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Regulating “Illegal Work” in China

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Addressing Multiple Forms of Migrant Precarity:
Beyond “Management” of Migration to an Integrated Rights-Based Approach

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Addressing Multiple Forms of Migrant Precarity: Beyond "Management" of Migration to an Integrated Rights-Based Approach

This paper is part of a Working Paper series that synthesizes research that was presented at a workshop convened by UNRISD and members of the World Universities Network (WUN) in Geneva in September 2015.

At the workshop, researchers from an international consortium presented new empirical research findings from Asia, Africa and America from a recently concluded study of migrant precarity. The research project focused on intraregional migration, looking in particular at the linkages between migration and social protection from a rights perspective. It considered policies and practice related to three key groups of migrants: unaccompanied children, refugees and labour migrants.

For further information on the workshop visit http://www.unrisd.org/migrant-precarity-workshop.

The main workshop discussions were summarized in an UNRISD Event Brief, which is available at www.unrisd.org/eb3.

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Acronyms

EEAL	Exit and Entry Administration Law 2013
MFA	Ministry of Foreign Affairs
MHRSS	Ministry of Labour and Social Security
MPS	Ministry for Public Security

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Abstract

The Exit and Entry Administration Law 2013 (EEAL) in China has been widely considered to be a major step forward in developing a more comprehensive legal regulatory regime for dealing with the rising inflow of foreigners to the country in recent decades. Situated in a policy discourse aimed at combating the so-called "three illegalities" (sanfei) of illegal entry, residence, and work, the EEAL introduces a range of restrictions on the admission of foreign migrants, controls over their employment and residence, as well as enforcement mechanisms that involve employers and members of the general public. This paper examines the ways in which China's immigration law regime regulates "illegal work" and thereby constructs precarious statuses that shape migrants' vulnerability to precariousness in their employment relations.

Introduction

The unprecedented growth of the Chinese economy has seen significant changes in its migration patterns and trends. Much of the literature on migration issues in China to date has been focused on internal rural-to-urban migration. In the global migration landscape, China has not conventionally been considered as a receiving country for immigration. Yet, in recent times, the world's largest industrializing economy has generated robust "pull" factors in relation to new and diverse flows of short-term and longer-term immigration of foreigners. In 1978, only 229,600 foreigners had entered China (National Bureau of Statistics of China 2001). At the end of 2014, there were 26.63 million inbound foreign visitors (National Bureau of Statistics of China 2015). In the 2010 National Census (which for the first time included foreign residents), there were 593,832 "persons with foreign nationality" (excluding Hong Kong, Macao and Taiwan) lawfully resident in China for at least six months (National Bureau of Statistics of China 2011). The official number of foreigners lawfully engaged in paid employment jumped from 74,000 in 2000 to 220,000 in 2011 (Xinhua 2012). Foreigners' countries of origin are wide-ranging, which include industrialized countries as well as developing countries in Asia and Africa (Ministry of Public Security, 2015). Foreign populations are concentrated in large cities such as Guangzhou, Shanghai, and Beijing, areas near bordering countries, as well as medium-sized trading cities such as Yiwu which is the world's largest commodities market (Pieke 2014; Bodomo and Ma 2010).

Despite these trends, a legal and institutional framework to regulate the entry, residence, and employment of foreign migrants has developed in a slow and piecemeal fashion. The Chinese immigration regime has thus far focused on formalistic procedures related to entry and exit administration. However, there has been little consideration of other policy issues regarding labour market regulation, rights protection, settlement and integration of longer-term migrants in China. Formal channels for labour immigration have been limited to a few categories of highly skilled professionals, experts, teachers, and employees of joint enterprises and foreign companies. At the same time, there has been rising public discourse of combating the so-called "three illegalities" (*sanfei*), which refers to "illegal entry", "illegal residence", and "illegal work".[1] In 2013, the national border inspection agencies investigated 2,996 cases of illegal entry/exit and another 49,200 cases of persons in violation of the exit and entry laws and regulations (Ministry of Public Security 2014).

