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**INTERSECTING PROTECTIONS, MIGRATING WOMEN:
USING HUMAN RIGHTS LAW TO EMPOWER WOMEN MIGRANT WORKERS***

MARGARET SATTERTHWAITE

NYU School of Law • New York, NY 10012
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**INTERSECTING PROTECTIONS, MIGRATING WOMEN:
USING HUMAN RIGHTS LAW TO EMPOWER WOMEN MIGRANT WORKERS**

© Margaret Satterthwaite
Research Director and Adjunct Assistant Professor of Clinical Law
New York University School of Law
Author email: satterth@juris.law.nyu.edu

The Center for Human Rights and Global Justice was established in 2002 to stimulate cutting edge scholarship and to make original and constructive contributions to on-going policy debates in the field of human rights. By emphasizing interdisciplinary analyses, the Center's programs seek to situate international human rights law in the broader context of the political, jurisprudential, economic, sociological, historical, anthropological and other influences that shape it and determine its impact. The Center's Faculty Director is Philip Alston, its Executive Director is Smita Narula, and its Research Director is Margaret Satterthwaite. CHRJJ thanks Stephanie Welch for copyediting and formatting this paper.

Abstract

Focusing on the exploitation of migrant domestic workers, this Working Paper argues that applying the methodology of intersectionality to human rights treaty law allows us to identify and articulate a set of robust standards relating to women migrant workers that can be applied to states—now. By shifting the focus from the single variable of “migration status” to the multiple variables relevant to women who migrate for work—including gender, race or ethnicity, and occupation—the treaties can be seen to work together to provide protection against exploitation.

The paper begins by describing the major forces combining to create gendered labor migration flows. The next section presents the concept of intersectionality, considers the issue of women’s “vulnerability,” and comments on the way in which human rights law can be used to reach “private,” non-state conduct. The following section demonstrates how intersectionality can be used by human rights advocates by applying the analytical model to one of the major issues that has been identified by rights advocates as especially pressing for women migrant workers: the problem of exploitative terms of work for women migrant workers.

The paper concludes by emphasizing the need to both insist on enforcement of existing protections, and to remain attentive to emerging claims. Such emerging claims may require scholars and advocates to push the current boundaries of rights frameworks to accommodate claims made by workers who are crossing borders at increasingly rapid rates.

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I. INTRODUCTION¹

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention or MWC) entered into force on July 1, 2003.² This event was celebrated as a major milestone in the effort to provide human rights protections to migrant workers all over the world—including the large number of women who migrate for work. Certainly, the existence of a binding human rights convention that provides explicit and extensive protections for migrant workers is a singular achievement. However, given that none of the primary receiving—"host"—countries have ratified the treaty,³ and that few are likely to do so in the near future,⁴ this victory is a limited one, even for human rights advocates accustomed to celebrating small achievements. For those concerned about the rights of women migrants, a dominant focus on the Migrant Workers' Convention could be detrimental—not only because such a focus would siphon off needed energy more wisely placed elsewhere—but also because it would allow states to marginalize the obligations they owe to women migrants under existing human rights law regardless of their decision to sign, ratify, or ignore this new treaty.

The temptation to counter-productive compartmentalization is by no means new or unique to advocates for migrants' rights: it is instead the product of the traditional single-variable human rights analysis still prevalent among human rights practitioners, U.N. experts, and those charged

¹ I am grateful to the following people for substantive comments and insightful assistance: Philip Alston, Kim Barry, Jean D'Cunha, Ratna Kapur, Gerald López, Alice Miller, Smita Narula, AnnJanette Rosga, Barbara Schulman, and Lee Waldorf. I would also like to thank Meghan Faux for contributions concerning International Labor Standards, and to Romaniã Iordache and Daniel Hardy for invaluable research assistance. Portions of this working paper began as a briefing paper for the U.N. Development Fund for Women (UNIFEM) to inform the agency's work to advance the rights of women migrant workers through its Empowering Women Migrant Workers in Asia program. I thank UNIFEM for permission to use relevant segments here.

² International Convention on the Protection of the Rights of All Migrant Workers and their Families, Dec. 18, 1990, ___ U.N.T.S. ___, entered into force 1 July 2003. The Migrant Workers' Convention was developed over a ten-year period, and was adopted by the U.N. General Assembly in 1990. The treaty, which is unusually long and detailed in comparison to the other major human rights conventions, was developed through a painstaking process of consensus building among both receiving and sending states. See Shirley Hune, *Migrant Women in the Context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, XXV INT'L MIGRATION REV. 800 (1991). The result is a treaty that includes a wide range of protections that also contain significant limitations clauses, which give ratifying states the ability to narrow the coverage of the treaty's norms. For example, while article 41 guarantees the right of documented migrants to vote in their countries of origin, the second clause of the article provides that this right shall be facilitated and exercised "in accordance with [each country's] legislation." While some host states have stronger protections than those included in the treaty for documented workers, many of those same states' laws may fall below the standards set out for undocumented workers. This simultaneous under- and over-protective nature means that many receiving countries are reluctant to sign the treaty. See Nicola Piper & Robyn Iredale, *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (2003) (setting out the wide range of obstacles to ratification identified through empirical research) (available at: http://www.unesco.org/most/apmrn_unconv.htm), and Patrick A. Taran, *Status and Prospects for the UN Convention on Migrants' Rights*, 2 EUR. J. MIGRATION & L. 85 (2000) (discussing major obstacles to widespread ratification).

³ As of August 18, 2004, the following states had ratified or acceded to the MWC: Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Kyrgyzstan, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Timor-Leste, Uganda, and Uruguay. UNOHCHR, *Status of Ratification of the Convention on the Protection of the Rights of All Migrant Workers and their Families*, available at: <http://www.unhcr.ch/html/menu2/6/cmw/ratifications.htm>.

⁴ See Piper & Iredale and Taran, *supra* note 2.

with implementing treaty norms at the national level. By focusing on a single aspect of experience—that of being a member of a racial minority, or a woman, for instance—and on the standards that seem most obviously to apply to those variables—such as the Convention on the Elimination of All Forms of Racial Discrimination (CERD) or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—human rights professionals often fail to examine and articulate the ways in which rights standards can be enlisted to provide strong protections for individuals whose experience crosses the pre-set institutional lines. Through the lens of such single-variable analysis, the MWC appears to be the only relevant standard for those who are migrant workers, since the treaty explicitly responds to the status “migrant.” Viewed through the framework of intersectionality on the other hand, all of the other major treaties have significant contributions to make to the empowerment of migrant workers.

In this short working paper, I will argue that applying the methodology of intersectionality to human rights treaty law allows us to identify and articulate a set of robust standards relating to women migrant workers that can be applied to states—now—by shifting the focus from the single variable of “migration status” to the multiple variables relevant to women who migrate for work—including gender, race or ethnicity, and occupation. Other scholars have demonstrated the ways in which the failure to use an intersectional approach leads to misapprehensions about individuals’ varied experiences of discrimination and subordination. Shifting the focus, I will argue here—more affirmatively—that intersectionality can also be applied to existing rights standards to produce a wide variety of empowering norms that advocates can begin to use right away.

It should be acknowledged immediately that intersectionality will not solve the most glaring and pressing predicament facing human rights practitioners: the problem of how to close the gap between theory and practice, between the ability to elaborate protective norms and the inability to halt egregious rights violations. Such a revelation, though potentially disappointing, should not be viewed as a weakness of the approach I forward here. Indeed, no matter what theory of norm internalization or treaty enforcement is chosen, it is clear that one of the main prerequisites to implementation of rights obligations is their unambiguous articulation under treaty law.⁵

Further, since there are no real enforcement mechanisms for human rights internationally, much depends on whether—and how—advocates take up the discourse of rights. Indeed, outside of the various regional human rights bodies (which have binding authority over states in various forms) human rights institutions and advocates largely rely on their power to “name and shame” as they monitor countries’ compliance with treaties. Despite the international human rights system’s

⁵ There is a growing literature examining the processes through which international norms are made part of domestic legal and political systems. *See, for example*, Harold Hongju Koh, *Bringing International Law Home*, 35 HOUS. L. REV. 623 (1998) (setting out key processes involved in “norm internalization,” through which international law norms become part of domestic legal systems); Margaret E. Keck & Kathryn Sikkink, *Human Rights Advocacy Networks in Latin America*, in *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 79-120 (1998) (describing the emergence of transnational human rights advocacy networks and their role in the implementation and enforcement of rights norms); and Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 1-38 (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink, eds.) (1999) (presenting a theory of domestic behavior change linked to international human rights norms).

significant limits, it provides advocates with a language and a material practice through which to engage states. Given the powerful transnational processes at work in producing conditions of life for migrant women, international human rights law should be seen as a crucial tool to capture the attention of both sending and receiving countries. What is needed is a skeptical engagement with human rights institutions and standards aimed at making states more responsive to the gendered, racialized, and class-specific impacts of economic globalization on women who cross borders to find work.

Through the lens of intersectionality, it is clear that treaty law prohibits governments from reducing policy decisions concerning the treatment of migrant workers to instrumental calculations about the economic impact of upholding entitlements. While advocates and scholars should welcome the Migrant Workers' Convention as an interpretive tool and as a potential site for the development of best practices, they should also turn away from that treaty to refocus their attention on the entire range of human rights treaties, insisting that the rights of women migrants are already included in the panoply of standards set out in those instruments.

Map of the Article

My argument will unfold as follows: in section II, I situate the experience of women migrant workers by describing the major forces combining to create gendered labor migration flows. In section III, I present the concept of intersectionality, consider the issue of women's "vulnerability," and comment on the way in which human rights law can be used to reach "private," non-state conduct. In section IV, I demonstrate how intersectionality can be used by human rights advocates by applying the analytical model to one of the major issues that has been identified by rights advocates as especially pressing for women migrant workers: the problem of exploitative terms of work for women migrant workers. In relation to this form of violation, I examine the ways in which human rights law can be called upon to require remedial steps and an end to abusive practices. The bulk of the analysis focuses on the experience of women in household service, since domestic work is the most prevalent occupation for women migrants around the world.⁶ The analysis draws on the five most relevant major human rights conventions,⁷ as well as several key ILO conventions:⁸ the Convention on the Elimination of All

⁶ INTERNATIONAL LABOUR ORGANIZATION [hereinafter "ILO"], PREVENTING DISCRIMINATION, EXPLOITATION AND ABUSE OF WOMEN MIGRANT WORKERS: AN INFORMATION GUIDE—BOOKLET 1: WHY THE FOCUS ON WOMEN INTERNATIONAL MIGRANT WORKERS 5 (2003) [hereinafter "Booklet 1"]. "To give a sense of the significance of women migrants in domestic work, some figures can be quoted: in Hong Kong, migrant domestic workers numbered more than 202,900 in 2000; between 1999 to June 2001, 691,285 Indonesian women left their country (representing 72 per cent of total Indonesian migrants) to work mainly as domestic workers abroad; and in Malaysia, there were 155,000 documented (and many more undocumented) migrant domestic workers in 2002; in Italy, 50 per cent of the estimated 1 million domestic workers are non-European Union citizens and in France over 50 per cent of migrant women are believed to be engaged in domestic work." *Id* at 10 (citations omitted). Globally, women make up 85% of maids and housekeeping personnel in the world. Richard Anker, GENDER AND JOBS: SEX SEGREGATION OF OCCUPATIONS IN THE WORLD 272 (1998).

⁷ Because this article focuses on women, the Children's Rights Convention and the rights of girls are not examined here.

⁸ ILO Conventions will be included when they are especially pertinent. This article does not provide a complete examination of the range of ILO protections available for women migrant workers. The ILO conventions examined in this article are: ILO CONVENTION NO. 111—DISCRIMINATION (OCCUPATION AND EMPLOYMENT), 1958 (ratified by 158 countries); ILO CONVENTION NO. 98—RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING, 1949 (ratified

Forms of Discrimination Against Women, the International Covenant on Social, Economic and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination, and the Migrant Workers Convention.⁹ Since the article focuses on treaty law, it does not include an analysis of the wide range of documents on migration produced by U.N. bodies in recent years, such as the reports produced by the U.N. Special Rapporteur on the Rights of Migrants¹⁰ and the Secretary-General,¹¹ resolutions of the U.N. General Assembly¹² and the Commission on Human Rights,¹³ documents relating to the International Commission on Migration,¹⁴ or the outcome documents from the various world conferences of recent years,¹⁵ though they were consulted as background. Further, important work being done at the regional level—including the recent

by 152 countries); ILO CONVENTION NO. 87—FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE, 1948 (ratified by 142 countries); ILO CONVENTION NO. 95—PROTECTION OF WAGES, 1949 (ratified by 95 countries); ILO CONVENTION NO. 131—MINIMUM WAGE, 1970 (ratified by 45 countries); ILO CONVENTION NO. 97—MIGRATION FOR EMPLOYMENT, 1949 (ratified by 42 countries); ILO CONVENTION NO. 155—OCCUPATIONAL HEALTH AND SAFETY, 1981 (ratified by 40 countries); ILO CONVENTION NO. 132—HOLIDAYS WITH PAY (Revised), 1970, (ratified by 32 countries); ILO CONVENTION NO. 30—HOURS OF WORK, 1930 (ratified by 30 countries); and ILO CONVENTION NO. 47—FORTY HOUR WEEK, 1935 (ratified by 14 countries).

⁹ Since the focus is on international treaty law, outcome documents from relevant world conferences (such as the Beijing Platform for Action and the Declaration and Programme of Action from the World Conference Against Racism) are not examined in this article, though special attention should be drawn to the Declaration and Platform for Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, since it includes very strong language concerning the rights of migrant workers, including women working in domestic service. See *Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, submitted pursuant to Commission on Human Rights Resolution 2001/52* (U.N. Doc. E/CN.4/2002/94) (15 Feb. 2002) for a discussion of the importance of the Durban documents for migrant workers. The work of relevant Special Rapporteurs is likewise not examined per se, though the factual information included in reports are integrated where relevant.

¹⁰ For information on the mandate and activities of the Special Rapporteur on the Human Rights of Migrants, see <http://www.unhcr.ch/html/menu2/7/b/mmig.htm>.

¹¹ See, for example, *Protection of Migrants: Report of the Secretary-General*, U.N. Doc. A/58/121 (2003); and *Protection of Migrants: Report of the Secretary-General*, U.N. Doc. No. A/57/134 (2002).

