their move, advise them about alternatives to leaving, and, not incidentally, integrate them into the labor movement. The MSC worked closely with state agencies.⁷

After a period of political instability between 2000 and 2004, a revamped left-wing coalition regained parliamentary control. The following year, its candidate, Prime Minister Mahinda Rajapaksa, won the presidency and held it until 2015. He relaunched the war against Tamil separatists within seven months of assuming office. Sri Lankan democracy took on an ever more illiberal cast, and the muscular, cohesive Sri Lankan state took further incremental steps to manage labor migration.

In 2007, the SLBFE was transferred to the newly created Ministry of Foreign Employment Promotion and Welfare (MFEPW), one of whose key responsibilities was 'to satisfy foreign demand for the employment of Sri Lanka personnel' (MFEPW, 2014). A year later, the ministry devised a National Labour Migration Policy (NLMP) with the technical and financial assistance of the ILO. In 2010, the NLMP was approved by the government, which intended it to articulate the state's approach to labor migration, help to fashion a long-term vision of its contribution to Sri Lanka's economy and society, enhance the benefits of migration for migrants and their families, and 'work towards the fulfillment and protection of all human and labour rights of migrant workers' (CSL, 2013: 22). A National Action Plan for the Protection and Promotion of Human Rights soon followed (GSL, 2011).

Abuse scandals (early 2010s)

Cases of extreme abuse soon took a sharply higher profile in the context of heightened state, trade union, and NGO attentiveness to FMDWs and other migrants, echoing developments observed earlier in the Philippines. In 2010, a 49-year-old mother of two, Lahadapurage Daneris Ariyawathie, had nails and metal particles hammered into her arms, legs, and forehead by her Saudi employer after complaining about being overworked. After several years of official and popular protests in

Sri Lanka, 24-year-old Rizana Nafeek was beheaded by sword in public near Riyadh in 2013 for the murder eight years earlier of a baby in her charge. Opposition legislators blamed President Rajapaksa for failing to prevent the execution and complained that the state had a financial incentive not to complain too forcefully to the Saudis (Jayasekera, 2013).

Such events provoked the emergence of new groups to fight for FMDWs' rights, a number of which adhered to the Migrant Forum Lanka (MFL) that formed in 2012. Although many of its members were independent, the MFL included trade unions. It had received its initial push from the Solidarity Center, a non-profit organization aligned with the American AFL-CIO labor federation, and played the insider/outsider role typical of civil society associations in the country (Gunawardana, 2014). The state set up a cross-country organizational network in 2012 to support the 'sustainable development of migrant workers' families by coordinating them at the grass-root level' (*Colombo Telegraph*, 2015).

The MFEPW was revamped during this period and given greater responsibility for 'attending to the concerns of the Diaspora' (MFEPW, 2014). It thereafter laid special emphasis on upping Sri Lanka's share of total world remittance income and, not unrelatedly, on improving its nationals' market position by 'rebranding' the migrant work force, i.e., providing training to hasten the replacement of the unskilled (and female) with the better-earning semi-skilled and skilled (and male) (CSL, 2011: 22). This 'reskilling' encompassed instruction for emigrating domestics (made compulsory for those going to Cyprus, Hong Kong, Saudi Arabia, and Singapore) and official attempts to encourage more migration to Europe, where conditions 'were not as tough as in Middle Eastern countries.'⁸ Concomitantly, the SLBFE committed itself to reducing yet further the number of women who emigrated for such work (as evidenced by the 2015 share of female migrants noted in Table 1).

Parallel to such developments, the state created mechanisms in labor-receiving countries to provide proactive legal assistance and monitoring of conditions. Hotlines were installed at Sri Lankan embassies, as well as a national complaint center in Colombo and a 24-hour welfare center near Bandaranaike International Airport. Introduced in 2013 were low-interest loans for returning migrants' self-employment ventures, free or subsidized houses for those disabled or distressed, and scholarships for FMDWs' children. FMDWs began to be extolled as 'foreign employment heroes' (*rata viruwo*) instead of victims (Attygalle, 2012), albeit over a decade later than in the Philippines.

The state redoubled efforts to negotiate bilateral agreements with labor receivers. By 2012, Sri Lankan governments had signed MOUs and service agreements setting out conditions to safeguard the social and economic well-being of migrant workers in nine European, Asian, and Middle Eastern destination countries (Samaratunga et al., 2012). Others with Oman and Saudi Arabia, the latter nearly identical to the kingdom's agreement with the Philippines, came along shortly thereafter. Sri Lanka was an earlier signatory to CEDAW (1981) and several ILO conventions covering migrants' working conditions, employment discrimination, and wage protection—but not ILO Convention No. 189.

Sri Lanka still took criticism for doing more to facilitate migration than to improve migrants' working and living conditions. At the same Global Forum for Migration and Development meetings where the Philippines was held up as a purveyor of good practice, Sri Lanka was often compelled to address its perceived weaknesses in managing labor emigration.⁹ Its officials pointed to the Philippines' longer migratory experience, bigger population, and greater economic weight to excuse their more 'careful' approach.¹⁰ They also cited issues of positionality—specifically, Sri Lankans' subjection to the harsh *kafala* (sponsorship) system employed in Middle Eastern receiving countries. However, most Filipina FMDWs have labored in those same countries, most of which have reached similar bilateral agreements with both sending countries.