Against this background, the introduction of the Entry and Exit Administration Law 2013 (EEAL) is underpinned by a prevalent policy goal of tackling *sanfei*. This new law has been widely considered to be the most significant reform in China's contemporary immigration regime since 1985. It introduces an array of restrictions on the entry, residence, and employment of foreign migrants (with the exception of highly skilled talent), harsher penalties on employers and migrants for violations, and notably, whistleblowing obligations on citizens to report *sanfei* activities. Furthermore, for the first time, the notion of "illegal work" is explicitly defined in the legislation as encompassing three types of situations: working without a valid permit, working outside the scope (of occupation and employer) as prescribed in the permit, and foreign students working outside the prescribed scope of occupations and/or working hours.

In this paper, I consider the ways in which China's emergent immigration law regime can create precarious statuses that shape particular vulnerability in migrants' work

[1] The term 'illegal' is used in this paper to denote the legal construction of the 'three illegalities' discourse under the Chinese immigration regime. As discussed below, the law creates a range of precarious migrant statuses in the host state.

relations. Borrowing from the literature on precarious work, Goldring, Berinstein, and Bernhard (2009: 245) refer to the term "precarious migrant status" to convey a "combination of ongoing risk and uncertainty, or ongoing vulnerability to precariousness" associated with immigration controls. Fudge (2012: 96) points out that "the state, through immigration law, creates a variety of different migration statuses, some of which are highly precarious, that in turn produce a differentiated supply of labour that produces precarious workers and precarious employment norms". Meanwhile, Anderson (2010: 306) explores how immigration controls construct legal status and "work with and against migratory processes to produce workers with particular types of relations to employers and to labour markets".

The paper seeks to contribute to an emerging body of international and comparative socio-legal scholarship that is purposively aimed at exploring the complex interaction and intersection of immigration law and labour market regulation. To date, there have been very little critical analyses of the regulatory regime concerning labour migration in China, especially with regards to the nature and effect of immigration controls on migrants' employment and residence situations. In analysing the new legal framework, the first part of the paper will provide a historical and contextual understanding of the evolving regime regulating foreign workers in China since the 1980s. Following on, the second part examines the norms, processes, and institutions associated with the regulation of illegal work under the EEAL, focusing on the conditions of entry, restrictions on employment, and the institutionalization of uncertainty for migrants with precarious statuses.

The regulation of labour regulation in China

Until the late 1970s, China had in place cautious and strict controls over the entry and exit and the activities of the very small number of foreigners permitted to be in the country. As economic reform commenced in the 1980s, there were some efforts aimed at attracting "foreign experts" to China. The most significant legislation to be introduced was the Law on the Administration of Entry and Exit of Aliens 1985 (1985 Law). The State Council's Implementing Rules of the 1985 Law further set out the conditions under which foreigners may be granted or refused exit-entry certificates and the function of the Z Visa category for foreigners to take up paid employment. In the late 1980s, two further administrative regulations set out the requirement for a foreign migrant to apply for a Z Visa prior to arrival and prohibited foreigners without a residence permit and foreign students from engaging in paid work.

During the 1990s, there was a substantial increase of foreigners as China's economic liberalization policies expanded. The State Council's Rules on the Administration of Employment of Foreigners in China 1996 (1996 Rules) laid down more detailed procedures and rules such as the eligibility criteria for admitting a foreign worker. To supplement the 1996 Rules, a number of administrative regulations, orders, circulars, and implementation rules were also issued. As discussed in the next part, the basic admission requirements under the 1996 Rules (as amended in 2011) are still applicable under the EEAL regime.

