

## Reflections on Domestic Work and the Feminization of Migration

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*Female labour migration is concentrated in a few female-dominated occupations associated with traditional gender roles. Labour market segmentation and stereotypes define the demand for women migrant workers: demand is increasing mainly for care services in less-skilled and devalued jobs such as domestic work including home cleaning and child care . . . .*<sup>1</sup>

*Until recently governments and international fora have done very little to address [the feminization of migration] in any systematic way, nor to address the issues raised by female migration as part of family units and by forced migration.*<sup>2</sup>

### INTRODUCTION

One of the most fundamental transformations experienced during the twentieth century was women's incorporation into the formal labor force. Nevertheless, women, as a whole, did not abandon their socially prescribed roles as houseworkers, childbearers and caretakers.<sup>3</sup> They have retained the primary responsibility for administering the household,<sup>4</sup> or for that matter, managing the *economy—oikonomia*—in the original meaning of the word.<sup>5</sup> As such, “a corresponding shift that

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1. Gloria Moreno-Fontes Chammartin, *Female Migrant Workers in an Era of Globalization*, in *FEMALE MIGRANTS: BRIDGING THE GAPS THROUGHOUT THE LIFE CYCLE* 77, 77 (2006), available at [http://www.unfpa.org/upload/lib\\_pub\\_file/658\\_filename\\_migration.pdf](http://www.unfpa.org/upload/lib_pub_file/658_filename_migration.pdf).

2. *Introduction* to *FEMALE MIGRANTS: BRIDGING THE GAPS THROUGHOUT THE LIFE CYCLE*, *supra* note 1, at 5.

3. See Theodore N. Greenstein, *Economic Dependence, Gender and the Division of Labor in the Home: A Replication and Extension*, 62 *J. MARRIAGE & FAM.* 322, 322-24 (2000).

4. *Id.*

5. As discussed by Austin and Vidal-Naquet, “[t]he Greek word *oikonomia* does not mean the same as our word ‘economy’, although the latter is of course derived from it. It means ‘management of the household’ (the *oikos*) in its broadest sense (domestic economy, one might say), and not only in its strictly economic sense. It can also mean ‘management, administration, organisation’ in a more general sense and be applied to different spheres[ ] . . . .” M. M. AUSTIN & P. VIDAL-NAQUET, *ECONOMIC AND*

would have more men carry an equal share of household responsibility has not occurred.”<sup>6</sup>

The traditional gender-based division of labor within the family unit has social and economic implications that surpass the family structure. One of its implications is the phenomenon of the paid domestic work,<sup>7</sup> which highlights, among other problems, the struggles faced by working women, many of whom leave their children and households to the care of other women. In many countries, this segment of the working population is primarily integrated by female immigrants from developing countries.<sup>8</sup>

This Article brings forth some general reflections on domestic work and the feminization of migration, with particular emphasis on the complex interrelation of immigration status, gender, class, and race that takes place in this context. In light of these reflections, the Article concludes by recommending the promulgation of additional national and international regulatory schemes designed to protect the human rights of domestic workers.

#### I. WOMEN'S LABOR FORCE PARTICIPATION: IMPLICATIONS IN THE DOMESTIC SPHERE

Women's labor force participation rates in the United States have increased substantially in the last few decades. For example, from 1950 to 1998 the participation rate of women in the workforce increased from one in three to three in five.<sup>9</sup> Women's labor force par-

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SOCIAL HISTORY OF ANCIENT GREECE: AN INTRODUCTION 8-9 (M.M. Austin trans., Univ. of Cal. Press 1977) (1972). “What is the status of ‘economics’—that is to say the housewife's shopping-basket—in relation to politics? That is the question asked by the disciple of Aristotle . . .” *Id.* at 159 (footnote omitted).

6. UNITED NATIONS POPULATION FUND, STATE OF WORLD POPULATION 2006: A PASSAGE TO HOPE: WOMEN AND INTERNATIONAL MIGRATION 25 (María José Alcalá et al. eds., 2006) [hereinafter A PASSAGE TO HOPE], available at [http://www.unfpa.org/upload/lib\\_pub\\_file/650\\_filename\\_sowp06-en.pdf](http://www.unfpa.org/upload/lib_pub_file/650_filename_sowp06-en.pdf).

7. A “domestic worker” is “a person employed part-time or full-time in a household or private residence, in any of the following duties: cook, servant or waitress, butler, nurse, childminder, carer for elderly or disabled persons, personal servant, barman or barmaid, chauffeur, porter, gardener, washerman or washerwoman, guard.” *Id.* at 86 n.70.

8. See Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: “Where Can You Find Good Help These Days!”*, 53 U. MIAMI L. REV. 1045, 1063 (1999); Donna E. Young, *Working Across Borders: Global Restructuring and Women's Work*, 2001 UTAH L. REV. 1, 2-3, 9 (2001).

9. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CHANGES IN WOMEN'S LABOR FORCE PARTICIPATION IN THE 20TH CENTURY (2000), available at <http://www.bls.gov/opub/ted/2000/Feb/wk3/art03.htm>.

participation rates, as a percentage of all women, fluctuated between 20.0% and 30.0% from 1900 through 1950, but rose to 37.7% in 1960, 43.0% in 1970, 51.5% in 1980, 57.5% in 1990, and 60.0% in 1999.<sup>10</sup> The near 60.0% rate has stabilized since the 1990s.<sup>11</sup>

Before women's mass incorporation into the paid labor force, a man within a stereotypical family was the sole breadwinner and usually the woman was a stay-at-home mother in charge of childbearing and housework. As women entered into the remunerated workforce in ever-increasing numbers, the need to restructure the traditional gender-based distribution of domestic labor became more evident. However, the corresponding restructuration did not occur.<sup>12</sup>

Even today, only in a minority of cases is there a balanced distribution of the domestic tasks between the spouses.<sup>13</sup> Women devote more time to housework than men, even in those cases in which both of them work the same amount time outside the home.<sup>14</sup> As recent as a few decades ago, the need to achieve the so called "work-family balance" did not seem to be an urgent problem to many. In fact, for many years, women performed both roles on their own or with the help of close relatives. Today, as would be expected, women have begun to resort to other strategies to deal with changing realities.<sup>15</sup>

The apathy of the State and other sectors within the labor market forced many women to provide their own solution to the problem. In fact, the development of a domestic labor sector usually takes place in countries that lack effective social policies and initiatives designed to help families to achieve such a balance between labor activity, household responsibilities, and caretaking.<sup>16</sup>

Thus, in order to facilitate their incorporation and continued permanence in the remunerated labor market, many women with enough resources to do so delegate a great deal of the household tasks and childcare responsibilities to other women who perform their jobs in

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10. See Scott A. Moss, *Women Choosing Diverse Workplaces: A Rational Preference with Disturbing Implications for both Occupational Segregation and Economic Analysis of Law*, 27 HARV. WOMEN'S L.J. 1, 2 n.1 (2004).

