

Gender and Migration:
Workers at the Interface of Migration and Development

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Decent Work for Migrant Care Workers

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It is perhaps in the global care chain that we can see most clearly the ways and institutions through which unequal resources are distributed globally.¹

One of the most profound consequences of globalization in the late twentieth and early twenty-first century has been the feminization of migration – the increase in the numbers of women who cross national boundaries in order to obtain paid work in order to support themselves and their families. On the demand side, the feminization of migration is fueled by the increase in women's labour force participation, falling fertility rates, increasing life expectancy, changes in family structure, shortages of public care, and the increasing marketization of care in the North and more developed countries in the South. On the supply side, economic trends such as growing inequalities between high- and low-income countries, and insecurity, vulnerability, and instability due to economic crises combine with gender-related factors such as abuse, family conflict, and discrimination to increase the numbers of women who migrate in order to obtain paid work. Remittances are key for the survival of households and communities in many less-developed countries. Migration increasingly has become a strategy by which governments cope with unemployment and foreign debt. Migrant women have become crucial agents in "global survival circuits".

The term "global care chain" was first used by Arlie Hochschild to refer to a series of personal links between people across the globe based on the paid and unpaid work of caring. Global care chains are networks of transnational dimension that are formed for the purpose of maintaining daily life; these networks are comprised of households that transfer their caregiving tasks from one to another on the basis of power axes. These global care chains, which not only link countries of the North and South but also contiguous countries in the South, are created in the

* These remarks are the basis for an oral presentation and do not provide citations or references. For such information please contact Judy Fudge at jafudge@uvic.ca

¹ Shireen Hassim, "Global Constraints on Gender Equality in Care Work," (2008) 36(3) *Politics & Society* 388-402 at 397

confluence of two related phenomena – structural adjustment policies and neo-liberal reforms.

Historically across a diverse range of countries women from disadvantaged racial and ethnic groups have tended to provide care and household services to meet the needs of more powerful social groups, while their own care needs have been downplayed and neglected. Many of these women are temporary migrant workers who do not enjoy either the right to become permanent residents in their host country or the right to circulate freely in the labour market. Women migrants are often restricted to traditionally “female” occupations – such as domestic and care work – that are frequently unstable jobs marked by low wages, the absence of social protection and poor working conditions. The problem is that historically the interaction between restrictive immigration and labour laws have made women carers who do not have professional qualifications highly vulnerable. These restrictive immigration and labour laws create complex power relationships, not only in more formal employment contexts but also with employers who may be recipients of care services in private households.

From a public policy point of view, the key question is how to transform a vicious circle in which women who migrate to perform care labour in the homes of people living in more developed countries are exploited into a virtuous circle in which the care needs, especially for the elderly, of more developed countries are met, and the need for employment and income of the women who migrate are fulfilled. It is here that the International Labour Organization’s Decent Work Agenda is absolutely crucial.

In 2009, the ILO released *Decent Work For Domestic Workers*, which demonstrated, on the one hand, the valuable and socially necessary work of domestic workers, and on the other, the failure of many countries to treat this work as real work deserving of social protection. This report was discussed last year at the International Labour Conference, where a majority of member states voted in favour of a convention for domestic work. As a result, a draft convention with an accompanying recommendation was circulated and it will be voted on at the ILO Conference next month in June.

These international instruments are designed to develop international standards that promote decent work, including social protection and collective organization, for domestic workers who work in private homes. They are also attentive to the transnational dimension of domestic work.

The key elements of the draft convention are that:

- It applies to domestic work that is performed in or for a household.
- It requires each member state to ensure the effective protection of human rights for all domestic workers, including fundamental principles and rights at work such as freedom of association.
- It requires that member states provide domestic workers with decent work.
- It requires member states to ensure that domestic workers are informed of the terms and conditions of their employment and for domestic workers who cross national boundaries for employment that they receive a written contract of employment.