¹² See, for example, *Protection of Migrants*, U.N. GAOR, 54th Sess., Supp. No. 156, U.N. Doc. A/RES/54/212 (2000); *International Migration and Development*, U.N. GAOR, 54th Sess., Supp. No. 212, U.N. Doc. A/RES/54/212 (2000), *Protection of Migrants*, U.N. GAOR, 56th Sess., Supp. No. 170, U.N. Doc. A/RES/56/131 (2002); and *Violence Against Women Migrant Workers*, U.N. GAOR, 56th Sess., Supp. No. 131, U.N. Doc. A/RES/56/131 (2002).

¹³ See, for example, *Human Rights of Migrants*, U.N. CHR Res. 2003/46 (2003); and *Human Rights of Migrants*, U.N. CHR Res. 2002-62 (2002).

¹⁴ The Global Commission on International Migration is an independent commission made up of 15 experts from all regions. The Commission began its work in January 2004 and will deliver its report to the Secretary-General of the U.N. and other key decision-makers during the summer of 2005. See U.N. Department of Public Information, “Win-Win Outcomes Possible if Approach to Migration is Rational, Compassionate, Secretary-General Tells New Global Commission,” <http://www.un.org/News/Press/docs/2003/sgsm9064.doc.htm> (9 December 2003).

¹⁵ Special attention should be drawn to the Declaration and Platform for Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, since it includes very strong language concerning the rights of migrant workers, including women working in domestic service. See *Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, submitted pursuant to Commission on Human Rights Resolution 2001/52*, U.N. Doc. E/CN.4/2002/94 (2002) for a discussion of the importance of the Durban documents for migrant workers.

advisory opinion affirming the rights of all migrant workers issued by the Inter-American Court of Human Rights—is not examined in this article.¹⁶

In the concluding section, I emphasize the need to both insist on enforcement of existing protections, and to remain attentive to emerging claims. Such emerging claims may require scholars and advocates to push the current boundaries of rights frameworks to accommodate claims made by workers who are crossing borders at increasingly rapid rates.

This article is intended to contribute to the efforts of advocates to use existing protections *now*, rather than waiting until more states have ratified the MWC, or until the U.N. human rights treaty bodies are effectively working in close coordination. It is also aimed at advancing scholarly considerations of human rights by demonstrating that careful doctrinal work can help close the gap between rules and reality by providing the normative clarity that is a prerequisite to effective rights enforcement.

II. FEMINIZED LABOR MIGRATION IN THE CONTEXT OF GLOBALIZATION

The International Labor Organization estimates that there are between 80 and 100 million migrant workers in the world today.¹⁷ Women account for about half of these workers, and in some countries¹⁸ they make up more than half of all migrant workers.¹⁹ Indeed, many analysts—most notably the ILO—speak of the increasing feminization of migration.²⁰ This feminization results from a number of worldwide forces in which gender roles and sex discrimination are intertwined with globalization. Trends contributing to this include: the growing demand for labor in fields dominated by women (especially the service sector); the lower cost of production when labor-intensive tasks are shifted to women migrant workers;²¹ and the sex-stereotyping of large business enterprises and governments that may see women as cheap, temporary, or supplemental laborers whose “docile” nature makes them easily exploitable.²²

Other forces are more regional. Women’s widespread participation in the wage labor market in the North, when combined with global income disparities in the South and persisting demands

¹⁶ Advisory Opinion OC-18/03, *Requested by the United Mexican States: Legal Status and Rights of Undocumented Migrants*, Inter. Am. C.H.R., OEA. The opinion, though not legally binding, sets out clearly that migrant workers—documented and undocumented—should enjoy human rights, including workers’ rights, without discrimination based on their migration status. Further, the Court found that the principles of equality before the law and non-discrimination have achieved *jus cogens* status, and are thus binding on all states. The Court also held that non-discrimination and equality require due process of law to be extended to all—including undocumented migrant workers.

¹⁷ ILO, “About MIGRANT,” <http://www.ilo.org/public/english/protection/migrant/about/index.htm>.

¹⁸ “[I]n 2000, women represented 68 per cent of the 2.55 million Indonesian migrant workers abroad; 46 per cent of the 2.945 million Filipino documented and 1.840 million irregular migrant workers abroad; and 75 per cent of some 1.2 million Sri Lankan migrant workers abroad.” ILO, Booklet 1, *supra* note 6, at 9.

¹⁹ ILO, PREVENTING DISCRIMINATION, EXPLOITATION AND ABUSE OF WOMEN MIGRANT WORKERS: AN INFORMATION GUIDE—BOOKLET 4: WORKING AND LIVING ABROAD 2 (2003) [hereinafter “Booklet 4”].

²⁰ ILO, “The Feminization of International Labour Migration,” in Booklet 1, *supra* note 18, at 9. See also Patrick A. Taran and Eduardo Geronimi, *Globalization, Labor and Migration: Protection is Paramount* (2002), from the ILO INTERNATIONAL MIGRATION PROGRAMME, at 10.

²¹ See Saskia Sassen, *Notes on the Incorporation of Third World Women into Wage Labor through Immigration and Offshore Production*, 18 INT’L MIGRATION REV. 1144 (1984).

²² ILO, Booklet 1, *supra* note 6, at 19.

for Northern women to retain responsibility for household and childrearing tasks, has led to a dynamic in which Northern women's reproductive labor is transferred to women migrants working as domestics, whose reproductive labor is in turn shifted to family members or poor women at home.²³ In Western Asia, where oil booms have brought about major social and economic changes, the employment of foreign women domestic workers has become a status symbol.²⁴ Other changes include short-term labor shortages in sectors dominated by women, and the increasing participation of women in the labor market in newly industrialized countries.²⁵

From the perspective of women seeking work, a wide variety of factors combine to make border-crossing an attractive, acceptable, or—in desperate circumstances—the only viable option.²⁶ For example, many women cross borders in search of better pay or broader horizons. In countries where structural adjustment policies and privatization have been imposed, broad cuts to the public sector often have a disproportionate impact on women, who make up a sizable proportion

²³ Scholars have noted that many migrant women workers are part of what one analyst calls the “international transfer of caretaking”:

the international transfer of caretaking refers to the three-tier transfer of reproductive labor among women in sending and receiving countries of migration. While class-privileged women purchase the low-wage services of migrant [women] domestic workers, migrant [women] domestic workers simultaneously purchase the even lower wage services of poorer women left behind in the[ir home countries]. In light of this transnational transfer of gender constraints that occurs in globalization, the independent migration of [women] domestic workers could be read as a process of rejecting gender constraints for different groups of women in a transnational economy.

RHACEL SALAZAR PARREÑAS, *SERVANTS OF GLOBALIZATION: WOMEN, MIGRATION AND DOMESTIC WORK* 62 (2001). See also Donna E. Young, *Working Across Borders: Global Restructuring and Women's Work*, 2001 Utah L. Rev. 1, 9 (2001) (explaining that “As middle class women enter the workforce, a vacuum is created within the home and housework becomes a commodity exchanged between women. The phenomenon of immigrant women's domestic work can be scrutinized, therefore, within the context of women's position within global labor markets and the intimate family setting.”); PIERRETTE HONDAGNEU-SOTELO, *DOMÉSTICA* 19-22 (noting the same dynamic); Hope Lewis, *Universal Mother: Transnational Migration and the Human Rights of Black Women in the Americas*, 5 J. Gender Race & Just. 197 (2001), at 218 (noting that many Afro-Caribbean women migrate to North America to work as domestics “while leaving their own children and parents in the care of relatives or lower-paid women or girls from rural areas in the Caribbean.”); ILO, *International Migration Paper #47, Sabika al-Najjar, Women Migrant Domestic Workers in Bahrain* 6 (2001) (stating that the entrance of Bahraini women into the wage labor market, alongside the persistence of family demands on women and the unwillingness of Bahrainis to take on domestic work has led families in Bahrain to seek assistance from foreign domestic workers); and JAN AART SCHOLTE, *GLOBALIZATION: A CRITICAL INTRODUCTION* 251-253, 252 (2000) (discussing the global dynamics that have created more opportunities for women in wage labor markets while failing to take away family burdens, leading to, *inter alia*, “[e]xpanded global markets in domestic servants. . .”).

²⁴ See al-Najjar, *supra* note 23, at 6. Bridget Anderson suggests that prestige is also a significant factor for Europeans hiring migrant domestic workers. See *Just Another Job? The Commodification of Domestic Labor*, in *GLOBAL WOMAN: NANNIES, MAIDS AND SEX WORKERS IN THE NEW ECONOMY* 104, 106 (Barbara Ehrenreich and Arlie Russell Hochschild, eds., 2002) (hereinafter “GLOBAL WOMAN”).

²⁵ See, for example, Noorashikin Abdul Rahman, Brenda S.A. Yeoh & Shirlena Huang, “*Dignity Over Due*”: *Transnational Domestic Workers in Singapore*, paper presented at the “International Workshop on Contemporary Perspectives on Asian Transnational Domestic Workers” (on file with author), at 2-3 (explaining that the introduction by the government of Singapore of the Foreign Maid Scheme in 1978 was an effort to encourage continued participation of women in the formal economic sphere).

²⁶ For a comprehensive discussion of the reasons women choose to migrate for work, see ILO, *PREVENTING DISCRIMINATION, EXPLOITATION AND ABUSE OF WOMEN MIGRANT WORKERS: AN INFORMATION GUIDE—BOOKLET 2: DECISION-MAKING AND PREPARING FOR EMPLOYMENT ABROAD* 9-20 (2003) (hereinafter “Booklet 2”). See also *Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, submitted pursuant to General Assembly Resolution 57/218* (U.N. Doc. A/58-275) (12 August 2003) (hereinafter “2003 GA Report”).

of the lower-level public sector jobs in many countries. Unemployment and cuts in social services may send such women abroad in search of new opportunities. In other places, women flee conflict or the aftermath of conflict, or cross borders for personal security, escaping violence and abuse.

Most job opportunities for women migrants are in unregulated sectors, including domestic work, informal/“off the books” industries or services, and criminalized sectors, including the sex industry.²⁷ This means that even women who cross borders legally may find themselves in unregulated—and often irregular—work situations.²⁸ In addition, the majority of opportunities that offer legal channels of migration are in male-dominated sectors such as agriculture and construction work,²⁹ putting women at a great disadvantage. The ILO explains that “the demand for foreign labor reflects the long term trend of informalization of low skilled and poorly paid jobs, where irregular migrants are preferred as they are willing to work for inferior salaries, for short periods in production peaks, or to take physically demanding and dirty jobs.”³⁰

In sum, globalization has ushered in increasing “pull” and “push” factors for women’s migration for labor at the same time as it has resulted in decreasing regulation of the labor market, growth in the informal sector, and the emergence of new forms of exploitation, many of which are gendered. In the midst of these trends, many governments are tightening migration controls while simultaneously allowing private employers and recruiting agencies to operate unchecked by regulation or inspection. This interplay of competing incentives sets the scene for abuse of those already disadvantaged through systems of discrimination and marginalization that operate along axes of gender, race, poverty and position within the global economic order. For women in many parts of the world, these trends spell increased vulnerability to exploitation and abuse, while simultaneously presenting opportunities for empowerment.

III. INTERNATIONAL INTERSECTIONALITY, WOMEN’S “VULNERABILITY” AND THE ROLE OF THE STATE

Although the human rights system is in many ways limited by the single-variable framework described in the introduction, the system is also flexible enough to allow for alternative interpretive methodologies. Through intersectionality, human rights law can effectively be used by advocates to respond to the myriad aspects of women migrant workers’ experience as multiply situated individuals. Further, human rights law can support carefully crafted responses to discrimination and exploitation that do not reinscribe women as “victims” in need of “protection.” Since states have obligations under treaty law to end discrimination and exploitation carried out by “private” actors, governments’ efforts to end abusive practices should reach employers and recruitment agencies. This section provides a consideration of the rationale

²⁷ Taran & Geronimi, *supra* note 20, at 10.

²⁸ The ILO identifies four types of “irregular” migrant workers: (1) “Those who enter the country legally but whose stay or employment contravene the law,” (2) “Those whose stay and entry are lawful but who do not have the right to work and are engaged in illegal or illicit employment,” (3) “Those who enter the country illegally and who seek to change their status after arrival to find legitimate employment,” and (4) “Those who enter the country illegally, whose stay is unlawful, and whose employment is illegal.” ILO, Booklet 2, *supra* note 26, at 18.

²⁹ Taran & Geronimi, *supra* note 20, at 10.

³⁰ Taran & Geronimi, *supra* note 20, at 5.

behind the intersectional approach, suggests a shift in that approach and then discusses the issues of women's "vulnerability" and the state's obligations in the "private" sphere.

A. Intersectionality and International Human Rights

Intersectionality should be situated within a family of analytical frameworks designed to explore how individuals' experiences and identities interact with forms of authority and discipline, including the law. Developed by scholars from around the world, the larger family of critical methodologies in which intersectionality finds its home includes such well-established schools of critique as subaltern studies,³¹ postcolonialism,³² and a range of feminist inquiries in both the global North and South concerned with issues of identity and difference. As others have eloquently demonstrated, intersectionality shares with this much larger family of critiques the commitment to reconceptualizing the model of the "self" as unitary and unchanging.³³

Briefly, intersectionality is an approach to combating discrimination in which the various forms of subordination that people face are taken into consideration as they act together. Instead of conceiving of a Filipina domestic worker, for example, as separately or consecutively disadvantaged by gender and racial discrimination in the United States, intersectionality calls attention to the ways in which race and gender interact—or intersect—to create specific forms of discrimination and oppression. A Filipina migrant woman's experience of racism in the U.S. will be different than the racism experienced by a Filipino migrant man in the same location, and her experience of gender discrimination will differ from that of a native born American woman of any race; these differences are seen as crucially important by those using intersectional analysis, since they may require different remedial and preventive actions. Further, by focusing on the dynamics of multiple forms of discrimination, intersectionality emphasizes society's responses to variously situated individuals and groups rather than the characteristics of disparate sets of people.³⁴

The version of intersectionality most familiar to North American legal audiences was formulated in the 1990s by critical race feminists.³⁵ This American strand of intersectionality has since blended with other forms of intersectional analysis, and has been used and recrafted by scholars,³⁶ advocates,³⁷ and jurists³⁸ in both North America and abroad. The concept of "multiple

³¹ For an overview, see Ranajit Guha, *A SUBALTERN STUDIES READER, 1986-1995* (1997).

³² For an overview, see ROBERT J.C. YOUNG, *POSTCOLONIALISM: AN HISTORICAL INTRODUCTION* (2001).

³³ See Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 *EMORY L. J.* 71, 101-137 (2003).