China's accession to the World Trade Organization prompted some reform to immigration law, such as simplifying visa application and approval processes. The Regulation on the Examination and Approval of Permanent Residence of Aliens in China 2004 introduced a "green card" scheme for long-term foreign migrants. However, eligibility for this scheme has been restricted to a small handful of highly skilled "foreign talent" who can demonstrate their capability of "significantly contributing to

fields of great need", foreign investors, and their family members. The scheme specifically requires skilled foreign talent to have held senior managerial or professorial positions for more than a continuous period of four years in China, with an accumulated period of residence of over three years, and a sound taxation record. By the end of 2011, only 4,752 foreigners had obtained permanent residence (State Council 2012). Aimed at further encouraging this small and privileged group of foreign migrants to stay in China, several government departments further released a Circular on the Equal Treatment with respect to Entitlements of Foreigners with Permanent Residency Status in China in 2012.

Although not strictly an immigration law, an Interim Measures for Social Insurance Coverage of Foreigners Working in China was introduced by the Ministry of Labour and Social Security (MHRSS) in 2011 to allow foreign workers to partake in China's social insurance system. This regulation covers all foreigners who are legally employed in China with respect to five types of social security schemes (pensions, medical, work injury, unemployment, and maternity insurance) that are available to Chinese employees. Employers must register their foreign employees for social insurance within 30 days after the issuance of the employee's work permit. Upon leaving China, foreign employees are entitled to receive pension benefits or seek a reimbursement of their contributions to the pension funds.

In general, there have been very few visa routes for foreigners to take up paid employment in China. Foreigners in certain sectors, such as cultural activities, journalism and broadcasting, commercialized entertainment performance, medical practice, international transportation, are subject to different regulations to "ordinary" Z visa holders. A substantial category of foreign migrants who are lawfully or unlawfully engaged in paid work is the growing number of foreign students coming to China for short-term courses, study exchanges, and university degrees. These students are permitted to engage in internships and other part-time employment during their studies, but are subject to certain restrictions such as limited working hours and scope of work under the Ministry of Education Administrative Rules on the Admission of Foreign Students by Colleges and Universities.

Administrative responsibilities for regulating foreign workers have been spread out between the Ministry for Public Security (MPS), MHRSS, and Ministry of Foreign Affairs (MFA), as well as these departments' local branches at provincial, municipal, and county levels. There has been extensive criticism of the uncoordinated and inefficient division of labour (Liu 2011, 2014; Zhu and Price 2013). Furthermore, the devolution of regulatory responsibilities (including immigration enforcement) to local governments has seen the proliferation of different practices. Some local authorities such as Shanghai and Guangzhou have established their own policies for attracting highly skilled foreign residents, and anti-sanfei measures which will be discussed later on. At times, local regulations can come into conflict with national laws, which further creates a fragmented and incoherent regulatory framework accompanied by haphazard and varied enforcement practices (Zhu and Price 2013).

As the 1985 Law was deemed to be an "outdated" legislation to meet the complex regulatory challenges of new immigration flows, the EEAL has been seen as a major "but still tentative" step towards a more comprehensive immigration law regime (Pieke 2013). The primary espoused goals of the EEAL are stated in Article 1 of the legislation as: standardizing exit-entry administration, safeguarding sovereignty, security, and social order, and promoting international exchange. However, as Pieke (2013) observes,

"The law [EEAL] is predominantly driven by public security and foreign affairs agendas, especially the clear regulation of entry, exit, residence and employment of foreigners and curbing of illegal practices". A prevailing policy objective is to control the growth of immigration in recent years, as policymakers grapple with an increasingly hostile socio-political climate towards the presence of foreign migrants in some cities. For example, unofficial estimates of the number of African migrants residing in Guangzhou's booming trading community are as high as 100,000-200,000, many of whom are overstayers and/or engaged in employment without the requisite legal authorization (Li et al. 2009).