11. See BUREAU OF LABOR STATISTICS, *supra* note 9.

12. See Young, *supra* note 8, at 3-4.

13. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, AMERICAN TIME USE SURVEY—2007 RESULTS (2008), available at <http://www.bls.gov/news.release/pdf/atus.pdf>.

14. *Id.*

15. See generally Catherine Albiston, *Anti-Essentialism and the Work/Family Dilemma*, 20 BERKELEY J. GENDER L. & JUST. 30, 49 (2005).

16. *But cf.* JANET C. GORNICK & MARCIA K. MEYERS, FAMILIES THAT WORK: POLICIES FOR RECONCILING PARENTHOOD AND EMPLOYMENT (2003).

exchange for a pecuniary benefit. If the State does not provide a satisfactory answer to the problem, it benefits from the increase in the number of people—mainly immigrants—willing to perform domestic tasks and to take care of children, old people, and the sick.

## II. DELEGATION OF HOUSEWORK AND CHILD CARE

Today, “[d]omestic workers’ services go far beyond providing employers with a luxurious lifestyle; these services help people meet their basic daily needs.”<sup>17</sup> Even though most of the people who pay for domestic services are middle and upper social class women with university degrees, there are low and middle class single mothers, old people, and sick people that also provide remuneration to receive these services.<sup>18</sup>

In the vast majority of cases, the domestic work is delegated to women.<sup>19</sup> The domestic workers are hired to either “replace” or complement other women’s gender-based roles. This redistribution of the reproductive and domestic labor does not alter the existing gender roles, and it merely replicates the traditional family model.<sup>20</sup>

Thus, although in most families women still bear primary responsibility for housekeeping and childrearing, nowadays they perform these tasks indirectly, by means of supervising and controlling the domestic worker’s employment conditions.<sup>21</sup> Usually the house labor is performed by immigrants who come from developing countries.<sup>22</sup>

It is worth noting that the replacement phenomenon also occurs among female immigrants with dependent children. The women who join the domestic service trade also transfer their burdens of social reproduction to others, typically close female relatives, so they are able to perform similar tasks in the employer’s household in exchange for remuneration. This phenomenon is known as the “global care chain.”<sup>23</sup> The paradox is that the “sending states and husbands of the migrant domestics, like the destination states and husbands in employing households, appear unwilling to assume any substantial

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17. Kristi L. Graunke, “Just Like One of the Family”: *Domestic Violence Paradigms and Combating On-the-Job Violence Against Household Workers in the United States*, 9 MICH. J. GENDER & L. 131, 198 (2002).

18. *Id.* at 198-99.

19. Young, *supra* note 8, at 7-8.

20. *Id.* at 21.

21. *Id.* at 71-72.

22. Mary Romero, *Nanny Diaries and Other Stories: Imagining Immigrant Women’s Labor in the Social Reproduction of American Families*, 52 DEPAUL L. REV. 809 (2003).

23. A PASSAGE TO HOPE, *supra* note 6, at 25.

portion of the social reproductive tasks that are the impediment (at the sending end) and also the magnet (at the receiving end) of the maid trade . . . .”<sup>24</sup>

### III. GLOBALIZATION AND IMMIGRATION

In recent decades, migration has risen dramatically, “primarily owing to the globalization of economic activity and its effect on labour migration.”<sup>25</sup> “The number of people counted as living outside of their country of birth has almost doubled during the last 50 years—[increasing to] 191 million in 2005.”<sup>26</sup>

Globalization is an economic phenomenon that not only implies capital flows among nations but also flows of people. The immigrant’s decision to migrate is determined by a combination of the so-called “pull” and “push” forces.<sup>27</sup> The “push” factors are “the aspects of life in the migrant’s country that produce dissatisfaction and provide the impetus to move.”<sup>28</sup> The “pull” factors have been defined as “the anticipated benefits that draw the migrant to a particular place.”<sup>29</sup>

The major “pull” forces are family reunification, the availability of employment in the migratory-receiving country, and the opportunity to receive higher wages.<sup>30</sup> The most common “push” forces that cause migration include poverty, unemployment, overpopulation, war and political instability.<sup>31</sup>

Migratory flows are diverse in nature. For example, immigration is often placed into two broad categories: (i) low-skilled immigration and (ii) high-skilled immigration. The latter category includes persons of extraordinary academic preparation and abilities, such as professors, researchers, and skilled workers.<sup>32</sup> This category of immigrants tends to have legal protection in the receiving country.<sup>33</sup> On the other hand, low-skilled immigrants usually are the victims of migratory repressive policies, although they generally make valuable contribu-

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24. See Joan Fitzpatrick & Katrina R. Kelly, *Gendered Aspects of Migration: Law and the Female Migrant*, 22 HASTINGS INT’L & COMP. L. REV. 47, 68 (1998).

25. A PASSAGE TO HOPE, *supra* note 6, at 5.

26. *Id.*

27. See *Developments in the Law—Immigration Policy and the Rights of Aliens*, 96 HARV. L. REV. 1433, 1438 (1983).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Susan F. Martin, B. Lindsay Lowell & Phillip Martin, *U.S. Immigration Policy: Admission of High Skilled Workers*, 16 GEO. IMMIGR. L.J. 619, 623 (2002).