³⁴ See Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* (2001) at 2 (noting that "A contextualized approach places less emphasis on characteristics of the individual and more on society's response to the person").

³⁵ See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. CHI. LEGAL F.* 139 (1989); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991); Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990).

³⁶ See *infra* note 40 for examples of some of these scholars.

³⁷ Advocates in the international arena have been using intersectionality, in one form or another, for many years. During the months leading up to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), women's rights advocates in many regions used the lens of intersectionality to discuss

forms of discrimination”—if not intersectionality—has even entered the language of U.N. documents. One of the most important instances is in the Declaration adopted at the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which recognizes that those suffering racial discrimination often “suffer multiple or aggravated forms of discrimination based on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status.”³⁹ Although the use of this language is an important move, intersectionality as a mode of analysis, in which all of the axes of discrimination are systematically considered as they work together, has not been truly integrated into the work of the human rights bodies of the United Nations.

Some scholars have pointed out that when combined with various strands of critical race and anti-essentialist theory, intersectionality allows analysts to move beyond debates over the ontological “essence” of the myriad identity categories used by individuals, communities, and states, enabling analysis of identities instead as fluid and changeable.⁴⁰ This transcendence could be especially valuable when examining identities that cross borders, since the conditions that construct and impact on those identities are likely to vary a great deal in different settings.

various forms of intersecting discrimination women experienced. *See* International Movement Against All Forms of Racism and Discrimination, *NGO Joint statement to the Commission on Human Rights*, available at <http://www.imadr.org/project/icr/ngojointstatement.march2001.html> (2001); NGO Forum, *Intersectionality of Race and Gender in the Asia-Pacific*, available at <http://www.hurights.or.jp/wcar/E/doc/gender/Genderracismpaper.htm> (NGO position paper prepared for the Asian Regional preparatory committee for WCAR); Human Rights and Equal Opportunity Commission (Australia), *Gender and Race Intersectionality*, available at <http://www.humanrights.gov.au/worldconference/>; Susana George, *Why Intersectionality Works*, 2 WOMEN IN ACTION (2001), available at <http://www.isiswomen.org/pub/wia/wiawcar/intersectionality.htm> (discussing the usefulness of intersectionality analysis in preparatory work for WCAR).

³⁸ For a discussion of the use of intersectionality by Canadian courts, *see* Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* (2001).

³⁹ Declaration of the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, §2. *See also* CERD Committee, *The Gender-related dimensions of racial discrimination*, *General Recommendation No. XXV, 2000*, contained in U.N. Doc. No. HRI/GEN/1/Rev.6 (2003), at 216 (noting that “racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life”).

⁴⁰ *See* Bond, *supra* note 33, at 101-137. Sociologist AnnJanette Rosga has pointed out that some critical race feminists, intending to “disrupt the legal tendency to view identity factors additively—as parts tacked on to a presumed neutral, so that a black woman is treated as a ‘white woman plus,’ in the end fail to challenge the ways in which even legal articulations of multiply constituted identities can still trap analysts into assuming static identity categories as component parts rather than contextually variable formations.” *See* Rosga, *Policing the State: Violence, Identity & the Law in Constructions of Hate Crime*, 32-33, n.29 (Ph.D. Dissertation, University of California, Santa Cruz, 1998). *See also* Isabelle V. Barker, *Disenchanted Rights: The Persistence of Secularism and Geopolitical Inequalities in Articulations of Women’s Human Rights*, *CRITICAL SENSE* 103, 106-107 (Fall 2002) (noting that intersectionality fails to disrupt “discrete” categories of identity). Similarly, some legal scholars have argued that extensions of intersectionality analysis that include a commitment to anti-essentialism, an examination of multiple forms of discrimination (beyond race and gender), or more complex understandings of processes of subordination, should be called “post-intersectionality” theory. *See* Darren Lenard Hutchinson, *Identity Crisis: “Intersectionality,” “Multidimensionality,” and the Development of an Adequate Theory of Subordination*, 6 *MICH. J. RACE & L.* 285 (2001) (reviewing his own theory of “multidimensionality” as well as that of scholars Francisco Valdes, Elvia Arriola, and Peter Kwan). I am intentionally retaining the term “intersectionality” because I believe it is expansive enough to include all of these later improvements, and because it is the term that has been taken up by rights practitioners internationally.

Indeed, I argue here that the anti-essentialist insight could be taken one step further, particularly when undertaking international analysis, where legal, social and economic regimes differently configure relevant identities. For too long, rights analysis has been forced to respond to discriminatory processes by speaking within those processes' own terms: accepting specific sets of identities but challenging their exclusiveness and the limitation of available remedies based on single-variable subordinated statuses. Instead, I would argue, international analysts should use intersectionality to zero in on the *processes of discrimination* that articulate themselves in the lived experience of each person. The emphasis should be on discriminatory practices and the ways in which they render salient certain features, characteristics or experiences, depending upon the legal and geographical borders within which individuals find themselves. This shift in emphasis will allow advocates to formulate responses to discrimination that acknowledge particular forms of exploitation as not only intersecting but as mutually constitutive. Such responses would also demand new ways of conceptualizing harm and remedy, rejecting the "additive" approach, in which race, gender, immigration status, and other axes of discrimination are dealt with serially, or where they are seen to "compound" one another.⁴¹

In recent years, a number of scholars have applied intersectionality analysis to international human rights norms and processes.⁴² In an important 1997 article, Lisa Crooms uses intersectionality to elucidate U.S. obligations under the CERD Convention. In the course of her discussion, Crooms notes the ways in which the human rights system—built on treaties that address different forms of discrimination and different groupings of substantive rights—seems to resist intersectionality on an institutional level, while making space for it at a theoretical level⁴³—through the concept of indivisibility, which holds that all rights are equally important.⁴⁴

⁴¹ See Ontario Human Rights Commission, *supra* note 38, at 22-25 (noting that "Although courts and tribunals have acknowledged the reality of discrimination on more than one groups, there are no clear directions on dealing with remedies in these types of claims."). See also Celina Romany, *Themes for a Conversation on Race and Gender in International Human Rights Law*, in *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* 53, 60-65 (Adrien K. Wing, ed., 2000) (discussing, *inter alia*, the "compounded nature of gender and racial inequalities").

⁴² See Lisa A. Crooms, *Indivisible Rights and Intersectional Identities Or, "What Do Women's Human Rights Have to Do with the Race Convention?"*, 40 *How. L.J.* 619 (1997); Bond, *supra* note 33; in Romany, *id.*; Hope Lewis, *Global Intersections: Critical Race Feminist Human Rights and Inter/National Black Women*, 50 *ME. L. REV.* 309 (1998) (calling for the use of intersectionality and critical race feminism more generally to analyze the discrimination suffered by diverse groups of women, using transnational migrant women from the Caribbean as an example); and Llezlie L. Green, *Gender Hate Propaganda and Sexual Violence in the Rwandan Genocide: An Argument for Intersectionality in International Law*, 33 *COLUM. HUMAN RIGHTS L. REV.* 733 (2002) (using Kimberle Crenshaw's model of intersectionality to argue that an intersectional analysis of the targeting of Tutsi women during the Rwandan genocide would "provide a more effective and equitable result for the victims of sexual violence").

⁴³ The international human rights system resists intersectionality on an institutional level in that the major treaties and their monitoring bodies each deal separately with particular sets of rights and forms of discrimination—freedom from racial discrimination under CERD, freedom from gender discrimination in CEDAW, for example. The system allows for intersectionality on a theoretical level, however, by insisting on the indivisibility of all human rights: as Crooms explains, "proponents of indivisibility see oppression as caused by interlocking and interdependent institutions. . ." Crooms, *supra* note 42, at 625-6, 628 ("Structured in this way, international human-rights law appears to be caught in a schizophrenic space. On the one hand, documents such as the Charter and the UDHR, express rights in a way that permits [interlocking forms of] oppression [to be addressed]. On the other hand, the . . . conceptual stance reflected in the Charter and the UDHR is compromised by the existence of separate covenants, conventions and declarations, the ranking of rights in an overarching hierarchy, and the procedures by which states choose which instruments to ratify and under what conditions they will do so.").

⁴⁴ See Crooms, *supra* note 42, at 628-632.

If applied holistically and robustly, Crooms concludes, human rights law can respond effectively to women's intersectional experiences of racism, sexism, and other forms of discrimination.

Similarly, Kimberle Crenshaw—a pioneer of intersectional analysis in relation to U.S. domestic law—has explored the ways in which “[n]either the gender aspects of racial discrimination nor the racial aspects of gender discrimination are fully comprehended within human rights discourses.”⁴⁵ Discussing the failure of the human rights system to address the ways in which multiple forms of subordination interrelate, Crenshaw emphasizes that “the intersectional problem is not simply that one discrete form of discrimination is not fully addressed, but that an entire range of human rights violations are obscured by the failure to address fully the intersectional vulnerabilities of marginalized women and occasionally marginalized men as well.”⁴⁶ Crenshaw recommends a number of specific steps that should be taken by the human rights community to implement intersectionality. The majority of her recommendations are institutional or procedural, ranging from improved disaggregation by gender and race of all statistics used in human rights monitoring to the appointment of a Special Rapporteur to develop greater awareness about the conditions of women of color and the convening of joint meetings by the CERD and CEDAW monitoring committees.⁴⁷ Crenshaw also recommends that treaty bodies interpret their own mandates as requiring intersectional analysis, though she limits this recommendation to the CERD and CEDAW committees.⁴⁸

Building on this work, Johanna Bond has recently called for renewed attention to intersectionality in the international arena, and has identified specifically the need for both a “theoretical shift” toward using intersectionality, and institutional reforms aimed at encouraging intersectional analyses by the treaty bodies and other U.N. human rights mechanisms. When it comes to concrete proposals, Bond's focus is heavily on institutional reforms, with suggestions ranging from the drafting of General Recommendations and Comments that would promote intersectionality to the appointment by treaty committees of cross-treaty liaisons and the development of joint reports by the Special Rapporteurs on Violence Against Women and the Special Rapporteur on Racism and Xenophobia.⁴⁹ She also points to the need for more scholarship that applies—rather than theorizing—intersectionality to human rights problems.⁵⁰ As she explains:

. . . the notion of the “intersectionality” of racism, sexism, classism, and heterosexism must inform the way in which we conceptualize women's human rights. Individuals do not experience neatly compartmentalized types of discrimination based on mutually exclusive forms of, for example, racism and sexism. Rather, individuals experience the complex interplay of multiple systems of oppression operating simultaneously in the world. To deal with this practical reality, intersectionality must [inform the ways in which advocates] promote human rights around the globe.⁵¹

⁴⁵ Kimberle Crenshaw, *Background Paper for the Expert Meeting on the Gender-Related Aspects of Race Discrimination* 1 (2000), available at: http://www.wicej.addr.com/wcar_docs/crenshaw.html.

⁴⁶ *Id.* at 7.

⁴⁷ *Id.* at 15-18.

⁴⁸ *Id.* at 15-16.

⁴⁹ Bond, *supra* note 33, at 152-160 (theoretical shifts) and 161-184 (institutional reforms).

⁵⁰ *Id.* at 75-76.

⁵¹ *Id.* at 76.

Taking up this challenge, I use intersectionality in this article to analyze the situation of women migrant workers. I intend to perform the kind of analysis requested by Crenshaw and Bond: examining some major human rights concerns women migrant workers face, I will set out the ways in which race, gender, and other variables interact in the daily lives of women migrant workers. But I also intend to push beyond this applied form of intersectionality with its focus on identifying forms of discrimination and suggesting institutional reform. Shifting the emphasis from only *articulating* forms of discrimination to also *identifying protections*, I will use intersectionality to uncover those human rights norms that already exist, and which could be called upon to fight the subordinating practices made so clear through intersectional descriptions of violations.

By examining all of the relevant U.N. human rights treaties together, the analysis takes indivisibility seriously and refuses to cordon off women's experience of gender discrimination from their experience of racism, xenophobia, or exploitation as workers in unregulated sectors. The analysis is also intentionally practical, sorting through the intricacies of the various human rights instruments and how they have been interpreted and applied to women migrant workers.

B. On Women's "Vulnerability"

Although necessary, rooting an analysis of human rights violations in women's lived experiences is fraught with danger.⁵² As Ratna Kapur has explained, this kind of focus can lead to "victimization rhetoric," in which women—usually from the global South—are presented as nothing other than the sum of their vulnerability, abuse, and victimhood:

In the context of law and human rights, it is invariably the abject victim subject who seeks rights, primarily because she is the one who has had the worst happen to her. The victim subject has allowed women to speak out about abuses that have remained hidden or invisible in human rights discourse. . . . However, an exclusive reliance on the victim subject to make claims for rights and for women's empowerment has some serious limitations.⁵³

Kapur explains that there are three main problems with this kind of approach: (1) it relies on gender essentialism, or "overgeneralized claims about women," (2) "it is a position based on cultural essentialism" in which "[w]omen in the Third World are portrayed as victims of their culture, which reinforces stereotyped and racist representations of that culture and privileges the culture of the West," and (3) the rhetoric of victimization "has invited protectionist, and even conservative, responses from states" to violations of women's human rights.⁵⁴

I attempt to avoid these problems by rejecting the common narrow focus on violence against women migrant workers and the trafficking of women. Many scholars have critiqued the seemingly exclusive focus on the "vulnerability" of women migrants—which often manifests itself through the emphasis on ending (usually sexual) violence against women migrants⁵⁵ and trafficking in women.⁵⁶ I do not mean to dispute the existence, pervasiveness, or perniciousness of these violations. I have chosen not to address trafficking, however, both because I feel it is much better addressed elsewhere, and because I seek to contribute to a wider discussion about

⁵² *Id.*, at 158-159 suggests that intersectionality in particular threatens to overemphasize victimization: "Because intersectionality focuses on the intersections of systems of subordination, the analysis may gravitate toward an overemphasis on victimhood. Theorists and activists using intersectionality in the international human rights context must carefully avoid this tendency by exploring the myriad ways that victims of intersectional human rights violations around the globe resist oppression."

⁵³ Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics* 15 HARV. HUM. RTS. J. 1, 5-6 (2002).

⁵⁴ *Id.* at 5-7.

⁵⁵ See, for example, Donna Maeda, *Inter/National Migration of Labor: LatCrit Perspectives on Addressing Issues Arising With the Movement of Workers: Agencies of Filipina Migrants in Globalized Economies: Transforming International Human Rights Legal Discourse*, 12 LA RAZA L.J. 317 (2002) (noting that "the focus on vulnerability centers the 'migrant' as a kind of status category for human rights analysis. Rather than addressing conditions that disable people from living well as human beings and focusing on changing these conditions, this human rights model places migrants into a status category with particular harms.") *Id.* at 326.