Precarious migrant statuses under the EEAL framework

The state may attempt to explain the phenomenon of sanfei in terms of foreigners "not knowing laws and regulations of China" or illegally residing "for malicious purposes" (State Council 2012). Yet, there is little attention to the role of immigration controls in producing sanfei and in shaping migrants' precarity. This part of the paper examines the regulation of illegal work under the EEAL framework, which includes the Regulations on Administration of the Entry and Exit of Foreigners 2013 (EEAL Implementing Regulations) and the 1996 Rules that remain in effect. Some key structural features of the EEAL framework are highlighted here: the highly restrictive admission routes in the face of increasing push-pull factors, the tying of migrants' status to a particular employer, other constraints on migrants' labour market mobility, the temporary duration of migrants' residence and employment status, the exclusion of labour law protections where immigration regulations are breached, a variety of harsh penalties on migrants (in comparison to the less severe employer sanctions), and finally, an extensive enforcement network consisting of the state, employers, and members of the public.

Conditions of entry

The admission procedure for a foreigner working in China involves several steps. The EEAL emphasizes the need for a work permit and work-related residence permit. Employers are prohibited from employing migrants without such permits (EEAL, article 41). The employer must first apply for a Foreign Employment License from the local labour administration certification authority to hire the migrant concerned (1996 Rules, article 5). Prior to entry, the migrant must submit an authorized invitation letter from the employer and a copy of the Foreign Employment License when applying for a Z Visa at the Chinese embassy or consulate in her home country (1996 Rules, article 8). Immediate family members (spouse and child) of Z visa holders may also apply for a S1 or S2 visa. Within 15 days of arrival, the migrant must obtain a work permit at the original certification authority where the Foreign Employment License was issued (1996 Rules, article 16). The Z visa holder must then apply for a work related residence permit from the local public security bureau within 30 days of entry (EEAL, article 30). Under the EEAL, a work related residence permit is valid for a period of a minimum of 90 days to a maximum of 5 years (EEAL, article 30). In comparison, the length of non-work related residence permits varies from 180 days to 5 years (EEAL, article 30). This difference in the minimum length of the two types of residence permits reflects the policy objective of the stricter monitoring over foreigners engaged in employment.

Like other countries, China's labour migration policy emphasizes the admission of highly skilled migrants. A new visa category R for "high level talents and professionals in short supply" has been introduced to facilitate this goal (EEAL Implementing Regulations, chapter 2, article 1(9)). The admission regime also introduces a "guiding catalogue" for foreigners working in China, to be formulated and regularly adjusted by

the relevant departments under the State Council (EEAL, article 42). The catalogue will take into account "economic and social development needs", and "supply and demand for human resources". Currently the 1996 Rules (article 6) set out some basic conditions regarding the position that will be taken up by the migrant: that the post is in "special need", that it cannot be taken up by a domestic candidate for the time being, and that no relevant state regulations are violated. The applicant must also possess the skills and experience for the post. The vagueness of such rules has provided room for different local interpretations. Given the overarching policy goal, it is likely that the admission of migrants under the new guidance catalogue will be restricted to a select handful of occupations and industries.

At the other end, a stricter visa issuance framework is aimed at deterring any "unwanted" immigration, namely low-skilled and unskilled migration. Under the EEAL, immigration officers have broad grounds for refusing a visa application or denying a foreigner entry to China, without any obligation to provide a specific reason (EEAL, articles 21 and 25). Furthermore, a person may be denied entry if immigration officers believe that the person may engage in activities inconsistent with the visa terms, such as overstaying or working illegally (EEAL, article 25).