33. See *id.* at 623-25.

tions to the receiving countries' economies. In addition, many of these immigrants are forced to accept low wages and work under precarious and poor conditions.<sup>34</sup>

In the United States, as in most developed countries, the size of the immigrant population is significant. The number of foreign-born individuals living in the United States is currently estimated at 35 million, which represents about 11.5% of the total population.<sup>35</sup>

Surprisingly, it has been estimated that the number of illegal immigrants living in the United States range from 8 million to as many as 12 million.<sup>36</sup> In fact, they constitute a large segment of the United States workforce. "The share of these workers in industries such as agriculture, cleaning, construction, food service, and other low-wage occupations is approximately three times the share of native workers in these types of jobs."<sup>37</sup> For example, it is estimated that "more than 250,000 undocumented immigrants work as janitors, 350,000 work as housekeepers and maids, and 300,000 are groundskeepers."<sup>38</sup>

#### IV. THE FEMINIZATION OF IMMIGRATION

Over the last few decades, women have constituted nearly half of all international immigrants.<sup>39</sup> This feminization of migration is "recognized by experts as characteristic of a new stage in the development of international labor migration. In large part, this is related to structural changes in the world economy accompanying the globalization processes: relative reduction of the industrial sector in the postwar period and the growth of the service sector . . . ."<sup>40</sup>

Among the push factors that cause female immigration are gender inequality and discrimination, which often have a disproportionate

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34. CHIRAG MEHTA ET AL., CHICAGO'S UNDOCUMENTED IMMIGRANTS: AN ANALYSIS OF WAGES, WORKING CONDITIONS, AND ECONOMIC CONTRIBUTIONS (2002) (providing a discussion of unlawful employment practices against undocumented immigrants), available at [http://www.uic.edu/cuppa/uicued/npublications/recent/undoc\\_full.pdf](http://www.uic.edu/cuppa/uicued/npublications/recent/undoc_full.pdf).

35. See JEFFREY S. PASSEL, UNAUTHORIZED MIGRANTS: NUMBERS AND CHARACTERISTICS 3 (2005), available at <http://pewhispanic.org/files/reports/46.pdf>.

36. 151 CONG. REC. S7852 (daily ed. Jun. 30, 2005) (statement of Sen. Sessions).

37. Iris Gomez & Marielena Hincapié, *Range of Federal Enforcement Programs Affecting Immigrant Workers*, 1625 CORP. L. PRAC. COURSE HANDBOOK SERIES 389, 413 (2007).

38. *Id.*

39. A PASSAGE TO HOPE, *supra* note 6, at 1.

40. Elena Tiuriukanova, *Female Labor Migration Trends and Human Trafficking: Policy Recommendations*, in HUMAN TRAFFIC AND TRANSNATIONAL CRIME 95, 98 (Rowman & Littlefield Publishers, Inc. 2005).

effect on women.<sup>41</sup> On the pull side is the increasing demand for women in domestic positions and service jobs.<sup>42</sup>

In its *State of the Population Report*, the United Nations Population Fund (UNFPA) stated the current international state of affairs:

Over the last 40 years, almost as many women have migrated as men. Most moved to join their husbands in the settler countries of Australia, Canada, New Zealand and the United States. By the year 2005, there were slightly more female than male immigrants in all regions of the world except Africa and Asia.

Among *developed regions*, North America is exceptional in that female immigrants have outnumbered male immigrants since 1930 and still do in both Canada and the United States. Europe and Oceania are also reporting increasing proportions of female immigrants—surpassing the number of males since 2000. Among migrants to Australia, women have outnumbered men for the last three decades. The majority of women migrating to Australia, New Zealand, Europe and North America do so for family reunification, followed by labour migration and asylum.

Within the *developing world*, the numbers of female labour migrants have also jumped.

In *Asia*, the number of women migrating from some countries has surpassed that of males. The majority migrate alone to neighbouring East Asian countries, the Middle East and elsewhere. By the year 2000, an estimated two million Asian women were working in neighbouring countries. In 2005, over 65 per cent of the nearly 3,000 Filipinos that left the country every day for work or residence abroad were women. From Sri Lanka in 2002, there were two women for every male emigrant. Between 2000 and 2003, an average of 79 per cent of all migrants leaving Indonesia to work abroad were women. By the mid-1990s an estimated 800,000 Asian women were migrating to the Middle East annually—mostly as domestic workers.

*Latin American and Caribbean* women are also highly mobile. By 1990, immigrant women in Latin America were the first in the developing world to reach parity with male migrants. Destinations include Europe, North America and elsewhere in South America. The trend toward feminization is also strikingly apparent among migrants moving from both Central and South America to Spain, with women representing nearly 70 per cent of all immigrants arriving from Brazil and the Dominican Republic in 2001. Women from this region also clearly dominate migration flows to Italy, where, in 2000, 70 per cent or more of the arrivals from 13 of 30 source countries were women. Caribbean

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41. Lesley Wexler, *The Non-Legal Role of International Human Rights Law in Addressing Immigration*, 2007 U. CHI. LEGAL F. 359, 364 (2007).

42. *Id.*

women have outnumbered males in migration flows to North America during every decade since the 1950s and are well represented in skilled categories. The tourism industry has been a major pull factor behind the migration of Caribbean women.

In *Africa*, widespread poverty, disease, land degradation and high male unemployment are all contributing to a steady increase in female migrants—and at a rate that is faster than the global average. By 2005, 47 per cent of the 17 million immigrants in Africa were women—up from 42 per cent in 1960—with the greatest increases among migrants in the Eastern and Western regions. While most African women circulate within the region, they are also moving to North America and Europe. To illustrate: From Cape Verde, women constitute 85 per cent of all those who migrate to Italy. Employment opportunities in France have drawn an increasing number of educated women from urban areas of Senegal. Nurses are also on the move—Nigerians to Saudi Arabia, and Ghanaian, South African and Zimbabwean nurses to Canada, the United Kingdom and the United States.

In the *Arab* region, socio-cultural norms continue to limit female mobility. Although reliable data are scarce, it is generally accepted that male émigrés far outnumber women. Unemployment, armed conflicts and economic need have been major factors. Young men migrating from poorer countries to richer oil-producing states have dominated migration flows to fill the demand for construction and infrastructural workers that followed in the wake of the oil boom.<sup>43</sup>

Hence, the increasing presence of women is one of the main characteristics of the current migratory flows.<sup>44</sup> This can be partly attributed to the desire of many women to achieve family reunification.<sup>45</sup> Nevertheless, it has become increasingly common for women to choose to migrate independently, leaving behind spouses or family members, in search of new opportunities.<sup>46</sup>

It is only recently that the international community has begun to acknowledge the particular challenges and risks women confront when migrating.<sup>47</sup> However, both international and national regulations fail to adequately address the problems of women migrants.<sup>48</sup>

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43. A PASSAGE TO HOPE, *supra* note 6, at 23 (italics in original).