⁵⁶ See Lewis, *supra* note 23, at 222 ("At this early stage in the recognition of the human rights implications of female migration, the attention of most mainstream human rights organizations remains fixed primarily on the physical and sexual abuses associated with slavery and trafficking. They document conditions involving literal enslavement or indentured servitude, such as the horrific cases reported in the United States involving foreign diplomats as employers. Are the stories of economic, social, and cultural violations that many other female migrant workers experience too 'ordinary' for us to see them as a matter of human rights urgency?").

the rights of women who consciously choose to cross borders, and whose agency in such decisions—while constrained by economic, cultural and political forces—is not the central problem to be addressed.

Instead of focusing on violence and trafficking, I examine the full range of human rights entitlements women migrant workers should enjoy—civil and political, social and economic. Further, I examine the experience of women in many regions, and explicitly reject protectionist responses by states as contrary to human rights norms. Finally, I treat women’s “vulnerability” not as a quality that inheres in them as some analyses seem to suggest or assume. I attempt to demonstrate that it is instead the product of political, economic, and cultural forces acting along a variety of identity axes, including gender, that disempower specific sets of women in particular ways. Focusing exclusively on women’s vulnerability effectively shifts the focus away from the forces of global inequality, the gendered divisions of labor, and the forms of racism and xenophobia that work together to ensure that women migrant workers remain marginalized. Applied international intersectionality is meant instead to foreground those forces that render women vulnerable to abuse alongside the rights that can be called upon to fight that constructed vulnerability.

C. Reaching “Private” Conduct Through Human Rights Law

Women migrant workers face abuses at the hands of government officials, as well as private individuals, companies, and other “non-state actors.” This is true all along a migrant’s trajectory of movement, as well as in her chosen place of work. In fact, most of the abuses described in this article are committed by “private” actors in the sense that they are not carried out directly by government personnel, but are instead perpetrated by employers and recruitment agencies. For this reason, it is important to acknowledge the ways in which the human rights framework has evolved to respond to abuses that are carried out by agents other than the state.

Against a general backdrop in which human rights obligations were assumed to function as a check on state actions, a number of developments have emerged in the last several decades that can be said to have dramatically altered that orientation forever.⁵⁷ First, as scholars of economic and social rights are quick to point out, human rights law was never really designed only to halt the abuses of the state: it was also written to include affirmative duties on states to ensure that those within their jurisdiction enjoyed a set of basic subsistence rights, such as the right to food, adequate housing, education, and health.⁵⁸ Through the development of the economic, social and cultural (ESC) rights regime, it has become clear that the state is not necessarily required to *provide* the goods needed to fulfill ESC rights.⁵⁹ Private individuals and groups—including families, communities, companies, or other groupings—may provide food, water, shelter and work to people in various countries. The state, however, is recognized as obligated to ensure that (a) conditions are such that even the most marginalized and poor can access their subsistence

⁵⁷ For a discussion of some of these changes, see Dinah Shelton, *Globalization and the Erosion of Sovereignty: Protecting Human Rights in a Globalized World*, 25 B.C. INT’L & COMP. L. REV. 273 (2002).

⁵⁸ See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter “ICESCR”].

⁵⁹ See MATTHEW CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* 120-124 (1995).

rights in some way—whether through access to private schemes or through direct provision of goods by the state,⁶⁰ and (b) when entrusting basic rights protections to the private sector, the state must regulate and monitor actions that could impinge on the rights of its people—through both action and inaction.⁶¹

The second major development that clarified the affirmative duties of the state in the “private” sphere was the achievement, through the work of feminists in many parts of the world, of acceptance that abuses such as domestic violence, even when carried out in the most sacrosanct of spaces, constitute human rights violations.⁶² This means that the state is required to take steps to prevent such abuses, to punish them when they occur, and to provide remedies to those who have been injured.⁶³ Having established this principle with respect to violence against women, it is now available for use with other forms of violation, including, for instance, discrimination that happens inside of companies, clubs, or recruitment agencies.

This broad set of positive and negative obligations for both private and public conduct has been abbreviated in the human rights field into the three-part requirement that states must respect, protect, and fulfill rights. States must *respect* rights by ensuring that the state and its instrumentalities do not violate rights; *protect* rights by preventing violations by non-state actors and investigating, punishing, and redressing violations when they do occur; and *fulfill* rights by creating enabling conditions for all individuals to enjoy their full rights.⁶⁴ In sum, then, in relation to both civil and political rights and economic, social and cultural rights, the state must ensure that conditions are such that all people enjoy all of their rights. Though the state actions required in relation to each set of rights—and indeed each individual right—may differ, this common framework is a helpful way of conceptualizing state obligations. It should help guide readers through the doctrinal analysis in this article: the focus is on the obligations of states, even when the abuses are occurring in private at the hands of non-state actors, since the state is ultimately responsible for setting up regulatory systems and monitoring schemes to halt such abuses.

One additional note is necessary here: human rights norms and interpretive methodologies have not yet been adequately well developed to respond sufficiently to the varying capacities of different states in the context of global economic inequality. This is a glaring gap in human rights law, since it means that states in poor Southern countries technically have similar responsibilities to fulfill individuals’ rights to adequate food and shelter, for example, as those in the North, even when Southern states’ governments may be encumbered by debt and lack of

⁶⁰ See *id.* at 140-142.

⁶¹ See, for example, CESCR, *The Right to Water, General Comment No. 15*, U.N. ESCOR, Comm. on Econ., Soc., and Cultural Rts., U.N. Doc. E/C.12/2002/11 (2002), paras. 23-24.

⁶² For a discussion of this shift, see UNIFEM, *NOT A MINUTE MORE: ENDING VIOLENCE AGAINST WOMEN* 16-25 (2003).

⁶³ See, for example, CEDAW, *Violence Against Women: General Recommendation No. 12*, U.N. Doc. No. A/44/38 (1989).

⁶⁴ The “respect, protect, fulfill” framework has developed over time, and is expressed in a variety of ways. For an example of the application of this framework, see CEDAW, *General Recommendation on Women and health* (No. 24, 1999) and CESCR, *General Recommendation on the Right to water* (No. 15, 2002). For a discussion and a variation, see HENRY J. STEINER AND PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* (2d ed., 2000), at 180-184 (including the obligations to respect the rights of others, protect rights and prevent violations, create institutional machinery, provide goods and services to satisfy rights, and promote rights).

infrastructure or resources. Work is being done to rectify this deficiency, through stronger application of the rule that states are bound only to the extent of their capability (or “maximum available resources”) and by emphasizing the obligation to pursue international assistance and cooperation.⁶⁵ However, because these rules have not been clearly elaborated in a set of consistent practices over time, anomalous results are not uncommon, with norms frequently developing that seem impractical at best, and impossible at worst, when applied to poor countries.⁶⁶

IV. INTERNATIONAL INTERSECTIONALITY: ARTICULATING ABUSES, IDENTIFYING RIGHTS

This section will begin by considering the principles of non-discrimination and equal protection as they apply to women migrant workers. Following this introduction to core principles, the second portion of the section will analyze the substantive treaty norms relevant to one of the most prevalent forms of discrimination and abuse that women migrant workers face: exploitative terms of work—especially abuses concerning pay, hours, and contracts.⁶⁷

Following a brief overview of the violations women experience in relation to terms of work, the relevant rights standards will be examined, alongside a brief consideration of some of the steps states may be required to take to fulfill their obligations to respect, protect, and fulfill the rights of variously situated women migrant workers under these treaties. This analysis will be based on a careful consideration of the major human rights treaties and their interlocking norms, as well as the interpretations of the treaties by their U.N. monitoring bodies.

This section is written in general terms, and includes descriptions of violations that occur in widely disparate circumstances. The common consideration of such violations may tend to decontextualize them, but it also highlights real similarities across geographical, political, and cultural spaces. These commonalities occur as a result of globalized labor and migration patterns, as well as both local and cross-national forms of gender discrimination and exploitation.⁶⁸ For

⁶⁵ See, for example, CESCR, *supra* note 61, at paras. 30-36, 36 (setting out the “international obligations” of states under the ICESCR, including the duty to “facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required”).

⁶⁶ For one example, see CESCR, *infra* note 152, in which the Committee on Economic, Social and Cultural rights expresses concern that workers in the informal sector in Senegal do not have access to social security. The implication is that the government of Senegal should bring all workers in the informal sector within the ambit of social security schemes. I am grateful to Ratna Kapur for calling my attention to this issue.

⁶⁷ In the longer article, I examine the following forms of abuse: Restrictions on the Freedom of Movement; Labor Market Discrimination Against Women—at Home and Abroad; Dangerous and Degrading Working Conditions: Safety and Health; Gender-Based Violence in the Workplace; Gendered forms of Racism and Xenophobia Against Women Migrant Workers; and Restrictions on Migrant Women’s Ability to Organize for their Rights.

⁶⁸ Parreñas, *supra* note 23, at 247 explains:

Globalization and its corresponding macroprocesses initiate the emergence of parallel lives in different settings. Macroprocesses do not have an umbrella-like impact, but they do impel the confrontation of similar issues of migration among workers in similar economic locations. Parallels therefore do not emerge out of some ontological similarity in institutions globally. They emerge from a particular process of globalization—global restructuring and its corresponding macroprocesses, which include but are not limited to the formation of the economic bloc of postindustrial nations, the feminization of labor, the unequal development of regions, the heightening of commodification in late capitalism, and the opposite turns of nationalism.

this reason, joint consideration is justified, and international human rights responses are especially important: the negative impacts of globalization cannot be corrected by any one state, but must instead be addressed by all states as they uphold their responsibilities to respect, protect and fulfill human rights.

Since this section is written in general terms, it does not examine questions that would be crucial for country-specific advocacy work, including the ratification status and extent of possible reservations to each of the treaties examined here. At a general level, this section examines the web of international norms that has been woven concerning women migrant workers. For that reason, the analysis in this section would only apply as a *legal* matter to states that have ratified the treaties under discussion without relevant reservations. As a *normative* matter, however, the existence of these rules, based on multilateral treaties that are in force for hundreds of states parties,⁶⁹ evidences certain ethical principles applicable in a persuasive manner to the whole international community, and contributes over time to the crystallization of customary international law rules. On this level, it should be remembered that different treaty norms will overlap, influencing the others via interpretive procedures, state practice, and jurisprudence. When working at the country level, legal analysis should be undertaken to determine the binding nature of the various standards discussed here in relation to the country under investigation. To do this, it will be necessary to determine which of the treaties examined here has been ratified, whether any reservations were made to the relevant provisions of those instruments, and what norms constitute customary law.⁷⁰

A. Core Principles: Non-Discrimination, Equality and Equal Protection—Ensuring Equality for Women Migrant Workers

Women migrant workers suffer specific forms of abuse and deserve full protection from these abuses under human rights law. While the human rights framework provides a wide range of standards and mechanisms that are relevant to this group, it is a challenge to build an analytical approach to women migrant workers' rights that will encompass *all* aspects of their experiences. At this stage in the development of the human rights framework, the experiences of women migrant workers have not been thoroughly and holistically articulated by international human rights analysis. Until now, women migrant workers have been situated at the crossroads of three major sets of norms: the human rights standards pertaining to women—mostly strong, protective standards; the human rights of workers—again, clearly articulated and robust; and the human rights rules concerning aliens or migrants—rules that remain in development, but which

⁶⁹ The exception is the Migrant Workers Convention, which entered into force on July 1, 2003. *See supra* note 3 for ratification information on the MWC. The other treaties are very broadly in force: as of November 2, 2003, the ICESCR, *supra* note 58, had 148 states parties; the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter "ICCPR"], had 151; the Convention on the Elimination of All forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 212 [hereinafter "CERD"], 169 and the Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (1979), *reprinted in* 19 ILM 33 (1980) [hereinafter "CEDAW"], had 174.

⁷⁰ The full version of this article includes a discussion of the human rights norms that can be used to argue against the imposition of overprotective measures and restrictive responses to abuses against women migrant workers. Since many governments have placed restrictions on women's freedom of movement and ability to seek employment abroad in response to rights violations they have suffered in receiving countries, it will be important to identify rules that can be used to guide states' choice of measures to respect, protect and fulfill women's rights.

currently offer less protection than the rules relating to women and to workers. While this somewhat uncomfortable position means that women migrant workers' rights should be very carefully articulated based on existing standards, it in no way means that they are unprotected. Indeed, as this article will demonstrate through the use of international intersectionality, women migrant workers have a wide range of clear rights to depend on, and states have existing obligations toward them that must be fulfilled.

In this context, this section will begin by setting out core principles underlying all human rights norms and applicable to everyone: non-discrimination, equality and equal protection of the law. Relevant provisions of the various human rights treaties embodying these principles will be examined, and their application to migrant women workers as both aliens and women will be considered.

The primary principles of non-discrimination, equality and equal protection of the law are essential to any human rights analysis, since they embody the general rule that human rights must be extended to all equally, and that avenues for redress should be made available to all on an equal footing. Over the years, these guarantees have been very strongly articulated with respect to certain groups that tend to face discrimination—including women. Unlike women, however, aliens and migrants, though they often face discrimination on the basis of their status as aliens or migrants, are not generally protected *as a category*.⁷¹ Indeed, some exceptions to the standards of equal protection and non-discrimination have been carved out in relation to these groups, allowing states to make certain distinctions between citizens and non-citizens, and between documented and undocumented aliens under international human rights law. This does not mean that states can violate the rights of aliens and migrants with impunity. Instead, it means that with respect to a small number of rights, states may limit their application to nationals or to regular, documented migrants. This subset of rights *never* includes the most fundamental guarantees—so-called “non-derogable rights”—and even permissible restrictions may not be imposed discriminatorily as between men and women. Further, since they are only permissible in specific circumstances, distinctions between citizens and non-citizens, and between documented and undocumented aliens should be scrutinized very closely.

The principle of equal protection requires states to ensure that individuals whose rights have been violated are able to access remedies on a basis of equality. Under this principle, women migrant workers should be able to seek remedies for rights violations in both their countries of origin and in the countries in which they work.

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) contains strong general non-discrimination and equal protection guarantees. Article 2 states that

[e]ach party to the present Convention undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized within the present Convention, without distinction of any kind such as race, color, sex, language,

⁷¹ The important and obvious counter-example is the Migrant Workers' Convention, which was created in part as a response to the gaps in existing conventions.

religion, political or other opinion, national or social origin, property, birth or other status.