Restrictive admission regimes can perversely become a driver of illegal migration, especially where there is employer demand for a cheaper and more compliant labour supply of illegal migrants (Ruhs and Anderson 2010; Düvell 2011). In the manufacturing hub of the Pearl River Delta, an area that has been experiencing rising labour costs in recent years, there has been the growing presence of workers from Vietnam, Laos, Cambodia, and Myanmar found in lower-skilled manufacturing jobs (China Daily 2008). Reports indicate that illegal work by foreigners is spreading across a variety of occupations and sectors, including domestic helpers, restaurant workers, part-time teachers, entertainers, and seasonal workers (China News Weekly 2012). There are also a significant number of migrants from Africa, especially in commercial hubs such as Guangzhou and Yiwu, who engage in trade and the provision of trade-related services between their home countries and China (Bodomo 2010; Bodomo and Ma 2010). As Mathews and Yang (2012: 98) argue, these traders represent agents of "low-end globalisation" or "globalisation from below", that is, "the transnational flow of people and goods involving relatively small amounts of capital and informal, sometimes semi-legal or illegal transactions commonly associated with the developing world".

The links between insufficient legal channels of migration and the growth of *sanfei* in certain sectors of labour "shortages" have rarely been articulated in policy or scholarly discourses in China. The notable exception being Zhu and Price (2013), who have argued for a regulatory framework to "recognize and convert" irregular workers such as Southeast Asian factory workers into "guest laborers who enjoy a settled range of rights and responsibilities in Chinese law". The creation of more accessible migration routes in the form of "guest worker" schemes has been promoted as an appropriate policy for addressing strong push and pull factors of global low skilled migration. Advocates of such schemes claim that the alternative would be the channelling of migrants into informal and less regulated sectors of the labour market where they are more vulnerable to exploitation (Global Commission on International Migration 2005). However, past and present guest worker schemes in numerous industrialized countries have been subject to numerous criticisms, such as the exploitation of guest workers that arise from

an array of restrictions on basic rights and the failure of these schemes to ensure the "temporary" presence of migrants in the host state.[2]

The limited designated legal migration routes for labour migration in China, combined with restrictive and bureaucratic procedures of admission (which pivots on the employer's sponsorship of the migrant) can render migrants' status more precarious. For the select group of migrants who are admitted under the Z visa, the primary condition of entry (a job offer with a specific employer) forms the basis of a variety of restrictions on their employment in China.

Restrictions on employment

A key restriction of immigration controls upon migrants' employment relations is the tying of their authorization to lawfully work and reside in the host state to a specific employer based on having a valid work permit and work-type residence permit. The EEAL (article 43) defines unlawful employment to include "work without obtaining work-permit or work-type residence permits in accordance with relevant regulations". The migrant must also work for the employing entity as indicated on her work permit (1996 Rules, article 24). Furthermore, the work permit is valid only in the geographical area specified by the labour administration certification authority (1996 Rules, article 16). Illegal work is also defined as "work beyond the scope prescribed in the work permits" (EEAL, article 43), therefore the migrant must work in the specific occupation as approved and certified on her work permit.

Should the migrant wish to change employers, occupation, or geographical area of work, immigration controls can make it extremely difficult to do so. For example, if the migrant wants to change employers within the same geographical area and take up a similar position to the one indicated on her work permit, the original local labour administration certification authority must approve such changes. In order for the migrant to change employers outside the designated geographical area or to be engaged in a different position with the same employer, the procedure is even harder as the migrant must apply for a new work permit and residence permit (1996 Rules, article 24). Controls over migrants' residence status impose further restrictions on their mobility. "Illegal residence" includes circumstances in which the foreigner stays beyond the duration specified in the visa or residence permit, or engages in activities that go beyond the restricted geographical area of residence (EEAL Implementing Rules, article 25).

The tethering of their migration status to a specific employer "sponsorship" can exacerbate the existing power asymmetries in the employment relationship by providing the employer with additional means of control (Anderson 2010). The multiplicity of constraints on migrants' labour and geographical mobility can further place them in a heightened position of vulnerability, where they find themselves unable to leave an existing employment relationship for the fear of losing their right to work and reside in China. A further implication of these immigration restrictions is the scope for employer practices that could render migrants' statuses ever more precarious. Advertent or inadvertent breaches of work permit conditions by the employer can give rise to a situation of illegal work as defined by the EEAL, for example, where an employer direct the migrant to perform duties beyond those of her approved position.