44. *See id.*

45. *Id.* at 5.

46. *Id.* at 1.

47. *Id.*

48. Fitzpatrick & Kelly, *supra* note 24, at 47-48.

## V. DOMESTIC WORK AND FEMALE IMMIGRATION

The newly-arrived low-skilled immigrants, especially illegal immigrants, are compelled to perform the hardest, the worst-paid, the most unstable, and the least prestigious jobs within the labor market.<sup>49</sup> Domestic labor opportunities often present an attractive option because they do not require high skills, wages are higher than the salaries earned in the home countries, and sometimes a large share of income can be remitted to family members.<sup>50</sup> Thus, in the international labor market many poor women choose to immigrate to a foreign country to become domestic workers, even though some of them have better qualifications than the work implies.<sup>51</sup>

It is worth noting that in recent years domestic work constitutes one of the major forces driving international female labor migration.<sup>52</sup> The emergence of a growing international trade of domestic workers can be attributed, in part, to the fact that developing countries have become more dependent on the immigrants to perform household responsibilities and caregiving.<sup>53</sup> Female immigrants are increasingly becoming indispensable in the supply of cheap labor in the capitalist global economy.<sup>54</sup>

The UNFPA in describing the global state of affairs has stated:

Asian domestic workers primarily migrate to Middle East, North America, Western Europe and to wealthier East Asian countries. The Philippines alone has sent approximately 1.5 million overseas foreign workers throughout the Asian region—the majority of whom are female domestic workers. In the 1990s, 84 per cent of all migrants from Sri Lanka to the Middle East were women, most of whom were domestic workers. The ILO estimates that in 2003 there were 200,000 foreign domestic workers in Hong Kong (SAR) and 155,000 in Malaysia. Saudi Arabia hosts at least one million women working in low-level occupations who come from Indonesia, the Philippines and Sri Lanka—the great majority domestic workers. In 2003, the United Arab Emirates (UAE) granted an average of 300 visas every day—mostly for women travelling from South and South-East Asia—with an average of three domestic workers per UAE household. In Singapore, one in every seven households employs a live-in migrant worker.

In Latin America, women from poorer countries (Bolivia, Paraguay and Peru) often go to work in the homes of families living in better-off

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49. *Id.* at 61

50. *Id.*

51. *Id.*

52. A PASSAGE TO HOPE, *supra* note 6, at 25.

53. *See id.*

54. Young, *supra* note 8, at 55-57.

neighbouring countries (such as Argentina and Chile). Domestic workers represent up to 60 per cent of *all* internal and international migrants from Latin America—with many bound for Europe and North America. In Spain, 70 per cent of working migrant women—mostly from South America—arrive to fill domestic and caretaking positions. Women from sub-Saharan Africa have also entered this global market: These include Ethiopians bound for Lebanon and Cape Verdeans and Ethiopians headed for Italy.<sup>55</sup>

The career women and the domestic workers meet as the result of a need to have access to the paid work force.<sup>56</sup> The domestic workers do it to support themselves economically, while the career women do it to achieve a work-family balance.<sup>57</sup> The social and cultural association of women with housework often emerges as a fundamental shaping influence on female migration.<sup>58</sup> The patriarchal ideologies that proclaim the superiority of the women in the domestic sphere and promote the idea that they have the responsibility for the housework have influenced many social and economic policies.<sup>59</sup> As Fitzpatrick and Kelly state, “[t]he gendered nature of the international labor market channels them into domestic service . . . .”<sup>60</sup> The domestic work, then, is conceived as an extension of the work of the woman in the house.<sup>61</sup>

Because of the high number of illegal immigrants that are hired in the domestic labor sector, it is difficult to obtain accurate statistics regarding domestic workers in the United States.<sup>62</sup> A report published in 1998 stated that approximately 800,000 domestic workers were registered as employees and thirty percent of them were immigrants.<sup>63</sup> Nevertheless, domestic work in the United States has been associated primarily with immigrants, in particular Latin Americans, Caribbean, and Philippine women.<sup>64</sup>

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55. A PASSAGE TO HOPE, *supra* note 6, at 51 (emphasis in original).

56. *See id.* at 9.

57. *See* Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform*, 48 AM. U. L. REV. 851, 919-21 (1999).

58. *See* Young, *supra* note 8, at 54.

59. A PASSAGE TO HOPE, *supra* note 6, at 10.

60. Fitzpatrick & Kelly, *supra* note 24, at 61.

61. *See id.*

62. Romero, *supra* note 22, at 814.

63. *See id.*

64. *See id.* at 813-22

VI. INTERSECTION OF GENDER, RACE, ETHNICITY, CLASS, AND  
MIGRATORY STATUS IN THE DOMESTIC SERVICE SECTOR

The intersection of migratory status, ethnicity, gender, class, and race particularly impinges on sub-groups of the immigrant community.<sup>65</sup> The effects that stem from the intersection of these variables and the disproportionate impact on immigrant women are often ignored in the debate regarding remunerated domestic labor, as “[i]ndependent analysis of each variable underestimates the magnitude of the problem. Viewed mathematically, subordination based on immigration status, ethnicity, gender, and class, is not simply the sum of the various components, but indeed may best be viewed as a multiple of them.”<sup>66</sup>

It should not come as a surprise that domestic labor is assigned according to the aforementioned variables because throughout history many of the social views regarding women’s roles have been rooted in their national origin, race, ethnicity, or social class.<sup>67</sup> This is consistent with an historic and social hierarchy that defines roles of women according to the groups to which they belong.<sup>68</sup>

The UNFPA has stated:

Ethnicity and class compound the problem of gender discrimination, stymie advancement and result in lower wages. For example, in the United Kingdom (which has long relied on immigrants to fill health-care jobs) harassment is widespread with black staff (mostly Caribbean women) largely concentrated in the lower grades. In the UAE, a college-educated domestic worker from the Philippines earns much more than her counterpart from India—regardless of the latter’s skills. One European study found that when fellow nationals undertake domestic work—as opposed to foreigners—they tend to be treated as professionals.