This protective standard does not draw a distinction between the rights of citizens and non-citizens, and therefore requires states parties to extend the rights within the Convention to all individuals equally. Indeed, the reference to “national origin” in this article may be construed as a rule prohibiting discrimination on the basis of nationality: as the Human Rights Committee explained in its General Comment on the Position of aliens under the Covenant (No. 15, 1986), “the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof.”⁷² In its General Comment on the Nature of the general legal obligation imposed on states parties to the Covenant, the Human Rights Committee underscores this rule, emphasizing that

the enjoyment of Covenant rights is not limited to citizens of states Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves under the territory or subject to the jurisdiction of the state Party.⁷³

Article 3 requires states parties to “ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Convention.” This robust standard ensures women equal civil and political rights. In its General Comment on non-discrimination (No. 18, 1989), the Human Rights Committee noted that since the Covenant does not define discrimination, the definitions of discrimination set out in CERD and CEDAW should guide the interpretation of the ICCPR such that

the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground . . . and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.⁷⁴

This “purpose or effect” standard has been recognized as essential to international efforts to combat discrimination. Article 26 holds that all people are entitled to equal protection of the law. “The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground. . . .” This article is crucial because it extends equal protection of the law to all persons subject to the state party’s jurisdiction, including women and aliens. One of the most important ways to enforce nondiscrimination standards is to ensure that all individuals—here, women migrant workers—are able to vindicate their rights

⁷² *General Comment 15, The Position of Aliens*, U.N. Human Rights Committee, 27th Sess., reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. High Commissioner for Human Rights, U.N. Doc. HRI/GEN/1/Rev.6 140 (2003) [hereinafter “*Compilation of General Comments*”].

⁷³ *General Comment on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Human Rights Committee, __th Sess. (2004).

⁷⁴ *General Comment 18, Non-discrimination*, U.N. Human Rights Committee, 37th Sess., reprinted in *Compilation of General Comments*, *supra* note 72, at 146.

equally under the law. Violations of the right to equal protection are among the most critical violations that women migrant workers face, since such infringements compound the underlying violation for which a remedy is sought. For example, everyone has the right to be free of servitude, but when non-nationals or women are denied even the ability to challenge their servitude in a court in the country where they work, they are also facing a denial of the equal protection of the law. Further, since aliens benefit from equal protection under the Covenant, all legislation in states that have ratified the convention must be applied without discrimination to aliens.⁷⁵ This means that in states that have enacted protective legislation on wages or working conditions, for example, such protections must be applied equally to aliens, unless the state can demonstrate that the exemption of aliens aims at achieving a legitimate purpose under the Covenant.⁷⁶ This will be especially important in cases in which a state has ratified the ICCPR but not the ICESCR or other treaties guaranteeing substantive economic and social rights.

In general then, the protections of the ICCPR are guaranteed without discrimination between women and men, and between citizens and aliens.⁷⁷ Against this background rule, some articles are specifically limited to citizens.⁷⁸ These rights—to participate in public affairs, to vote and hold office, to have access to public services, and to enter one's own country—are rights directly tied to the status of citizenship in a democratic state.⁷⁹ The special nature of these rights makes their limited applicability to citizens acceptable.

In addition to these citizenship rights, there is one other category of rights that may be limited in relation to non-citizens in specific circumstances. Article 4 holds that in the instance of a public emergency, which “threatens the life of the nation and the existence of which is officially proclaimed,” states Parties may derogate from a limited set of obligations under the Covenant so long as the derogations are not implemented in a manner that discriminates on grounds of race, color, sex, language, religion or social origin. Note that unlike the general non-discrimination clause included in article 2(1), this list of prohibited classifications is narrower and does not include nationality. For this reason, states that have declared a public emergency may limit the rights of aliens, but only in relation to those rights which are not non-derogable, and even then, the limitations may not extend beyond those which are strictly required by the exigencies of the

⁷⁵ As the Human Rights Committee explained *id.*, article 26 “prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on states parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a state party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.”

⁷⁶ This is the rule set out by the Human Rights Committee in its General Comment on Non-discrimination (No. 18, 1989): “the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant,” U.N. Human Rights Committee, *supra* note 72, at para. 12.

⁷⁷ U.N. Human Rights Committee, *supra* note 72, at paras. 1 and 2.

⁷⁸ For a discussion of the structure of the norms concerned, see David Weissbrodt, Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights on the Rights of Non-Citizens, *Progress Report of the Special Rapporteur submitted in accordance with Sub-Commission decision 2000/103 and 2001/108, as well as Commission decision 2002/107* (U.N. Doc. E/CN.4/Sub.2/2002/25, at paras. 17-20 and 50-51) (5 June 2002).

⁷⁹ Human Rights Committee, articles 25 and 12(4). See Weissbrodt, *supra* note 78, for discussion.

situation.⁸⁰ This means that states may not use public emergencies as an excuse to limit the rights of aliens in ways that are unrelated to the emergency. Further, even when certain limitations are legitimate under the Covenant, it must be recalled that all of the non-derogable provisions and rights under the Covenant continue to protect citizens and aliens equally within a state party's jurisdiction. For these reasons, limits on the rights of women migrant workers during states of emergency must be closely scrutinized to ensure they are strictly necessary under the prevailing circumstances, and that they do not constitute sex-based discrimination.⁸¹

The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) includes strong non-discrimination guarantees in the field of social and cultural rights, and slightly less protective guarantees for economic rights.⁸² With respect to gender, the ICESCR contains a guarantee identical to that in the ICCPR: article 3 guarantees the equal right of men and women to the enjoyment of all economic, social and cultural rights. In addition, the list of protected groups in article 2 is also identical to those included in the ICCPR. Article 2 obliges states parties to “undertake to guarantee that the rights enunciated in the present Convention will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” As with the ICCPR, the reference to “national origin” in this article can be interpreted as a general rule prohibiting discrimination on the basis of nationality.

One specific exception to this rule is carved out, however, in article 2(3) of the Convention. Under this provision, developing countries may decide, “with due regard to human rights and their national economy, to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”⁸³ It must be stressed that this exception is limited to developing countries, and to *economic* rights. Aliens continue to have the right to the full complement of social and cultural rights in all countries. Further, by calling on states to make this decision with “due regard” to human rights and the national economy, the treaty makes clear that states may not use this provision as a general exemption from the obligation to protect the economic human rights of aliens. Further, even when permissible, it may be possible to argue, using article 3, that restrictions on the economic rights of aliens must not be applied in such a manner as to amount to sex discrimination. This would mean that both limitations on economic rights that are facially discriminatory on the basis of sex, and those which violate substantive equality by impacting women disproportionately, would be impermissible.⁸⁴

⁸⁰ *General Comment 5: Derogations During a State of Emergency*, U.N. Human Rights Committee, 13th Sess., reprinted in *Compilation of General Comments*, *supra* note 72, at 127.

⁸¹ See *General Comment 28 on the Equality of Rights Between Men and Women*, U.N. Human Rights Committee, 68th Sess., reprinted in *Compilation of General Comments*, *supra* note 72, at 179 (States may not discriminate on the basis of sex when derogating).

⁸² For a discussion of the protective regime concerning non-citizens under the ICESCR, see Weissbrodt, *supra* note 78, at paras. 21-24 and 50-51.

⁸³ ICESCR article 2(3).

⁸⁴ This argument would rely on analogy to principles guiding derogations and other permissible restrictions of rights under the ICCPR. First, the Human Rights Committee signaled that it would use a substantive equality approach to reviewing states' derogations under the Convention when it stated that (a) derogations may not be made on sex-discriminatory grounds, and that (b) they may not have a gender-discriminatory impact (see U.N. Human Rights Committee, *supra* note 72: “[t]he equal enjoyment of human rights by women must be protected during a state of

Convention on the Elimination of All Forms of Racial Discrimination

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) includes strong language requiring states parties to prohibit and eliminate racial discrimination in all its forms and to guarantee equality before the law to all without distinction as to “race, color, or national or ethnic origin.”⁸⁵ On its face, the reference to “national origin” appears to prohibit discriminatory distinctions between citizens and non-citizens as it does in the ICCPR and the ICESCR. The CERD Convention regime is more complex than this, however. Article 1(2) states that the Convention does *not* prevent the state from drawing distinctions between citizens and non-citizens: “[t]his Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a state party to this Convention between citizens and non-citizens.”

In addition to this provision, article 1(3) makes clear that the treaty will not affect the rights of states parties to determine how they grant nationality, citizenship or naturalization.⁸⁶ It is important to note that these provisions clarify the scope of the Convention rather than authorizing substantive restrictions on the rights of aliens. Article 1(2) is simply saying that CERD is not the standard to look to when determining the permissibility of distinctions on the basis of alien status.⁸⁷ This means that states Parties to CERD cannot find permission in the Convention to contravene the rights of aliens recognized in other human rights instruments, such as those included in the ICCPR and the ICESCR.⁸⁸ Indeed, those rights remain, and functionally trump the silence of the CERD Convention in this area.

emergency (art. 4). States parties which take measures derogating from their obligations under the Covenant in time of public emergency, as provided in article 4, should provide information to the Committee with respect to *the impact on the situation of women* of such measures and should demonstrate that *they are non-discriminatory*.” Para. 7) (emphasis added). Second, the Human Rights Committee has shown a similar attention to discrimination in permissible restrictions under the Covenant (*see General Comment 22, Right to Freedom of Thought, Conscience and Religion*, U.N. Human Rights Committee, 48th Sess., *reprinted in Compilation of General Comments, supra* note 72, at 155: stating that “[I]n interpreting the scope of permissible limitation clauses, states parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. . . Restrictions may not be imposed *for discriminatory purposes* or *applied in a discriminatory manner*.” Para. 8) (emphasis added).

⁸⁵ CERD article 5.

⁸⁶ CERD article 1(3) reads: “Nothing in this Convention may be interpreted as affecting in any way the legal provisions of states Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.”

⁸⁷ David Weissbrodt, the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights on the Rights of Non-Citizens, puts it this way: “The International Convention on the Elimination of All Forms of Racial Discrimination does not. . . pre-empt the rights of non-citizens enumerated in other international instruments.” *Preliminary Report of the Special Rapporteur submitted in accordance with Sub-Commission decision 2000/103* (U.N. Doc. E/CN.4/Sub.2/2001/20, at para. 16.) (6 June 2001).

⁸⁸ The CERD Committee explicitly recognized this in its General Recommendation on the rights of non-citizens (No. XI, 1993), where it stated that article 1(2) of CERD “must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Social, Economic and Cultural Rights and the International Covenant on Civil and Political Rights.” *General Recommendation XI, Rights of Non-Citizens*, U.N. Committee on the Elimination of Racial Discrimination [hereinafter “CERD Committee”], 42nd Sess., *reprinted in Compilation of General Comments, supra* note 72, at 202.

In addition, the CERD Committee has interpreted the Convention to require that otherwise permissible distinctions between citizens and non-citizens may not be applied in a racially discriminatory manner—in other words, an otherwise acceptable distinction between citizens and aliens is rendered discriminatory when it applies only to certain races or national origins.⁸⁹ Even more potentially far-reaching is the principle CERD set out in *Zaid Ben Ahmed Habassi v. Denmark*.⁹⁰ In that case, the Committee found that when circumstances suggest that alien status may be used as a proxy for racial discrimination, “a proper investigation into the real reasons” for the distinction are required by the state party. Failure to conduct such an investigation may amount to a violation of the convention. Under that rule, states may have an obligation to investigate distinctions on the basis of alien status—even by private actors—whenever such distinctions are suspected of being used as a proxy for impermissible discrimination.

In a more straightforward manner, the discrimination that migrants face often has little to do with their actual alien status, but is instead an overt function of racism, ethnic discrimination, and xenophobia; these forms of discrimination are clearly covered by the Convention.⁹¹ Finally, although CERD is silent with respect to sex discrimination, it has been interpreted to include prohibitions on gender-specific and gender-differential forms of racial discrimination, making it a very useful tool for women migrant workers.⁹²

Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW or Women’s Convention) was drafted with the object and purpose of eliminating discrimination against women, so its guarantees on this subject are very strong. CEDAW begins by setting out a strong general right to equality and non-discrimination, and proceeds to include specific provisions concerning substantive areas in which steps should be taken to dismantle gender discrimination and ensure the equality of women and men. The absence of provisions on specific topics, however, does not mean that CEDAW is inapplicable to that area. Indeed, the Convention applies to “all fields,” requiring states to dismantle sex discrimination and take effective measures for the advancement of women.⁹³

Specifically, the Convention obligates states parties to prohibit discrimination against women.⁹⁴ CEDAW’s definition of discrimination against women is expansive, and has been taken up by other treaty-monitoring bodies. Article 1 explains that “the term ‘discrimination against women’

⁸⁹ Weissbrodt, *supra*, note 87, at para. 17. The exact contours of this requirement have not yet been fully explored.

⁹⁰ CERD Communication 10/1997 (1999) (holding that an alien who was denied a bank loan on the basis that only citizens could be granted loans was denied his right to an effective remedy when the state failed to investigate the “real reasons” for the use of alien status for loan eligibility).

⁹¹ As the Special Rapporteur on Migrant Workers explains: “People whose color, physical appearance, dress, accent or religion are different from those of the majority in the host country are often subjected to physical violence and other violations of their rights, independently of their legal status. The choice of victim and the nature of the abuse do not depend on whether the persons are refugees, legal immigrants, members of national minorities or undocumented migrants.” *Report of the Special Rapporteur, Ms. Gabriella Rodriguez Pizarro, submitted pursuant to Commission on Human Rights Resolution 1999/44* (U.N. Doc. E/CN.4/2000/82, at para. 32) (6 Jan. 2000).

⁹² General Recommendation XXV, Gender-Related Dimensions of Racial Discrimination, CERD Committee, 56th Sess., *reprinted in Compilation of General Comments, supra* note 72, at 214.

⁹³ CEDAW article 3.

⁹⁴ CEDAW article 1.

shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women” of their human rights. Article 3 amplifies and expands this definition by requiring states to “take in all fields, in particular in the social, economic and cultural fields, all appropriate measures, including legislation to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”⁹⁵ This definition of discrimination—when paired with the guarantee of equality that accompanies it—should be understood according to the substantive equality model. This means that women’s rights are violated not only when, for example, laws formally treat them differently from men, but also when any law, policy, or action has the practical effect of disadvantaging them. This standard has important protective implications for women migrant workers. In effect, whenever a pattern can be found in which a certain law or policy has a disproportionately negative impact on migrant women, discrimination is present and the state must take active steps to ensure women their equal rights.