[2] Walzer 1983; Castles 2006; Dauvergene and Marsden 2014.

Precarious migrant statuses also structure migrants' "temporariness" of employment and residence in the host state. The duration of migrants' labour contracts in China cannot exceed five years (1996 Rules, article 18). Upon termination of employment, the employer must surrender the migrant's work permit and residence permit to the local labour administration authority and public security organ (1996 Rules, article 21). The migrant's labour contract is deemed to be terminated upon expiry but may be extended subject to the renewal of the work permit (1996 Rules, article 18). To renew the work permit, the employer shall apply to the labour administration certification authority to extend the migrant's employment. This application must take place at least 30 days prior to the expiry of the current contract (1996 Rules, article 19). The possibility for renewing the migrant's work permit, based on the employer's discretion to extend her contract, can enhance the employer's power of labour retention in addition to the power of dismissal. For the migrant, this discretion of the employer can create considerable uncertainty and instability in their employment and residence statuses in the host state at any given time.

Immigration rules provide that the salaries paid to migrants may not be lower than the local minimum wage and that their working hours, rest periods, holidays, safety, and social insurance shall be implemented in accordance with relevant legal provisions (1996 Rules, articles 22 and 23). Furthermore, labour disputes between the employer and migrant worker shall be handled in accordance with the Labour Law and the Law on Mediation and Arbitration of Labour Disputes (1996 Rules, article 26). It would appear that the Chinese labour law regime, at least on paper, affords foreign migrant workers the same rights and recourse to remedies as resident workers.

However, the precariousness of migrants' statuses has troubling implications for their access to these employment protections. Article 26 of the Labour Contract Law 2008 explicitly states that a labour contract violating "mandatory provisions of laws or administrative regulations" shall be wholly or partially void. In other words, the rights and remedies afforded to foreign migrants under Chinese labour law are predicated on the existence of a valid employment contract. This non-protection principle has been confirmed in the Supreme People's Court Interpretation of Several Issues in a Labour Dispute Trial in 2013. Article 14 of the Interpretation states that where a migrant did not have a work permit as required by immigration law and has requested the court to recognize a labour relationship with the employer concerned (for a claim under labour law), the court will not support such a case. Such an approach has devastating consequences for irregular migrants' entitlement to claim the protection of labour laws to enforce their rights, thus making them particularly vulnerable to exploitative working conditions.

A potential avenue for a migrant with *sanfei* status to claim some form of compensation is through civil damages against the employer. Article 86 of the Labour Contract Law imposes liability on the party at fault for damages for any harm or loss caused to the other party if the labour contract is declared invalid in accordance with Article 26 of the Labour Contract Law. This would require the migrant to show that it was the employer's wrongdoing that gave rise to the invalid labour contract, which may be difficult to establish in situations involving the direct or indirect complicity of the migrant. The employer may even perversely use such a provision against the migrant. In practice, migrants in *sanfei* situations are unlikely to pursue any legal claims through formal channels, given the ever-present threat of deportation, detention, and other immigration sanctions if their precarious statuses become disclosed in the process.

Institutionalizing uncertainty

A range of punitive measures against "illegal" migrants, situated in a discourse of targeted enforcement by the state and other actors, are instrumental in the production of institutionalized uncertainty that is associated with precarious migrant statuses (Anderson 2010). With a prevailing policy objective of combating *sanfei*, the EEAL introduces harsher individual penalties for illegal work both in scope and in severity. Whereas previous penalties involved fines of less than 1,000 RMB (Implementing Rules of the 1985 Law), migrants engaged in illegal work are now subject to a fine of 5,000 RMB to 20,000 RMB[3] (EEAL, article 80). For serious offences, the migrant may be detained for a period of 5 to 15 days in addition to the fine (EEAL, article 80). Furthermore, migrants who "refuse inspections of work permits by administrative departments, change employers without approval, change jobs without approval, or extend the terms of employment without approval" shall have their work permits withdrawn and residence permits cancelled (1996 Rules, article 29). The "ultimate" sanction for the migrant is voluntary departure (if appropriate) or deportation/repatriation (EEAL, article 62). A person who has been deported is prohibited from re-entering China for one to five, or 10 years in cases of "severe" violations (EEAL, article 81).