The United States provides one example of how domestic work is divided along ethnic and racial lines. During the 1950s and 1960s, African-American women dominated the occupation but by the end of the 1980s, their numbers had dropped dramatically throughout the country. Around that same time, foreign-born Latin American women stepped in to fill the breach—from 9 per cent to 68 per cent in Los Angeles alone.<sup>69</sup>

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65. See Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1541-53 (1995).

66. *Id.* at 1542.

67. Young, *supra* note 8, at 4-5.

68. *Id.*

69. A PASSAGE TO HOPE, *supra* note 6, at 34-35.

The hiring of domestic workers is frequently determined by racial and ethnic preferences that are based in prevailing stereotypes regarding certain groups.<sup>70</sup> This type of preference has changed historically.<sup>71</sup> For example, between the nineteenth century and World War I, the majority of the domestic workers in the Southern United States were African-Americans; whereas in the North the domestic labor sector was dominated by immigrants.<sup>72</sup> More recent decades have been witness to how Caribbean, Latin American, and Philippine female immigrants—documented as well as undocumented—have become the preferred groups to perform domestic tasks and take care of sick and dependent people, most of whom are children and the elderly.<sup>73</sup>

Lately, immigrants hailing from Latin America seem to be considered as the ideal candidates to take care of the needs for domestic service of the families in the United States.<sup>74</sup> Today, “the image of the Black woman toiling in the kitchen, cleaning the house, and caring for her employer’s children has . . . been replaced largely by an image of Spanish speaking immigrant woman.”<sup>75</sup>

Some concrete preferences regarding Latin American women also are based in stereotyped visions.<sup>76</sup> For example, some employers prefer to hire Latin Americans with lighter skin because they are perceived as more reliable, hard-workers, and submissive.<sup>77</sup> In addition, the fact that the domestic worker does not speak English sometimes is seen as an advantage because this avoids the possibility that the employee will divulge family matters to other members of the employer’s community.<sup>78</sup>

## VII. CONDITIONS OF DOMESTIC WORKERS

### A. Introduction

Low wages, long hours, poor training facilities, heavy workloads, and in some countries abuse and restriction on freedom of movement are among the most common issues regarding the working conditions of migrant women workers.<sup>79</sup> In domestic work in particular, where

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70. See Graunke, *supra* note 17, at 153.

71. Young, *supra* note 8, at 58.

72. *Id.*

73. See *id.* at 58-61.

74. Romero, *supra* note 8, at 1063.

75. *Id.*

76. See Graunke, *supra* note 17, at 153.

77. *Id.*

78. *Id.*

79. Moreno, *supra* note 1, at 80

women have a personal relationship with their employers, there is a high likelihood that psychological, physical, or even sexual abuse will take place.<sup>80</sup> In some countries, it is common for the wages of women migrants to be withheld while they are required to work unpaid overtime with little rest.<sup>81</sup>

The extremely poor working conditions of domestic workers can be attributed, in part, to the fact that the hiring process usually takes place within the subterranean economy and outside the scope of government-sponsored regulation.<sup>82</sup> The employers are inclined to exercise absolute discretion regarding the salary and employment conditions of the domestic workers that they hire.<sup>83</sup>

### B. *Salary*

A common trait of paid domestic labor is the low salary.<sup>84</sup> This problem has increased lately, particularly in those cities that have a high immigrant population and where there is an ever-increasing offer to provide domestic services.<sup>85</sup>

Even though immigrants frequently earn better salaries—particularly in absolute terms—than in their home countries, the remuneration continues to be very low in comparison to the salaries of women that are natives of the receiving country.<sup>86</sup> For example, in the United States it is estimated that 18.3% of the foreign-born women live under the poverty line, as compared with 13.2% of the native-born women.<sup>87</sup> In addition, among families in which a female migrant is head of the household, a whopping 31% are poor.<sup>88</sup>

In addition to the evident repercussions for domestic workers and their families, low salaries also substantially delay family reunification. This is because in many of the receiving countries, including the United States, it is necessary for those who sponsor a family reunification to show evidence of income and economic self-sufficiency.<sup>89</sup>

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80. *Id.*

81. *Id.*

82. *Id.*

83. Romero, *supra* note 8, at 1062.

84. Peggie R. Smith, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 46 (2000).

85. Graunke, *supra* note 17, at 152.

86. A PASSAGE TO HOPE, *supra* note 6, at 34.

87. *Id.*

88. *Id.*

89. *Id.*

### C. *Workday*

It has been denounced at the international level that many domestic workers are victims of exploitation.<sup>90</sup> The exploitation includes extremely long work schedules that oscillate between fourteen and nineteen hours per day.<sup>91</sup>

Because many immigrants are compelled to save money and limit their expenses in order to send money to their families back home, there has been an increase in the number of domestic workers that live with their employers.<sup>92</sup> This increases their vulnerability to abuse and exploitation.<sup>93</sup>

In the United States, domestic employees commonly work at least ten hours a day, with an average working day that extends to somewhere between eleven to twelve hours per day.<sup>94</sup> The workday is often longer for workers that live in the employers' home.<sup>95</sup> In these cases it is particularly difficult for domestic workers to limit the duration of their workday to a fixed term.<sup>96</sup>

Additionally, the kind of labor that the domestic workers perform, along with the extremely long workdays and limited periods of rest, have an adverse effect on their health.<sup>97</sup> The occupational health problem is aggravated because many immigrants have limited access to health services.<sup>98</sup>

### D. *Physical and Psychological Abuses*

Millions of female immigrants that work in domestic service "toil in intolerable conditions, are exploited, held in virtual captivity and [are] physically and psychologically abused. Reports of abuse and exploitation come from all over the world."<sup>99</sup> It has been said that:

Employers have been accused of psychological abuse; physical assault and battery; sexual violence; limiting freedom of movement by withholding passports or forbidding employees to leave the house; prohibiting communication with strangers or neighbours; imposing

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90. See INTERNATIONAL LABOUR ORGANIZATION, A GLOBAL ALLIANCE AGAINST FORCED LABOUR 48 (2005), available at [http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD\\_BLOB?Var\\_DocumentID=5059](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059).