Sri Lanka has undertaken undeniable moves to strengthen its diaspora engagement policies. Its institutional apparatus has been built more consciously than that of the Philippines and with the

benefit of its experience. The MFEPW, SLBFE, and SLFEA have worked together more cohesively yet have not proven as aggressive in implementing and enforcing protective policies as the Philippines' more complex institutional array.

In Michele Gamburd's estimation, the state has hesitated to exert diplomatic pressure 'for fear that employers in the Middle East will turn to labor from other countries' (quoted in Murray, 2012: 463). Such worry is not necessarily misplaced: receiving countries have sometimes answered deployment bans with refusals to issue visas and talk of bringing domestics in from alternative source countries. The admitted motivation for augmented government programs to train and rebrand Sri Lanka's FMDWs has been to raise their value. The SLBFE's mission has become to make the labor migration sector 'highly competitive by introducing required structural changes together with necessary promotional and welfare activities to meet the international market challenges' (MFEPW, 2014).

As has been argued, Sri Lanka's 'state-controlled polity' allows for more top-down direction and less input from civil society than the Philippines' 'state-dominated polity' (Chaulia, 2011)—and even less interference from entrenched societal elites over migration-related matters (compare Oh, 2016). Sri Lankan feminist organizations and ideas have had less impact on attitudes and policies. FMDWs' particular susceptibility to abuse and exploitation has finally been attracting official notice, in part due to the perceived affront to respectable Sinhala Buddhist womanhood.¹¹ Individual attributes and not family structures or gender-related social practices are customarily held accountable. In 2013, the Minister of Foreign Employment and Welfare rebutted IOM reports characterizing Sri Lankan FMDWs as the most tortured in the world, maintaining that those returning from the Middle East had self-inflicted injuries: 'They do this in order to get some money and come home' (quoted in Chrishanthi, 2013).

Since January 2015, the new 'national unity' government under President Maithripala Sirisena has vowed to fight human trafficking, fortify the welfare of the country's overseas workers and their families back home, and root out corruption and inefficiency in the SLBFE. It has lowered the bureau's registration fee and started looking into a pension scheme and overseas voting rights for migrant workers (*Colombo Telegraph*, 2015). At the same time, authorities have begun requiring only female migrants to secure a certified 'family background report' proving that they have no young children. Sri Lanka has not joined the Philippines in providing social protections for domestic workers in the country itself.

Conclusion

As contrasted with its Philippine counterpart, the Sri Lankan state has been both dissuaded from intervening vigorously in favor of 'its' FMDWs by the global market's more modest valuation of them and pushed less by local civil society to do so. Powerful demand for domestic workers with preferred attributes makes for more sensitivity on the part of receiving-country states to Philippine lobbying for improvements in the treatment that they receive, pressure tempered by the sending state's desire not to upset the 'customers' too much. A more active and independent civil society and higher levels of gender equality have factored into the greater inclination to push for better working conditions for female migrants by the Philippines than Sri Lanka.

In the market competition for domestic worker positions, exporters' fortunes can change quickly. Employers' justifications for preferring or disdaining domestic workers of one or the other nationality frequently rest on stereotypes, and the hierarchy of preferences can be reshuffled. Thus the influx of Indonesian FMDWs into the Middle East has coincided with grumbling that Filipinas are 'too assertive' and summary judgments that Sri Lankan women are not as 'clean' or 'civilized' as Indonesians (Moors et al., 2009: 153).

For the time being, wherever both Filipina and Sri Lankan FMDWs labor—in Cyprus, Israel, Italy, Jordan, and Lebanon—the former have received better treatment and pay (Ireland, 2011). Filipinas' superior market value affords them better handling and stronger home-state defense than Sri Lankans. The distribution of FMDWs' destinations does not account for differences in sending-country postures.

The export of unskilled, low-paid service workers constitutes a comparative advantage for the Philippines and Sri Lanka. Labor market disadvantage has become institutionalized and gendered in the integrating global economy. The strength of a sending country's position in it, conditioned by the varying ability of civil society to put weight behind human rights and gender equality concerns, determines the degree to which its state tries and is able to defend female migrant domestic workers.

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Notes

1. Interview at the Sri Lanka Bureau of Foreign Employment (SLBFE), Battaramulla, 2 August 2012.
2. Amidst international outcry, Ms Balabagan received a new trial. Her sentence was reduced to a year's imprisonment, a caning, and the payment of blood money.
3. Visit to the Commission on Filipinos Overseas, Manila, 14 December 2011.
4. Interview at the Ministry of Foreign Employment and Promotion (MFEP), Colombo, 19 July 2012.
5. Today, the SLBFE has seven regional centers across the country and over 800 employees (Thimothy et al., 2016).
6. Interview at Caritas Sri Lanka, Colombo, 28 May 2013.
7. Interview at the Migrant Services Centre, Dehiwala, 20 July 2012.
8. Interview at the MFEP, Colombo, 19 July 2012.
9. Interview at the Scalabrini Migration Center, Quezon City, 17 December 2011.
10. Interview at the MFEP, Colombo, 19 July 2012.
11. Interview at the Migrant Services Centre, Dehiwala, 20 July 2012.

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