Employer sanctions are limited to a fine of 10,000 RMB for every foreigner who is "illegally employed", and up to a maximum amount of 100,000 RMB in total for all illegally employed migrants (EEAL, article 80). Any monetary gain resulting from illegal employment will also be confiscated from the employer, although it is unclear how such gains are calculated. Employers are required to cover the deportation expenses *only* if the migrant is unable to bear such costs (EEAL Implementing Regulations, article 32). The EEAL (article 80) also imposes sanctions on persons and companies who "introduce jobs to ineligible foreigners". These intermediaries may be fined 5,000 RMB for each job that is "illegally introduced", with a cap of not more than 50,000 RMB (for a person) or 100,000 RMB (for a company). "Illegal gains", if any, shall be confiscated. It is questionable whether the much weaker civil penalties for employers under the EEAL regime would achieve any significant deterrence effect as intended by the legislation. For the unscrupulous employer, gaining a competitive advantage from an exploitable migrant workforce may outweigh the risk of "getting caught" and being "punished" with a relatively small fine.

The EEAL provides local public security bureaus and exit/entry border inspection authorities considerable enforcement powers to conduct on-the-spot interrogation, continuous inspection, and detention for investigation up to 60 days of foreigners suspected of "illegally entering/exiting, residing or working" in China (EEAL, articles 58, 59 and 60). Enforcement is targeted towards certain groups of foreign migrants, as reflected by specific anti-*sanfei* campaigns conducted by local authorities in recent years. A notable example is the presence of Africans working and residing in "ethnic enclaves" in Guangzhou. Compared to other foreigners, this group has been subject to more frequent on-the-spot inspections such as passport checks and crackdowns by local public security bureaus. This targeting is in part driven by the criminalization of Africans in the public discourse, often fuelled by the local media (Lan 2015). In areas with a high concentration of African migrants in Guangzhou, the local municipal

[3] Based on the exchange rate on 25 June 2016, 1 USD is equivalent to around 6.62 Chinese Yuan RMB. As a benchmark of reference, the fines of 5,000-20,000 RMB are equivalent to around 2-10 times the 2015-2016 minimum wage in cities with the highest wage levels such as Shenzhen (2,030 RMB), Beijing (1,720 RMB), and Shanghai (2,190 RMB).

government has set up a centralized administrative team of government officials from different departments to manage *sanfei* migrants (Liu 2011; Branigan 2010).

The enforcement of immigration law has expanded to involve actors beyond the state and at diverse sites such as the workplace. Employers must report to local public security bureaus, in a timely manner, upon discovering any of these circumstances: (1) A foreigner employed resigns or changes employment location… (3) A foreigner employed violates the provisions on administration of exit and entry; or (4) A foreigner employed dies, disappears or other serious circumstances arise (EEAL, article 45; EEAL Implementing Rules, article 26). This state-sanctioned watchdog role of the employer in monitoring migrants' immigration compliance can be deployed by employers seeking to exert additional control over migrants' work relations.

Another enforcement mechanism that could institutionalize uncertainty on a day-to-day basis for migrants with precarious statuses is the introduction of a whistleblowing system of reporting *sanfei* activities by the general public. Article 45 of the EEAL stipulates that: "Citizens, legal persons or other organizations who find foreigners illegally entering, residing or working in China shall duly report such matter to the local public security organs". Certain duties are placed on employers, education institutions, and hotels, such as verifying passports and visas, not hiring or providing services to foreigners without valid documents, and reporting *sanfei* cases to public security organs. Fines can be imposed if these parties fail to carry out their obligations, for example, fines of 1,000–5000 RMB shall be imposed on hotels that fail to undertake accommodation registration for foreigners (EEAL, article 76).