91. A PASSAGE TO HOPE, *supra* note 6, at 52.

92. Graunke, *supra* note 17, at 152.

93. *Id.*

94. Romero, *supra* note 8, at 1053.

95. *Id.*

96. *Id.*

97. A PASSAGE TO HOPE, *supra* note 6, at 52.

98. *Id.*

99. *Id.* at 51-52.

extremely long working hours (14 to 19 hours per day with no rest days); withholding pay; offering only low wages; and denying privacy and access to medical facilities.<sup>100</sup>

“The most extreme forms of exploitation and abuse have resulted in severe injury and even [the] death” of domestic workers.<sup>101</sup> For example:

The ILO charges that “[m]any, including migrant workers from Sri Lanka, Philippines and Indonesia, have died in unclear circumstances. In Singapore, between 1999 and 2005, an estimated 147 domestic workers died—most by falling out of buildings or committing suicide. In 2004, the Asia Pacific Forum on Women, Law and Development (APWLD) reported on various cases of violent assaults and deaths suffered by domestic workers in Lebanon, Kuwait, Malaysia and Saudi Arabia. In the latter countries alone, some 19,000 domestic workers fled from their employers in 2000.”<sup>102</sup>

The problem is complex and it is increasingly accentuated because the harassment and exploitation suffered by domestic workers is often circumscribed to the actual or perceived sphere of intimacy of the household in which they work.<sup>103</sup> In addition, a great deal of domestic workers continue to work for exploitative employers out of fear of deportation or fear of losing their status as legal immigrants.<sup>104</sup>

#### VIII. ISOLATION

Another characteristic of domestic labor is that workers are usually isolated from other employees, friends, and relatives.<sup>105</sup> In most cases, workers perform tasks while they are alone in the house of the employer. This isolation allows employers to control their employees, resulting in a psychological dependency that may prevent a laborer from escaping an abusive environment.<sup>106</sup> The isolation of domestic workers explains in part why this labor sector is not well organized.

#### IX. INSTABILITY AND ABSENCE OF MOBILITY

The domestic workers’ labor is precarious, which contributes to job instability. The continuity of labor relations depends on the trust

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100. *Id.* at 52.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. See Graunke, *supra* note 17, at 160-63.

106. *Id.* at 161.

that the employer has in the domestic worker.<sup>107</sup> Another common factor that causes labor instability is the difficulty laborers face in negotiating working conditions and salaries. Consequently, most of them consider quitting their job as the only possible alternative.

The absence of labor mobility is also common in this sphere. The possibility of moving to different labor segments is very limited.<sup>108</sup> A large number of women migrant workers, even those that have university degrees or professional qualifications, have a difficult time climbing the occupational ladder.<sup>109</sup>

#### X. FACTORS THAT PREVENT LEGAL PROTECTION FOR DOMESTIC WORKERS

##### A. *Perceptions About Housework*

The rooted perceptions that women should bear primary responsibility for housework and that domestic labor does not constitute “work” have served as powerful weapons for those who argue that the government should not regulate domestic work.<sup>110</sup> Indeed, some believe “domestic work performed by family members to be clearly beyond the scope of legal regulation.”<sup>111</sup>

For a long time, the fact that women’s domestic work has been undervalued has had a negative impact on the salary and working conditions of remunerated domestic workers.<sup>112</sup> For example, there is a generalized perception that domestic work is a low-paying job because it does not require a lot of skill or training and the required abilities are part of women’s “inherent” abilities.<sup>113</sup>

As Fitzpatrick and Kelly explain:

The traditional allocation of these [domestic] tasks to women has important and disadvantageous consequences for participants in the maid trade. Housework and child care were traditionally treated as a non-economic activity because those tasks were often discharged by housewives who do not receive cash wages. Even when unrelated women migrate to assume these tasks, the traditional devaluation of the work depresses wages and working conditions, to an extent that sometimes results in total nonpayment of cash wages. Moreover,

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107. Chammartin, *supra* note 1, at 80-81.

108. *Id.*

109. *Id.*

110. Young, *supra* note 8, at 23-24.

111. *Id.*

112. *See, e.g., id.* at 30 (stating that many states have relaxed minimum wage and maximum hour restrictions for domestic workers).

113. *Id.* at 62.

where the maid becomes a resident member of the household, she may face physical and psychological violence and subordination . . . .<sup>114</sup>

*B. Nature of the Employer-Employee Relationship*

Many employers do not perceive their relationship to domestic workers as an employer-employee relationship. Commonly, domestic workers are seen as “one of the family.”<sup>115</sup> Frequently, domestic workers are exploited “under the guise that the employee is engaging in a labor of love as a family member, rather than engag[ing] in paid labor as an employee.”<sup>116</sup>

As Kristi L. Graunke has elucidated, “In some cases, this means that the employers, as heads of the household, assume they may exercise control over a domestic worker without encountering the restrictions and state regulatory intrusions accompanying the employer-employee relationship.”<sup>117</sup> Professor Donna E. Young also has described the problem eloquently, stating that “[i]t is the home’s dual nature, as a refuge for a private family and a workplace for a domestic worker, that has hindered efforts to find the appropriate level of state intervention.”<sup>118</sup>

This hybrid role between employee and “one of the family”—into which many domestic workers are placed—carries the potential of combining the most burdensome aspects of being both the person entrusted with the domestic work and the disadvantages and vulnerability of being a low-status worker.<sup>119</sup>

It is difficult to achieve the appropriate balance in this peculiar employer-employee relationship because most domestic workers tend to appreciate the existence of some sort of relationship with their employers.<sup>120</sup> In fact, they seem to reject the idea of cold and impersonal relationships because this may constitute “blatant reminders of the low regard in which society holds them.”<sup>121</sup>

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114. See Fitzpatrick & Kelly, *supra* note 24, at 67.

115. Graunke, *supra* note 17, at 164.

116. Romero, *supra* note 8, at 1047.

117. Graunke, *supra* note 17, at 164.

118. Young, *supra* note 7, at 20.

119. Graunke, *supra* note 17, at 157.

120. *Id.* at 200.

121. *Id.* (quoting PIERRETTE HONDAGNEU-SOTELO, DOMÉSTICA: IMMIGRANT WORKERS CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE 208 (2001)).