Article 2 explicitly requires states parties to ensure that women have “effective protection” against discrimination, through courts and other institutions. Article 15 guarantees women equality with men before the law. CEDAW does not directly address the rights of aliens, though as noted above, its equality provisions include women aliens’ right to substantive equality. By way of example, these standards would require a state in which a disproportionate number of women migrant workers were subjected to violence within their employer’s home—for instance, in states where violence against women domestic workers is widespread—to take steps to ensure effective protection from such abuse.

⁹⁵ CEDAW article 3.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers' Convention or MWC) includes clear non-discrimination and equal protection standards. Article 1 requires states parties to extend the rights contained in the Convention to all migrant workers and members of their families "without distinction of any kind such as sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status." By including both "national origin" and "nationality," the Convention is ensuring that discrimination on the basis of alien status is covered. Article 7 repeats this standard, but amplifies it by requiring states parties "to respect and to ensure" the rights in a non-discriminatory manner.

The Convention's equal protection provision is especially strong, since it makes clear that *all* migrant workers—documented and undocumented, male and female—must be treated equally before the law. Article 18 provides that migrant workers "shall have the right to equality with nationals of the state concerned before the courts and tribunals." Article 24 affirms that "[e]very migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law." The Convention also sets out a broad set of substantive rights, such as the right to life and freedom from torture, that must be extended to all migrant workers, regardless of their employment or residency status. The Convention does draw some distinctions based on regularity of status by extending a set of rights to those migrant workers who are "documented or in a regular situation"; these rights, outlined in part IV of the Convention, concern rights to equality in educational programs, participation in community affairs, and the freedom to choose residence in the host country.

B. Applied International Intersectionality: Examining Human Rights Norms Relevant to Exploitative Terms of Work

The remainder of this section will examine the exploitative terms of work that women migrant workers often face. It will begin with a description of the forms of abuse women face, and then move on to identify human rights standards relevant to those violations, alongside a consideration of steps states may be required to take to halt such abuses.

Exploitative Terms of Work: Pay, Hours & Contracts

A number of forces combine to render women migrant workers vulnerable to exploitative terms of work, especially in relation to pay, hours of work, and contracts. Restrictions on the right to cross borders for work, for example, create incentives for legal and illegal agents alike to take advantage of women migrant workers. Recruitment agencies—even when working legally—often charge steep fees for placement and travel; when working irregularly or without government oversight, such agencies often charge fees that are close to impossible to repay,

trapping women migrants into conditions akin to debt bondage.⁹⁶ Others house migrant workers in “collection” centers in the sending country for as long as several months before the receiving country processes the needed papers; conditions in such centers are sometimes horrendous, with women held incommunicado and given inadequate or rotten food.⁹⁷ Finally, agents who are working in direct contravention of national laws, facilitating women’s crossing of borders illegally, may use coercion, force, or false promises, placing women in clandestine domestic settings, illegal sex work, or exploitative sweatshops—practices that amount to trafficking. The ILO reports that

[w]omen tend to be more likely than men to make use of these illegal recruitment and migration channels because of their limited access to information, lack of time to search for legal channels and lack of financial resources to pay the fees. The nature of the work and the forms of migration open to women often force them to rely on fraudulent recruiters and dubious agents.⁹⁸

Regardless of their means of entry, women migrants face myriad types of exploitation, and contract problems abound. Women who actually receive a contract may not understand the language in which it is written.⁹⁹ They may find that the contract they sign is later replaced by an inferior version stripped of worker protections, or they may be refused a copy entirely.¹⁰⁰ In many places, contracts are concluded between the employer and recruitment agency alone, leaving the worker without any protection. When employees do sign contracts with employment agencies, they may be asked to sign “undertakings” in which they agree not to seek a change of employment or employer, not to engage in “immoral” behavior, not to marry a citizen or permanent resident, not to leave the premises of the employer without permission, and never to take a day off.¹⁰¹ In some countries, aliens or women who have contracts may face legal or

⁹⁶ MIDDLE EAST REPORT ran a story in 1999 detailing the conditions facing Sri Lankan women hired as domestic workers in Lebanon: recruited at home, they pay significant fees to a local agent, who arranges a connection with a Lebanese agency. The Lebanese agency then contracts with the employer, who pays a fee for a 2-3 year contract, often without the knowledge of the worker. Reed Haddad, *A Modern-Day ‘Slave Trade’: Sri Lankan Workers in Lebanon*, MIDDLE EAST REPORT, Summer 1999. See also ILO, Booklet 1, *supra* note 18, at 18 (discussing exorbitant fees, deceptive contracts, and other practices used by migration agents), and ILO, PREVENTING DISCRIMINATION, EXPLOITATION AND ABUSE OF WOMEN MIGRANT WORKERS: AN INFORMATION GUIDE—BOOKLET 3: RECRUITMENT AND THE JOURNEY FOR EMPLOYMENT ABROAD (2003) [hereinafter “Booklet 3”] at 20-21 (exploring debt bondage).

⁹⁷ ILO, Booklet 3, *id.*, at 24.

⁹⁸ ILO, Booklet 1, *supra* note 18, at 18.

⁹⁹ An ILO study explains that women from Ethiopia are often asked to sign a contract upon their arrival in Middle Eastern countries in languages that they do not understand. ILO—GENPROM Working Paper No. 3: Emebet Kebede, *Ethiopia: An Assessment of the International Labor Migration Situation—The Case of Female Labor Migrants*, 6-7.

¹⁰⁰ ILO, Booklet 3, *supra* note 96, at 22-23.

¹⁰¹ See Abdul Rahman, *supra* note 25, at 9 (discussing a set of rules for foreign domestic workers distributed by a recruiting agency to new employees: included in the rules are the requirement not to take a day off during the 2 years of employment, not to seek a change in employers, never to go to sleep before other members of the family unless it is exceptionally late, and always to be humble); ILO, Booklet 4, *supra* note 19, at 22 (citing and quoting I. Josiah, S.F. Lee & J. Kee, “Protecting Foreign Domestic Workers in Malaysia: Laws, Policies, Implication and Intervention” (unpublished paper prepared for the Women’s Aid Organization) (2003)); see also ILO, Booklet 3, *supra* note 26, at 22-23 (discussing a contract found in a travel agency that “recruited” workers in Ethiopia that explicitly stated that the domestic worker was not to leave her employer’s premises for the 2-3 year duration of the contract).

economic barriers in accessing courts or other judicial institutions, and host country courts may deem the contracts unenforceable.¹⁰² As may be expected, women in the informal, irregular, or illegal sectors are rarely given contracts.

Women migrant workers face a range of abuses connected with compensation.¹⁰³ Even when paid on time and according to the terms of any contract they may have been given, women migrant workers are often paid substandard wages. Human Rights Watch reported that the migrant domestic workers it had interviewed in the United States received an average of \$2.14 per hour—less than half the required minimum wage.¹⁰⁴ Employers may deduct dubious or blatantly unfair charges, including fees for health services that are never received, or fees for rent in situations of squalor.¹⁰⁵ Payments may be delayed, improperly calculated, or withheld arbitrarily. One common practice with respect to domestic workers is for employers to place payments into a bank account that they claim has been opened for the domestic worker, but to refuse her any access to this account until the end of her contract.¹⁰⁶ In some places, employment agencies offer domestic employers the option of “returning” a migrant worker after a period of time—often as long as three months in some places—if their services are deemed unsatisfactory. During the trial period, the employee is rarely paid, and once they are “returned” they must begin a new probationary period, during which they will again likely not receive pay. This kind of cycle—in which the employee is working without wages—has reportedly lasted more than a year in some countries.¹⁰⁷ Exorbitant fees for breaking contracts may be imposed. At the extreme end of the spectrum, women who are in conditions of debt bondage or slavery may not receive wages at all.

Women domestic workers often work in completely unregulated conditions: in some countries, those in the domestic sector do not count as “employees” under legal definitions, or are expressly exempted from labor codes protecting workers.¹⁰⁸ In such circumstances, employers take advantage of the vulnerability of women migrant workers by forcing or coercing them to work long hours, often without breaks or leisure time.¹⁰⁹ Indeed, “unscheduled availability at all times”

¹⁰² In the United Arab Emirates, for example, contracts are not binding unless they are concluded pursuant to a bilateral agreement with the sending country. There are currently no such bilateral agreements governing contracts for domestic workers, a fact that has not stopped recruiting agencies from furnishing workers with seemingly valid contracts. See ILO, Booklet 3, *supra* note 26, at 34. In Bahrain, contracts concluded with domestic workers are not binding under the provisions of that country’s labor code. See al-Najjar, *supra* note 24, at 21.

¹⁰³ See Booklet 4, *supra* note 19, at 23 for a discussion of the range of payment-related abuses.

¹⁰⁴ Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States* 17 (2001).

¹⁰⁵ See ILO, Booklet 4, *supra* note 19, at 25 for a discussion of accommodations for migrant domestic workers.

¹⁰⁶ See Kebede, *supra* note 99, at 8.

¹⁰⁷ *Id.*

¹⁰⁸ By way of example, the following countries expressly omit domestic workers from coverage under national labor laws: Japan, Korea, Malaysia, Qatar, and Sudan. The United States also exempts domestic workers from the protective rules of the National Labor Relations Act. See ILO, Booklet 4, *supra* note 19, at 12.

¹⁰⁹ See Special Rapporteur on the Human Rights of Migrants, 2003 GA Report, *supra* note 26, at para. 28 (noting that “Many domestic employees work long hours for a miserable salary and under truly inhumane and degrading conditions that sometimes amount to slavery”); see also ILO, International Migration Paper #48, Ray Jureidini, *Women Migrant Domestic Workers in Lebanon* 8 (2001) (noting that many domestic workers in Lebanon are “considered to be ‘on-call’ for 24 hours,” often requiring “cooking and cleaning until late at night when visitors are over, or nursing the children and assisting elderly people during the night”); Human Rights Watch, *supra* note 104, at 16-17 (domestic workers in the United States required to be on call 24 hours a day); Anderson, *supra* note 23, at

is often a characteristic of domestic work for women, an expectation modeled on gendered assumptions about women's roles in the home.¹¹⁰

Even when regulations do apply to them, discriminatory rules exempting domestic workers from normal hour limits, or setting long limits (as much as 12-16 hours¹¹¹ in some places) may exist. Exceptions to overtime and holiday pay rules also frequently apply to domestic workers. Further, women working as domestics rarely have days off¹¹²—even in places where rest days are regulated, domestic workers may be exempted or subject to special rules allowing a single or half day of leisure instead of the standard number applicable to other workers. An ILO study conducted in the United Arab Emirates found that not one of the women working as domestics surveyed benefited from a regular day off.¹¹³ While the families who employ domestics often explain the long hours by saying that such women are “part of the family,”¹¹⁴ this feeling is not shared by the employees themselves.¹¹⁵ One researcher in the United States found that many migrant domestic workers were asked to use a separate set of utensils and told when and how much to eat.¹¹⁶ Similar findings were reported in Taiwan, where migrant workers are often asked to wash their clothes separately from the family.¹¹⁷ One domestic worker explains: “We are treated like strangers, we are not allowed to sit on the furniture. It does not matter for them if you have a profession or not, you are here, you are a maid.” Another domestic worker adds: “When they talk about us they say words like: stupid, knows nothing, or maid. We are always inferior in their place.” And finally: “I am treated as a lower person because I am poor. They order us in a way that hurts. They don't sympathize with us. We are vulnerable in their houses, because we are poor.”¹¹⁸

106-107 (expectation of domestic workers' “permanent availability” in European households); and Nicole Constable, *Filipina Workers in Hong Kong Homes: Household Rules and Relations*, in *GLOBAL WOMAN*, *supra* note 24, at 124-125 (desire by employers in Hong Kong to have domestic workers available at all hours).

¹¹⁰ ILO-GENPROM Working Paper No. 2: Ana Isabel García, Manuel Barahona, Carlos Castro & Enrique Gomáriz, *Costa Rica: Female Labor Migrants and Trafficking in Women and Children*, at 18. *See also* Parreñas, *supra* note 23, at 164 (finding that Filipina live-in workers in Los Angeles and Rome have complained of the “absence of set parameters between their work and rest hours.”).

¹¹¹ The Labor Code of Costa Rica specifically allows employers of domestic workers to require 12 hour days, with the possibility of 4-hour additions when necessary. The Employment Act of Grenada provides for a 60-hour week for domestic workers, while restricting to 40 hours the work week of agricultural, construction, and industrial workers. *See* ILO, Booklet 4, *supra* note 19, at 12.

¹¹² The ILO reports that not one of a number of women interviewed about working as domestic workers in the United Arab Emirates reported receiving a day off. *See* ILO, Booklet 4, *supra* note 19, at 26. Similar stories emerged from Malaysia. *Id.*

¹¹³ ILO-GENPROM Working Paper No. 10: Rima Sabban, *Migrant Women in the United Arab Emirates: The Case of Female Domestic Workers*, at 25.

¹¹⁴ For a discussion of the “part of the family” phenomenon and the ways in which migrant domestic workers have attempted to subvert the familial discourse to their benefit, *see* Parreñas, *supra* note 23, at 179-195. *See also* al-Najjar, *supra* note 24, at 10-11.

¹¹⁵ Parreñas, *supra* note 23, at 165 found that Filipina domestic workers “regularly found themselves subject to food rationing, prevented from sitting on the couch, provided with a separate set of utensils, and told when to get food from the refrigerator and when to retreat to their bedrooms. These attempts by employers to regulate their bodies are described by domestic workers as part of the larger effort by employers to own them.”

¹¹⁶ *Id.*

¹¹⁷ Pei-Chia Lan, *Surrogate Family, Disposable Labour, and Stratified Others: Transnational Domestic Workers in Taiwan*, paper presented at the “International Workshop on Contemporary Perspectives on Asian Transnational Domestic Workers” (on file with author), at 10.

¹¹⁸ *See* Sabban, *supra* note 113, at 20.