Article 45 has largely been "borrowed" from existing local government regulations and campaigns conducted by local public security organs. Most notably, the 2011 Interim Provisions of Guangdong Province on Administration of and Services to Aliens established a reward and penalty system. Individuals and organizations may be rewarded for reporting *sanfei* foreigners to local authorities. An example of less formal practices of immigration enforcement by local authorities is the 100-day "*sanfei* clean up" campaign launched by the Beijing public security bureau in 2012. With substantial media coverage, the campaign actively encouraged members of the public to provide "clues" and report any suspicious foreigner who may be *sanfei* or engaged in criminal and other "illegal" activities (Wiest 2012).

Conclusion

As the state attempts to regulate who may cross its borders, reside in its territory, and participate in its labour market and the conditions of their entry, residence, and employment in its territory, immigration controls construct a range of personal statuses for non-citizens, beyond the conventional dichotomy of "legal" and "illegal" migration. Some of these migrant statuses are highly precarious, and are created, shaped, and reinforced by the intersection of the norms, institutions, and processes of immigration law with other regulatory domains such as labour law, administrative law, and criminal law. Through a close analysis of China's nascent labour immigration regulatory regime, I have argued in this paper that the design of the EEAL, situated in the context of an anti-*sanfei* political discourse, can produce migrant statuses that are associated with multidimensional precariousness in their work relations and other aspects of their lives.
The paper has contributed new theoretical insights to the scarce but emerging scholarship on Chinese immigration law and policy, which will become more significant in light of China's recent experience as a country of international migration. My inquiry has also casted a spotlight on a (numerically) small but potentially important

group of workers in China whose rights and interests have been marginalized, neglected, and undermined in the prevailing public discourse surrounding *sanfei* migration. The legal construction of precarious migrant statuses under the EEAL regime has wider implications beyond the realm of immigration law, such as the production of precarious norms in the labour market more broadly. Employers can develop a stronger "preference" for a more exploitable workforce, as reflected in the growing incidence of *sanfei* Southeast Asian workers in the Pearl River Delta, a region that are experiencing escalating labour costs.

The Chinese government has sought to enhance worker protections through labour law reforms in recent years, with an aim of addressing growing labour conflicts in an increasingly precarious labour market. As examined in this paper, the EEAL and its related regulatory framework accord migrants with a range of precarious statuses that can challenge the worker-protective goals of labour law. Here, the tensions between the two legal realms, with their own regulatory goals and concerns, are elucidated. The conventional "logic" of immigration law seems to be "primarily concerned with… regulating the numbers, origin, and material and other circumstances of those whom entry will be granted, not primarily concerned with the protection of their rights" (Clayton 2010).

While it is beyond the scope of this paper, the question of whether immigration law and policy in China may potentially increase employers' control over local workers and challenge collective worker-protective institutions (which has occurred elsewhere) remains to be seen. It may be that at this stage, the proportion of foreign migrants in the Chinese workforce is fairly trivial that it would not be a concern in the immediate future. The other issue that deserves further investigation is the role played by private intermediaries such as employment agencies in the migratory process and labour supply chain with respect to foreign migrants working in China. While there is one mention of "intermediaries" in the EEAL—namely the punishment of those "assisting others in illegally exiting or entering China", there has been very little scholarly or policy consideration to how the Chinese state regulates the different types of intermediaries that play a key role in the flow of international labour migration today. Finally, it is suggested that future qualitative studies such as interviews and ethnographic research of the EEAL and how different labour market actors interact with the legal regulatory framework can shed important light on the "law in action".

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