C. *Spheres and Dichotomies: Between the Public and the Private*

The paid domestic labor is atypical, among other things, because it takes place in the context of replacing or complementing a private activity that develops within the so-called private-sphere of the home. “As the ILO states, ‘domestic workers experience a degree of vulnerability that is unparalleled to that of other workers.’ The fact that domestic work takes place in the private sphere is what makes workers especially vulnerable.”<sup>122</sup>

For some, the ideological private family connection of the home creates a very different work environment.<sup>123</sup> “Therefore, it is argued that state intervention in household matters (including domestic working relationships) should be minimized in order to retain a place to raise families free from governmental interference.”<sup>124</sup> Thus, little regulation incentive exists due to domestic labor being viewed as a “private household matter.”<sup>125</sup>

In contrast, others argue that once it is admitted that the paid domestic labor constitutes work subject to remuneration, it acquires a public dimension in which governmental regulation is justified.<sup>126</sup> The state has an interest in regulating the relation to maintain minimum work standards and prevent exploitation.<sup>127</sup>

The clash between the dichotomy of the private and public dimensions of domestic labor is particularly evident in the United States. In general terms, domestic labor that is performed by a family member does not constitute work because the housework is considered an integral part of the set of obligations owed to the family.<sup>128</sup> Therefore, housework is perceived as a matter that should be regulated privately by family members and beyond the scope or encroachment—as some would deem it—of governmental regulation.<sup>129</sup>

However, when the housework is performed by an extra-familial third party in exchange for remuneration the public dimension rises to the surface.<sup>130</sup> Nevertheless, the public dimension of house labor often is blurred by the common perception that the home falls within

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122. A PASSAGE TO HOPE, *supra* note 6, at 51.

123. See Young, *supra* note 8, at 19-20.

124. *Id.*

125. See *id.*

126. *Id.* at 20.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 20-21

the purview of what is private.<sup>131</sup> As discussed in the following section, this way of construing the private-public dichotomy impinges on the elaboration and evolution of cross-border labor and employment law.<sup>132</sup>

## XI. REGULATION OF DOMESTIC SERVICE

### A. *Protection at the National Level*

Because of the transnational nature of the problem, the domestic labor performed by immigrants is susceptible to regulation both by the laws of sending and receiving states, and by international agreements or treaties.

National labor laws that regulate domestic work usually do little when it comes to addressing the particular problems that domestic workers, immigrants in particular, face. In fact, these laws tend to significantly disadvantage these workers.

[T]he fact that domestic work takes place within the household determines its exclusion from the ambit of labour law. Domestic work is done in households (not considered as workplaces) of private persons (not considered employers) that cannot be supervised by labour inspectors. Domestic workers' employment situation does not fit the general framework of existing employment laws so their working conditions remain, in essence, unregulated. In fact, not only do some countries not consider household helpers or domestic workers as workers and exclude them from protection under their national labour codes, but do not provide them with optional protection under any other national law.<sup>133</sup>

Thus, a number of domestic workers "remain outside the protection of labour legislation, leaving them little recourse in cases of abuse, non-payment or the arbitrary withholding of wages. In fact, a study conducted by the ILO, undertaken in sixty-five countries, reveals that only nineteen countries have specific laws or regulations dealing with domestic work."<sup>134</sup> Moreover, the hiring process usually occurs within the underground economy and employers exercise almost absolute discretion regarding the working conditions of the employee.<sup>135</sup>

Some national governments have begun efforts designed to improve domestic workers' employment conditions and protect their most fundamental human rights. As the authors Fitzpatrick and Kelly

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131. *Id.*

132. *Id.* at 21.

133. Chammartin, *supra* note 1, at 80.

134. A PASSAGE TO HOPE, *supra* note 6, at 52.

135. Romero, *supra* note 8, at 1062.

have said, "Sending states are taking modest steps to blacklist exploitative brokers, to provide consular services to nationals in receiving states, to empower migrants to protect themselves by means of required pre-migration training courses and to negotiate bilateral agreements that provide avenues of redress against abusive and dishonest employers."<sup>136</sup>

For example, the governments of Malaysia and the Philippines have adopted a default contract with minimum standards for Filipina domestic workers.<sup>137</sup> Recently, Jordan adopted legislation that confers the Ministry of Labor with the authority to ensure compliance with applicable regulations.<sup>138</sup> "Hong Kong labor laws guarantee a minimum wage, maternity leave, a weekly day off, public holidays and paid vacation time" for domestic workers.<sup>139</sup> In Italy, women are allowed to organize into migrant unions.<sup>140</sup> "The embassies of Indonesia, the Philippines and Sri Lanka all maintain mechanisms for fielding and addressing labor complaints, including offering assistance to secure legal advice and medical care."<sup>141</sup>

In general, the United States' domestic workers do not have the same legal protections as other workers.<sup>142</sup> With few exceptions,<sup>143</sup> the United States Congress has excluded domestic workers from many protections of labor and employment laws.<sup>144</sup> For example, the National Labor Relations Act (NLRA), which guarantees the right to organize and engage in collective bargaining, explicitly excludes domestic workers from its protection.<sup>145</sup> Domestic workers are also excluded from the Occupational Safety and Health Act (OSHA), which provides protection for workers against occupational dangers.<sup>146</sup> Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination, implicitly excludes domestic workers from coverage

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136. Fitzpatrick & Kelly, *supra* note 24, at 110-11.

137. A PASSAGE TO HOPE, *supra* note 6, at 54.

138. *Id.* at 55.

139. *Id.* at 54.

140. *Id.* at 55.

141. *Id.*

142. Young, *supra* note 8, at 27.

143. The Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219 (2000) sets requirements regarding minimum wage and record-keeping that apply to domestic workers. *Id.* § 206(f); 29 C.F.R. § 516.2 (2007).

144. Romero, *supra* note 8, at 1056.

145. 29 U.S.C. § 152(3) (2000).