- It requires that domestic workers be given the right to privacy and the right, if they are migrants, to retain their travel documents.
- It requires that domestic workers be treated the same as other workers with respect to working time, social protection, health and safety, and labour inspection
- It requires that employment agencies that recruit migrant domestic workers do not charge fees and otherwise exploit domestic workers.

Essentially, the draft convention recognizes that domestic work is work like other forms of work and that the workers, who are overwhelmingly women, who perform it are entitled to the same rights as other workers. Decent work for domestic workers is not just a luxury of developed countries. In fact, countries in Europe and North America have much to learn from some less developed countries about how to protect domestic workers. Zambia, for example, has recently introduced legislation that specifically addresses the working conditions of domestic workers. It sets a minimum wage and addresses working time, sick leave and maternity leave, and severance pay. It also established 15 years as the minimum age for admission to domestic work.

When it comes to designing and establishing appropriate mechanisms and procedures for the supervision and enforcement of applicable laws with respect to domestic workers there is no “one-size-fits-all” approach. Although domestic workers should be entitled to the same labour and social protections as all workers, effective enforcement of domestic workers’ rights need to take into consideration the specific circumstances of such work. However, as a first step, it is essential to formalize the employment relations of such workers. In Jordan, for example, employers are required to register their domestic workers’ employment contracts with the Ministry of Labour.

Before concluding, I want briefly to turn to Canada, the country I know best, and look at the situation of migrant caregivers who provide care in the homes of their employers. The Live-in Caregiver Program is designed to fill a specific labour shortage in the country – the lack of people willing to reside in private households and provide care to members of those households. Although initially designed for childcare, increasingly this program is used to provide elder care. It is an employer-driven temporary migration program that ties the migrant worker’s entitlement to work and to reside in Canada to an ongoing employment relationship with a specific employer. The Program requires the migrant worker to live in the private household of the person for whom the worker provides care. The *quid pro quo* is that it provides a unique pathway to permanent residency.

Under this Program, prospective employers must provide the migrant domestic workers with a private, furnished room in their home and make a job offer that has primary caregiving duties for a child or an elderly or disabled person. They must provide the workers with a written employment contract and also pay for all services, fees, and costs of a recruitment agency and for all travel costs of the caregiver to and from Canada.

Historically, in Canada domestic work was excluded from statutory employment standards such as overtime and statutory holidays. However, this pattern of exclusion is changing, and domestic workers, who include live-in caregivers, are now covered by most employment standards. In Canada, labour law is a matter of provincial and not federal jurisdiction and some provinces, such as Ontario for example, continue to exclude domestic workers from collective bargaining and occupational health and safety legislation. Moreover, even when migrant domestic workers admitted under the Program

are formally included within the scope of protective labour legislation, the location of their work and residence, the homes of their employers, and their dependence on their employer to maintain or change their migration status undermine their ability to enforce employment-related rights. There is also evidence that employment agencies and immigrant consultants exploit migrant domestic workers, although Manitoba, a Canadian province, has taken steps to eradicate unscrupulous employment agencies.

The most distinctive feature of Canada's Live-in-Caregivers Program is that it gives the migrant workers who enter through it direct access to transferring to permanent resident (landed migrant) status. After having worked as a live-in caregiver for a cumulative period of at least two years during the four years following her arrival in Canada, a live-in caregiver may apply for permanent residence without having to leave the country or to meet the skills-based criteria that the majority of applicants who apply for permanent residence are required to meet.²

Given the transnational nature of global care chains and the fact that domestic workers often cross national boundaries it is absolutely crucial to have a minimum set of international standards. Such standards not only recognize the important economic and productive value of domestic work, they are designed to ensure that sending and receiving countries both benefit from transnational care chains by ensuring that the key actors, the women who cross national boundaries to perform care work in other people's home, are protected by labour law. .

² The Philippines supplies about 95 percent of the migrant workers admitted under the LCP. The vast majority (95 per cent) of domestic workers admitted under the Program are women, and over 90 percent of the foreign nationals who enter Canada under it apply for permanent residence status, and 98 percent of them are successful.