The ILO explains that

a major incentive for exploitation of migrants and ultimately forced labor is the lack of application and enforcement of labor standards in countries of destination as well as origin. These include respect for minimum working conditions and consent to working conditions. Tolerance of restrictions on freedom of movement, long working hours, poor or non-existent health and safety protections, non-payment of wages, substandard housing, etc. all contribute to expanding a market for trafficked migrants who have no choice but to labor in conditions simply intolerable and unacceptable for legal employment. Worse still is the absence of worksite monitoring, particularly in such already marginal sectors as agriculture, domestic service, sex-work, which would contribute to identifying whether workers may be in situations of forced or compulsory labor.¹¹⁹

Human Rights Standards Relevant to Exploitative Terms of Work: Pay, Hours & Contracts

1. U.N. Human Rights Treaties

Through provisions on equal rights in employment, just and favorable working conditions, and equal protection of the law, the major human rights conventions offer forceful protections for women migrant workers against exploitative terms of work. CEDAW guarantees women equal rights in employment, including: the same employment opportunities as men, the free choice of profession, and the right to promotion.¹²⁰ The Convention also extends to women the right to equal remuneration, including benefits, and equal treatment in respect of work of equal value.¹²¹ The ICESCR recognizes the right to fair wages—defined in the Covenant as wages that, at a minimum, provide a decent living for the worker and her family—and includes the specific right to equal pay for equal work.¹²² Article 7(d) guarantees workers rest, leisure, and reasonable limitations on working hours and periodic holidays with pay, as well as remuneration for public holidays. These rights must be extended to women and men without discrimination.¹²³ CERD prohibits discrimination on the basis of race, color, or national or ethnic origin in work, free

¹¹⁹ Taran & Geronimi, *supra* note 20, at 11.

¹²⁰ CEDAW Article 11(1) guarantees women the right to equal rights in employment, including the right to the same employment opportunities as men and the application of the same criteria for selection in matters of employment. Article 11(1) also provides that women have the equal right to free choice of profession, and the right to promotion and job security.

¹²¹ CEDAW Article 11(1) also provides that women have the equal right to all benefits and conditions of service equal to men. The same article also guarantees women equal remuneration, including benefits, and equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work. Article 11(1) protects women's right to social security and the right to paid leave, on a basis of equality with men.

¹²² ICESCR Article 7(a) recognizes the right to the enjoyment of just and favorable conditions of work, including remuneration which provides all workers, at a minimum, with: fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and a decent living for themselves and their families.

¹²³ ICESCR Article 2 calls on states to ensure that the rights included in the Convention are exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ICESCR Article 3 requires states to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights in the Convention.

choice of employment, and just and favorable working conditions.¹²⁴ Under the ICCPR, all individuals—including women and men, aliens and citizens—are guaranteed equality before the law,¹²⁵ and aliens and women may not be treated differently in court based on their alien status or gender.¹²⁶ This guarantee of equality is amplified in the Migrant Workers' Convention, which clearly requires states to ensure that migrant workers benefit from the same terms of work as nationals, including remuneration, hours of work, overtime pay, weekly rest, and holidays with pay.¹²⁷ The Convention also provides that migrant workers must have equal access to the authorities to vindicate their contract rights,¹²⁸ and may claim their wages and other entitlements owed to them even if they have been expelled from the state of employment.¹²⁹ The ICCPR¹³⁰ and the MWC¹³¹ include protections against debt bondage or slavery-like practices.

¹²⁴ CERD Article 5(e)(i) guarantees the rights to non-discrimination on the basis of race, color, or national or ethnic origin in work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favorable remuneration.

¹²⁵ ICCPR Article 26 provides that all persons are equal before the law, and are entitled without any discrimination to equal protection of the law. The law should prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, including sex, race, color, national or social origin, or other status.

¹²⁶ ICCPR Article 14 provides that all people shall be equal before the courts and tribunals. In its General Comment on the position of aliens under the Covenant (No. 15, 1986), the Human Rights Committee emphasized that this guarantee of equality before the courts and tribunals applies to aliens, who must not be treated differently from citizens on the basis of their status. Concerning gender equality, the Human Rights Committee made clear in its General Comment on the equality of rights between men and women (No. 28, 2000), that women must have equal—and autonomous—access to justice under article 14.

¹²⁷ MWC Article 25 provides that migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the state of employment in respect of remuneration and other conditions of work, including overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work covered under domestic law. Article 25 also guarantees equal treatment with nationals concerning other terms of employment including minimum age of employment, restrictions on home work and any other matters that are considered a term of employment under domestic law. The same article also requires states Parties to take all appropriate measures to ensure that migrant workers are not deprived of any rights concerning remuneration and other conditions of work on the basis of irregularities in their work or residence status. Article 25 also provides that employers may not be relieved from obligations toward their workers on the basis of irregularities.

¹²⁸ MWC Article 54(2) provides that if a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the state of employment on the basis of equality with nationals of that state.

¹²⁹ MWC Article 22 guarantees migrant workers the right to claim wages and other entitlements even if they have been expelled from the state of employment.

¹³⁰ ICCPR Article 8 provides that no one shall be held in slavery, and that no one shall be held in servitude or required to perform forced or compulsory labor.

¹³¹ MWC Article 11 provides that no migrant worker or member of his or her family shall be held in slavery or servitude, and that no migrant worker or member of his or her family shall be required to perform forced or compulsory labor.

2. *International Labor Standards*

ILO treaties contain a number of protections for migrant workers concerning pay, hours and contracts. With respect to remuneration, the most relevant standards are conventions 97, 131, and 95, as well as a number of recommendations. The Migration for Employment Convention (Revised) (No. 97, 1949), requires states to apply to immigrants with regular status “treatment no less favorable than that which it applies to its own nationals” concerning, *inter alia*, remuneration, hours of work, overtime arrangements, and holidays with pay.¹³² The Minimum Wage Fixing Convention (Convention 131, 1970) requires governments to establish a minimum wage fixing system.¹³³ In deciding the minimum wage, the government must consider the needs of the family, the cost of living and living standard in that country.¹³⁴ Unfortunately, Convention 131 permits governments to exclude groups of workers they deem inappropriate for such a system.¹³⁵ Recommendation 100 on the Protection of Migrant Workers (Underdeveloped Countries, 1955) provides that wage standards should be set for migrant workers so that the lowest rates for unskilled workers can meet “normal family needs.”¹³⁶

The Protection of Wages Convention (Convention 95, 1949), requires that wages be paid in legal tender¹³⁷ and generally directly to the worker.¹³⁸ Article 8 of the same Convention states that deductions from wages are only permitted when prescribed by law, the collective bargaining agreement or arbitration award. Similarly, the Protection of Wages Recommendation (No. 85, 1949) states that wage deductions should be limited to ensure workers may make an adequate living.¹³⁹ It further provides that deductions for reimbursement of damaged or lost goods or equipment should only be permitted when the worker can clearly be shown to be at fault.¹⁴⁰ Finally, the recommendation suggests that wages be paid at least on a bimonthly or monthly basis.¹⁴¹ Recommendation 100 on the Protection of Migrant Workers (Underdeveloped Countries, 1955) affirms that wages must be paid regularly to ensure that workers have sufficient means available to meet their needs.¹⁴²

Concerning contracts, Recommendation 86 on Migration for Employment (Revised, 1949) provides that contracts should be translated into a language the migrant worker can understand.¹⁴³ Recommendation 100 states that governments should observe procedures for

¹³² Article 6.

¹³³ Article 1.

¹³⁴ Article 3.

¹³⁵ See Article 1. In its first report under this Convention, the member must explain why it has excluded certain types of wage earners from the Convention’s protections.

¹³⁶ Para. 23(1-2).

¹³⁷ Article 3.

¹³⁸ Article 5. Certain exceptions include where otherwise provided by law, contract or agreement of the worker. ILO Recommendation 100 reinforces these provisions.

¹³⁹ Para. 1.

¹⁴⁰ *Id.* at para. 2.

¹⁴¹ Para. 4.

¹⁴² Para. 30.

¹⁴³ Recommendation 86, annex I, article 22(2).

entering into employment contracts to make sure each worker understands the terms and conditions of work.¹⁴⁴

Regarding working hours, the Forty Hour Week Convention (Convention 47, 1935) states that each member to the Convention approves a forty hour week.¹⁴⁵ The Hours of Work (Industry) Convention (No. 1, 1919), and the Hours of Work (Commerce and Offices) Convention (No. 30, 1930) both guarantee an eight-hour day/48-hour week for the specific industries they cover.¹⁴⁶ Thus, employees covered by these conventions are guaranteed at least one day off each week. The Holidays with Pay Convention (No. 132, 1970), provides that each person to which the Convention applies shall have a minimum of three weeks annual paid holiday for one year of service.¹⁴⁷ Although Recommendations 86¹⁴⁸ and 151¹⁴⁹ affirm that documented migrant workers should be admitted to employment in the same conditions as nationals, many of the sectors in which migrant workers are most frequently hired are not covered by these standards because they are in the informal sector, or because they take place in the “private” sphere of the home.

In addition to these treaty-based standards, the ILO’s Declaration on Fundamental Principles and Rights at Work, adopted unanimously by ILO Member states in 1998, speaks specifically of migrant workers in its preamble and requires states to respect, promote and realize in good faith principles relating to the elimination of all forms of forced or compulsory labor.¹⁵⁰

3. *Measures to Respect, Protect and Fulfill*

States in which women migrant workers find employment may be required to adopt a wide variety of measures to ensure that women’s rights to fair terms of work are fully respected, protected, and fulfilled. Based on the relevant treaty provisions and the guidance given by the treaty bodies, it is now clear that states may be required to adopt a range of measures to fulfill their obligations, including the following examples. States should consider undertaking a comprehensive study on the employment situation of women migrants;¹⁵¹ such a study could

¹⁴⁴ Recommendation 100, part IV, para. 54 (“in cases where the terms and conditions of employment, the language, customs, or the currency in use in the region of employment are not familiar to migrant workers, the appropriate administrative service or services should ensure the observance of any procedure for entering into employment contracts so as to make certain that each worker understands the terms and conditions of his employment, the provisions of his contract, the details in regard to the rates and payment of wages, and that he has accepted freely and knowingly these terms and conditions.”).

¹⁴⁵ Article 1.

¹⁴⁶ Article 2, Convention No. 1; article 3, Convention No. 30.

¹⁴⁷ Article 3.

¹⁴⁸ Para. 16.

¹⁴⁹ Para. 2.

¹⁵⁰ ILO, *Declaration on Fundamental Principles and Rights at Work* (1998) (preamble: “Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers”; operative language: “Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: . . . (b) the elimination of all forms of forced or compulsory labour. . .”).

¹⁵¹ See, for example, *Concluding Observations: Germany*, Committee on the Elimination of Discrimination Against Women [hereinafter CEDAW Committee], 22nd Sess., U.N. Doc. A/55/38, paras. 287-333 (2000) (“Noting the Government’s intention to commission a study on the living situation and social integration of foreign women and

include an examination of the impact of discrimination on the basis of sex, race or ethnicity, and alien status, and focus on issues such as the use of contracts and their terms, the enforceability of contracts, pay rates, working hours, the deduction of fees, and the use of training periods to withhold payment. States that exempt domestic or non-national workers from labor protections should take steps to extend labor protections—including working hours and minimum wage standards—to these groups.¹⁵² Although some fair and non-discriminatory amendments might be needed to account for specific differences in workplaces, regulatory schemes concerning working conditions and terms of employment should be made applicable to workers in domestic service.¹⁵³ In places where regulations already apply to non-national and domestic workers, states should ensure that enforcement measures are effective, that monitoring takes place regularly, and that fines are imposed or licenses revoked wherever necessary.¹⁵⁴ Finally, states

girls, the Committee requests the Government to undertake a comprehensive assessment of the situation of foreign women, including their access to education and training, work and work-related benefits, health care and social protection, and to provide such information in its next report.” Para. 318).

¹⁵² See, for example, *Concluding Observations: Senegal*, U.N. Committee on Economic, Social, and Cultural Rights [hereinafter CESCR], U.N. Doc. E/C.12/1/Add. 62 (2001) (“The Committee is concerned that, while half of Senegalese workers are employed in the informal sector, most of them still lack access to basic social services, including social security and health insurance, and work long hours in unsafe conditions. The Committee is concerned that the state party is not taking appropriate measures to protect the rights of domestic workers, mostly women and girls, especially with regard to their lack of access to basic social services, their unfavorable working conditions and their wages, which are far below the minimum wage.” Paras. 20-21); *Concluding Observations: Jordan*, CESCR, U.N. Doc. E/C.12/1/Add. 46 (2000) (“The Committee is concerned that non-Jordanian workers are exempted from minimum wage provisions, are denied participation in trade union activities and are excluded from the social security system. The Committee is concerned that the 1996 Labor Code does not provide any protection for persons working in family-owned and agricultural enterprises, and domestic labor. It is precisely with respect to work in these areas that protection is most needed because it often involves hazardous working conditions, and largely female and child workers.” Paras. 19-20); *Concluding Observations: Morocco*, CESCR, U.N. Doc. E/C.12/1994/5 (1994). (“The Committee is also concerned that labor laws and regulations are largely ignored or disregarded in the informal and traditional sectors of the economy and that the absence or limited presence of labor inspectors in these sectors has impeded the effective implementation of regulations relating to just and favorable conditions of work, including health and safety of the workplace.” Para. 14). See also *Concluding Observations: Israel*, CERD Committee, 52nd Sess., U.N. Doc. CERD/C/304/Add. 45 (1998) (“The Committee encourages the state party to adopt new labor legislation in order to secure the protection against ethnic discrimination of the rights of Palestinians working in Israel on a daily basis; the rights of migrant workers, including undocumented workers, is also a matter of concern.” Para. 17).

¹⁵³ See, for example, *Concluding Comments: India*, CEDAW Committee, 22nd Sess., U.N. Doc. A/55/38 (2000) (“The Committee requests the Government to enforce laws on bonded labor and provide women with self-employment opportunities and minimum wages in home-based production and the non-formal sector.” Para. 83); *Concluding Comments: Chile*, CEDAW Committee, 21st Sess., U.N. Doc. A/54/38 (1999) (“The Committee congratulates the Government of Chile on the adoption of a number of legislative reforms, including . . . reforms to improve the conditions of access to employment and training, working hours and social benefits for female workers, including domestic workers.” Para. 215).