146. *Id.* §§ 651-658.

because of the fifteen or more employee threshold that activates applicability.<sup>147</sup>

State laws generally fail to fill in the gaps left by federal legislation. For example, most states exclude domestic workers from minimum wage laws as well as statutes providing for workers' compensation, unemployment benefits and civil rights laws.<sup>148</sup>

The lack of government oversight and enforcement mechanisms contributes to the workers' vulnerability. It is even worse for alien domestic workers because, among other factors, many of them are ineligible for most welfare programs.<sup>149</sup> The United States, as well as many other receiving countries, continues "to prioritize immigration control objectives over protection of migrants' safety and legitimate economic expectations, frequently imposing serious obstacles to migrants' access to the criminal justice system or to civil dispute resolution mechanisms."<sup>150</sup>

The absence of a regulatory scheme in favor of immigrant domestic workers reinforces the abuse and the exploitation. It also perpetuates discrimination based on gender, race, national origin or immigration status.<sup>151</sup>

#### B. *Protection at the International Level*

International human rights should play a fundamental role in the protection of female immigrant domestic workers' rights. In fact, the disclosure of the abuses and exploitation suffered by many of them has attracted the attention of international human rights bodies and activists.<sup>152</sup>

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter, "MWC" or "MWC Convention"), in force since July 1, 2003, is the major normative instrument that protects immigrants' rights.<sup>153</sup> The MWC, which is based on the human rights recognized in other treaties or conventions, states that all immigrants, irrespective of their migratory status, are entitled to certain protection.<sup>154</sup> Hence, the MWC

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147. See 42 U.S.C. § 2000e(b) (2007).

148. Young, *supra* note 8, at 30-34.

149. Johnson, *supra* note 56, at 1550.

150. Fitzpatrick & Kelly, *supra* note 24, at 111.

151. Graunke, *supra* note 17, at 186-87.

152. See Fitzpatrick & Kelly, *supra* note 24, at 59.

153. See Information Kit on the United Nations Convention on Migrants Rights, <http://www.unesco.org/most/migration/convention/> (last visited Oct. 20, 2008).

154. *Id.*

Convention, *inter alia*, requires treatment no less favorable than that provided to nationals in relation to remuneration and conditions of employment and provides for effective protection by the state from violence and exploitation.<sup>155</sup>

The MWC has not been ratified by most developed countries.<sup>156</sup> As of August 2008, less than one-third of the one hundred and ninety-one (191) developed countries had ratified the MWC Convention.<sup>157</sup> Not one among the top ten immigrant-reception countries in the world has ratified the Convention.<sup>158</sup>

Although the MWC is an important instrument that protects migrant workers, it limits itself to a relatively vague and undifferentiated treatment of foreign domestic workers and does not address some of the gender-specific problems faced primarily by female immigrants.<sup>159</sup> In fact, there is no single, comprehensive, international instrument that broaches the asymmetrical problems confronted by female workers or which addresses the wide array of important agendas concerned with governing and policing the rights of female immigrants.<sup>160</sup>

However, other instruments may be construed as addressing these issues indirectly. For example, it is worth noting the Convention on the Elimination of All Forms of Discrimination Against Women,<sup>161</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>162</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>163</sup> These instruments prohibit discrimination on the grounds of sex, race, religion, language, political ideology, national or social origin, property, birth or other status.<sup>164</sup> In addition, they declare the

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155. *Id.*

156. *Id.*

157. *Id.*

158. A PASSAGE TO HOPE, *supra* note 6, at 68.

159. Fitzpatrick & Kelly, *supra* note 24, at 111; Jillyanne Redpath, *Human Rights of Migrant Women and International Protection Mechanisms*, in FEMALE MIGRANTS: BRIDGING THE GAPS THROUGHOUT THE LIFE CYCLE, *supra* note 2, at 86.

160. Jillyanne Redpath, *Human Rights of Migrant Women and International Protection Mechanisms*, in FEMALE MIGRANTS: BRIDGING THE GAPS THROUGHOUT THE LIFE CYCLE, *supra* note 1, at 85.

161. United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

162. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

163. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 999 U.N.T.S. 3.

164. *Id.*

right to freedom from slavery, torture, and inhumane and degrading treatment.<sup>165</sup>

#### CONCLUSION

While international law provides some protection to migrant women, the challenge lies in the implementation of protection at the national level, particularly in regard to migrant women in irregular situations.<sup>166</sup> “Indeed, the effectiveness of international standards protecting the rights of migrant women is only as good as the domestic legislation, policy and practices implementing them. Effective protection requires political will at the national level.”<sup>167</sup>

In recent years, the failure of national laws and international treaties to adequately address the problems faced by domestic workers has caused the emergence of non-governmental organizations, both national and international, that work toward the human rights of domestic workers.<sup>168</sup> For example, the RESPECT network of migrant domestic workers campaigns for the rights of women and men working in the European Union.<sup>169</sup> In the United States, the Break the Chain Campaign is a coalition of organizations that campaign in favor of the rights of trafficking victims and exploited domestic workers.<sup>170</sup> However, it is not enough; the efforts to improve the international and national regulatory scheme addressing these issues constitute an open agenda that is far from being ideal or even acceptable:

Today, the world has an opportunity to right the wrongs of “migration gone bad” and assist some of the world’s most marginalized and exploited workers . . . migrant domestic workers. To do so, however, will require multi-lateral, global, regional and national efforts to implant and enforce international and national human rights standards relating to migration. Only then will the world put a halt to some of the most egregious and hidden human right abuses ever perpetrated. Slavery is alive and well in the 21st century. The battle to end it must be decisive.<sup>171</sup>

A good way to start is to combat the silence and the conformity. Evoking the words of Julia de Burgos, the renowned Puerto Rican poet

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165. See Jillyanne Redpath, *Human Rights of Migrant Women and International Protection Mechanisms*, in *FEMALE MIGRANTS: BRIDGING THE GAPS THROUGHOUT THE LIFE CYCLE*, *supra* note 1, at 87.

166. *Id.*

167. *Id.*

168. *A PASSAGE TO HOPE*, *supra* note 6, at 55.

169. *Id.*

170. *Id.*

171. *Id.*

and immigrant: “Cantemos, sí, cantemos, que al cantarle al silencio, a la sorda derrota y a la impar soledad, venceremos la muerte, venceremos la nada, y a la cumbre del tiempo nuestras almas irán.”<sup>172</sup>

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172. JULIA DE BURGOS, *TE LLEVARÁN, EL MAR Y TÚ; OTROS POEMAS* 80 (1954). This passage translates into English as: “Let us sing, yes, let us sing. By singing to silence, to dull defeat, and to uneven solitude, we shall triumph over death, we shall triumph over nothingness; and our souls shall reach the summit of time.” Ángel R. Oquendo, *The Solitude of Latin America: The Struggle for Rights South of the Border*, 43 *TEX. INT’L L.J.* 185, 229 n.257 (2008).