¹⁵⁴ See, for example, *Concluding Observations: Panama*, CESCR, U.N. Doc. E/C.12/1/Add. 64 (2001) (“The Committee is concerned about the lack of a sufficient number of labor inspectors and the reported widespread use of ‘blank’ contracts and temporary work contracts, which avoid the protection and benefits that the law requires for persons employed under longer-term contracts.” Para. 15); *Concluding Observations: Peru*, CESCR, U.N. Doc. E/C.12/1/Add. 14 (1997). (“The Committee recommends that the state party make the necessary efforts to ensure compliance with the legislation on minimum wage, safety and health in the workplace, equal pay for equal work for men and women and the legal recognition of young people from 16 to 25 years of age as workers. To that end, the Committee stresses that sufficient resources should be allocated to the labor inspection services to enable them to perform their task properly.” Para. 32); *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CESCR, U.N. Doc. E/C.12/1994/19 (1994) (“The Committee expresses its concern about the legal and

must take proactive steps to ensure that women migrant workers are not trapped in debt bondage, and to remedy the situation when it does arise.¹⁵⁵ States should consider extending assistance to women who have been the victims of debt bondage, including resources for rehabilitation and reintegration.¹⁵⁶

V. CONCLUSION: CLARIFYING RIGHTS AND ARTICULATING EMERGING CLAIMS

As growing numbers of women migrate for work, there is an increasing focus on the abuses they face in sending and receiving countries. Much of the effort to combat these violations focuses on urging states to ratify the Migrant Workers Convention or on clarifying that Convention's guarantees.¹⁵⁷ As the analysis provided in this article demonstrates, this singular focus is misplaced. Indeed, if advocates are not attentive to the ways in which migrants' rights are protected by *all* of the major U.N. human rights treaties, the focus on the MWC could be counterproductive.

As a practical matter, it is highly unlikely that the MWC will be ratified in the near future by a broad range of states that are host to a large number of migrant workers.¹⁵⁸ Of the states that had ratified the Convention at the time of writing, none are key receiving states.¹⁵⁹ Further, a singular focus on the MWC would undercut the fact that a strong body of binding norms already exists and should be implemented without delay, and reduces advocates' ability to respond to the intersectional forms of discrimination challenging women migrants.

Arguments that migrants do not have rights, or that the human rights framework is inadequate to the task of protecting those crossing borders¹⁶⁰ should be countered with clear analyses and

social position of foreign employees known as domestic helpers in Hong Kong. It considers that these workers' economic, social and cultural rights are seriously impaired by the so-called two-week rule which provides that a worker may neither seek employment nor stay more than 2 weeks in Hong Kong after the expiration of original employment; by the fact that maximum working hours are not set; and by the discriminatory practice of not being allowed to bring their families to Hong Kong, while professional migrant workers from developed countries are allowed to do so." Para. 29).

¹⁵⁵ See, for example, *Concluding Observations: Kuwait*, CERD Committee, 43rd Sess., U.N. Doc. A/48/18, paras. 359-381 (1993) ("In addition, it was alleged that many domestic staff of Asian origin, mainly women, were subjected to debt bondage, other illegal employment practices, passport deprivation, illegal confinement, rape and physical assault. Members requested information on measures taken by the Government to improve and remedy that situation.").

¹⁵⁶ See, for example, *Concluding Observations: Mali*, CESCR, U.N. Doc. E/C. 12/1994/17 (1994) ("With regard to Article 6 of the Covenant, the Committee notes with concern that, despite the prohibition of forced labor in the new constitution, debt bondage still exists in the salt mining communities north of Timbuktu. It has to be stated, however, that the number of people treated in this way has decreased and that the Government has assisted in the rehabilitation of former victims." Para. 8).

¹⁵⁷ See, for example, Patrick A. Taran, *Status and Prospects for the UN Convention on Migrants' Rights*, 2 EUR. J. MIGRATION & L. 85 (2000).

¹⁵⁸ For a discussion of the obstacles to widespread ratification, see Shirley Hune and Jan Niessen, *Ratifying the U.N. Migrant Workers Convention: Current Difficulties and Prospects*, 12 NETHS. Q. HUM. RTS. 12 (1994), and Taran, *supra* note 157, at 94-96 (outlining obstacles but also expressing limited optimism).

¹⁵⁹ *Supra* note 3.

¹⁶⁰ On International Migrants Day, December 18, 2003, U.N. Secretary-General Kofi Annan chose to focus on the need for states to ratify the MWC instead of pointing out the myriad ways in which states are currently violating their existing obligations:

insistence on enforcing and monitoring norms. Of course, the MWC should not be ignored. Ratification efforts should continue alongside these other tasks. Moreover, the newly-formed Committee on the Protection of the Rights of All Migrant Workers and their Families, charged with monitoring compliance with the MWC, should be viewed as a location for more than just enforcement of the treaty. Advocates should look to the Committee for explications of rights protections that can be used as interpretive guides for similar obligations under other human rights treaties. Statutes and policies adopted by ratifying countries and identified as promising by the Committee in its monitoring role can be promoted as best practices. And organizing efforts led by NGOs in states that have ratified can model productive engagement with states receptive to improving their treatment of migrant workers on both the sending and receiving end.

In addition to supporting the work of the Committee and clarifying that many claims can be supported by existing law, those concerned with migrant workers' rights must remain attentive to emerging claims. The processes through which the nascent claims of individuals and groups are articulated into rights discourse are complicated, but it is clear that these processes are vital to ensuring that norms evolve in response to the felt claims of those most directly affected by discrimination and exploitation. The job of the human rights lawyer involves walking the tricky line between seeking normative clarity and remaining flexible enough to respond to emerging claims.¹⁶¹

More must be done to ensure the respect of the human rights of migrant workers and their families—be they regular or irregular, documented or undocumented. That is why I call on States to become parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which entered into force this July. The Convention establishes for its ratifying countries the obligation to respect the core human rights and fundamental freedoms of migrant workers in their State of immigration. It is a vital part of efforts to combat exploitation of migrant workers and members of their families.

U.N. Press Release, "Secretary-General, in International Migrants Day Message, Underlines Need to Maximize Benefits of Migration," U.N. Press Release No. SG/SM/9081, OBV/405 (18 December 2003).

¹⁶¹ Feminists have developed methodologies aimed at excavating women's claims that have not yet been acknowledged as human rights through the formal mechanisms of the international human rights machinery. One of these methodologies involves close attention to women's own "sense of entitlement" concerning their lives, bodies, and futures. Developed by the International Reproductive Rights Research Action Group (IRRRAG), the concept of women's "sense of entitlement" and its accompanying ethnographically-driven anthropological methodology has been used to identify the things that women consider to be morally theirs, but which have not yet hardened into legal norms:

In order to capture our respondents' own perception of their needs and just claims. . . beyond what may exist juridically, we adopted the concept of "sense of entitlement" . . .

Sense of entitlement goes beyond the concept of "needs" insofar as it entails a conviction of the moral rightness of one's claim, without perhaps the formal public or legal acknowledgment that "rights" imply. It thus denotes the space in between a felt sense of need and an articulation of right.

Rosalind Petchesky, *Introduction*, in *NEGOTIATING REPRODUCTIVE RIGHTS: WOMEN'S PERSPECTIVES ACROSS COUNTRIES AND CULTURES* 1, 13 (Rosalind Petchesky & Karen Judd, eds., 1998).

To identify what lies in this space in between, IRRRAG designed an ethnographic research methodology that encouraged women to articulate their own sense of entitlement at the local level, focusing especially on claims made in relation to partners, family, and caregivers, rather than the State. Indeed, IRRRAG was not terribly interested in claims made against the State, since such claims already implied a certain advanced form of claiming, while IRRRAG was most concerned with embryonic rights claims as felt and expressed by women on the micro level.

Using the spirit of this concept if not the accompanying anthropological methodology, legal scholars could usefully examine claims by women migrant workers that are based on the same "sense of entitlement" IRRRAG discusses, but which have progressed beyond their earliest stage and are now being forwarded as rights by women

The importance of this kind of balancing act is exemplified in the historical debates over violence against women.¹⁶² As mentioned above, several decades ago, advocates struggled to establish the human rights pedigree of norms against domestic violence.¹⁶³ This work required a close examination of the seemingly fundamental distinction in human rights law between state action and the acts of private individuals, and the analogically opposed realms of the “public” and “private” more generally.¹⁶⁴ Through intensive advocacy and careful legal work, women’s rights advocates established definitively that states have the duty to prevent violence against women in all realms, and to take remedial actions when such violence occurs.¹⁶⁵ Similarly gendered struggles remain to be had concerning the rights of women migrant workers, many of whom work in those same “private” spheres of family and home, and whose status as workers seems to trouble neat categories of productive and reproductive labor.

migrants and their advocates. These are claims that have not yet become rights in a formal sense, but which should be attended to by human rights advocates as they make claims on the State and the international community. Identifying these claims requires an iterative methodology in which existing guarantees for women migrants are carefully and consistently invoked while newly articulated rights are progressively brought forward.

Research could be conducted, for example, with migrants’ and women’s rights NGOs, or with groups of women migrant workers more directly, to identify the core entitlements that have not yet become part of established human rights law. Moving such claims to the center of advocacy efforts would honor the agency of the women migrant workers whose experiences have been so far described and analyzed only through existing legal norms. One important effort that should be closely followed is the organizing work being done by the Washington-based NGO Global Rights/Partners in Justice, which coordinates an affinity group of domestic migrant workers’ advocates, and is currently compiling an international “Declaration” on the rights of migrant domestic workers. This effort was inspired in part by the creation of the “Migrant Domestic Workers Charter of Rights” by a network of advocates in the European Union. See Respect Network, “Migrant Domestic Workers Charter of Rights,” available at <http://www.solidar.org/Document.asp?DocID=162&tod=63616>.

¹⁶² Feminist human rights scholars worked for decades to redefine women’s rights as human rights. Indeed, until the 1993 World Conference on Human Rights in Vienna, the straightforward claim that “women’s rights are human rights” remained controversial. See Elisabeth Friedman, *Women’s Human Rights: The Emergence of a Movement*, in *WOMEN’S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* 18 (Julia Peters & Andrea Wolper, eds., 1995), and Bond, *supra* note 33, at 77-92; for an example of an earlier work setting out the arguments, see Charlotte Bunch, *Women’s Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 *HUM. RTS. Q.* 486 (1990). In the past ten years, much work has been done to “mainstream” women’s rights into all forms of human rights work—from local organizing efforts to treaty-making and international institution-building. See Bond, *supra* note 33, at 138-142. See also UNDP, *Gender Mainstreaming Tools*, available at <http://www.undp.org/gender/tools.htm>. One of the methodological imperatives that has emerged from these feminist efforts is the requirement that existing human rights norms not be taken as the permanent embodiment of what human rights *are*. Indeed, feminists have developed methodologies aimed at excavating women’s claims that have not yet been acknowledged as human rights through the formal mechanisms of the international human rights machinery. Such methodologies are especially important correctives to the gendered biases embedded in international human rights law, since they will refocus the attention of advocates not on what human rights law appears to protect already, but on what it needs to be brought to enable.

¹⁶³ See, for example, Kenneth Roth, *Domestic Violence as an International Human Rights Issue*, and Rhonda Copelon, *Intimate Terror: Understanding Domestic Violence as Torture*, in *Human Rights of Women: National and International Perspectives* 326, 116 (Rebecca J. Cook, ed., 1994).

¹⁶⁴ The feminist interrogation of the public/private divide in human rights law has of course extended beyond the issue of domestic violence. For broader discussions, see Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in Cook, *supra* note 163, at 85, and Donna Sullivan, *The Public/Private Distinction in International Human Rights Law*, in Peters & Wolper, *WOMEN’S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* 126.

¹⁶⁵ For a discussion of this shift, see UNIFEM, *NOT A MINUTE MORE: ENDING VIOLENCE AGAINST WOMEN* 16-25 (2003).

Arguments have already been joined concerning how to establish standards, design monitoring programs, and set up enforcement mechanisms for work done in the “private sphere.” Many of these arguments have gendered connotations similar to those heard during the violence debates of the 1990s. Work to uncover women migrant workers’ own sense of their rights are important, and should be coupled with a gendered examination of how those entitlements can best be articulated using the human rights framework.

Further, claims lying outside the realm of what seems possible at any given time—such as current arguments for a right to cross borders freely—may need to be strategically incorporated as political demands rather than rights claims. This kind of strategy will be especially important when dealing with women’s entitlements concerning transnational processes that have yet to be adequately addressed by human rights law. In this way, political claims about forces that lie beyond the control of any one state (such as globalization), or within the purview of international financial institutions rather than states per se (such as conditions for loans and aid, including privatization and structural adjustment programs) or which states continue to hold as their prerogative (such as immigration controls), may become cognizable within the larger human rights discourse¹⁶⁶ if not (yet) the human rights legal framework.¹⁶⁷

Human rights law was created primarily to address abuses and forms of exploitation that were presumed to take place within the public sphere by state agents against individuals of the same nationality. These standards were based on certain gendered assumptions that prevailed at the time, and were written to address discrete forms of discrimination. Over time, the norms and rules constructed to address such abuses have been expanded to include violations aimed at non-nationals, exploitation of individuals in “private” places by non-state actors, and forms of abuse that combine multiple forms of discrimination. Because of these transformations, many of the violations suffered by women migrant workers may be addressed by existing human rights law using intersectionality. What lies outside these protections, however, are types of exploitation bound up with forces of globalization, transnational gender dynamics, and patterns of racism, ethnic discrimination and economic subordination that exceed the borders of any one state, and

¹⁶⁶ As Donna Maeda explains:

“human rights” do not reside solely within the international legal framework developed under the United Nations. The idea of human rights is powerful for those attempting to assert claims to change conditions in their lives and to work for justice on a global level. In addition, critical human rights workers are able to use U.N. fora to organize and transform approaches to human rights. Multiple discourses or regimes of human rights co-exist, compete, coincide, and overlap. Acknowledgment of these multiple discourses in contexts of globalization moves from simply adding formerly excluded voices to a more critically transformative approach to severe power differentials. . .

Maeda, *supra* note 55, at 334-5.

¹⁶⁷ Hope Lewis calls for a human rights analysis of similar forces:

Global migration stories should also be about the transnational human rights impact of international policies and arrangements over which the North has significant control and responsibility. Assigning the sole responsibility for human rights violations to the governments of the Third World masks the responsibilities of the North with regard to the human rights of migrants. Structural adjustment policies, Third World debt, and inequitable terms of trade, for example, have a great deal to do with human rights conditions in the South. We must use the lens of human rights to examine more fully the factors that contribute to the need to migrate.

Lewis, *supra* note 23, at 227.

which involve institutions that are as yet not bound by human rights law. These forces remain to be adequately addressed by the human rights framework; examining the experiences of women domestic workers—the new “servants of globalization”—may be a good place to start. The entitlements that these women articulate as they cross borders may allow us to identify the human rights concepts and institutions that need to be reconfigured as we struggle to humanize globalization.