Women Migrant Workers: Embracing Empowerment Over Victimization

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Abstract

This paper focuses on women migrant workers – women who leave their countries, whether taking their families or leaving them behind, in search of employment and economic opportunity abroad. After a discussion of the recent globalization of migration, this paper continues with an examination of the feminization of migration. Part II then discusses how men and women workers experience migration differently, and discusses human rights violations against women migrant workers. Part III suggests women migrant workers often are seen as victims of violence, and that such a perspective ignores the other issues, particularly economic issues, they face. Part IV offers an alternative perspective, one focusing on empowerment over victimization. Part V highlights the International Convention on Migrant Workers, then examines the Convention through an empowerment perspective.

Life is hard in the Philippines. You don’t earn enough. Nothing will happen to you if you stay there. Even though you are a maid here, at least you are earning money. What I couldn’t buy in the Philippines, I could buy here … but the work is difficult. You bend your back scrubbing. You experience what you would never experience in the Philippines. In the Philippines, your work is light but you don’t have any money. Here you make money, but your body is exhausted.

Vanessa Dulang, domestic worker in Rome, Italy

Sometimes when I look at the children that I care for, I feel like crying. I always think about how if we did not need the money, we would all be together and I would be raising my children myself.

Analin Mahusay, domestic worker in Rome, Italy

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1 Rhacel Salazar Parrenas, “Migrant Filipina Domestic Workers and the International Division of Reproductive Labor,” 14 Gender and Society 560, 574 (2000).
2 Id. at 576.
I. Who are Women Migrant Workers?

The Globalization of Migration

Throughout the world, there are over 175 million migrants – people who have left their countries of birth to search for employment, to escape war or internal strife, or for countless other reasons. The number of migrants is at an all-time high, comprising three percent of the world’s population. This is a dramatic increase in the sheer numbers of migrants during the middle half of the twentieth century, when in 1960, there were 75 million international migrants.

Migration affects all parts of the world, developed or developing. Sixty percent of migrants reside in developed nations, while 40 percent live in developing nations. Almost one out of every ten persons in the developed world is a migrant, while one out of every 70 in the developing world is a migrant. Countries with the largest numbers of migrants include the United States, with almost 35 million migrants, followed by the Russian Federation, with 13 million. The top four countries with the largest percentage of their total population being migrants, in contrast, are all in the Middle East. The United Arab Emirates, the leader of this category, has a migrant population that is over 73 percent of its total population. Migrants make up at least one-quarter of the populations of all of the top ten countries in this category.

Migration for Work

Over 120 million of today’s migrants are migrant workers and their families, the majority of whom are unskilled laborers, and the majority of whom have entered their host countries legally and with proper work authorization. The number of migrant workers is much higher than other types of migrants, such as refugees, who make up only 9 percent of the total migrant population. This paper focuses on the women migrant workers – women who have left their home countries, whether taking their families or leaving them behind, in search of employment and economic opportunity abroad. This paper does not deal with internal migrant

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4 Id.
6 UN Report at 2.
7 Id.
8 Id. at 3.
9 See Id. at 4.
10 Id.
11 Id.
13 Courville at 47.
15 UN Report at 4.
workers, nor the plight of refugees or other migrants who leave their home countries for reasons other than to find work.

After a discussion of the recent globalization of migration, revealing data on migrants and migrant workers, this paper continues with a closer examination of exactly how women fit into migration, pointing to data that indicates a feminization of migration. Part II then discusses how men and women workers experience migration differently, and reveals the types of human rights violations that happen to women migrant workers. Part III suggests that too often, women migrant workers are seen as victims of violence or trafficking, and that such a perspective ignores the other issues, particularly economic issues, faced by migrant women workers. Part IV offers an alternative perspective, one that takes into account the labor rights of women, and focuses on empowerment over victimization. Part IV next lays out what such an empowerment perspective might look like when applied to women migrant workers. Part V introduces the reader to the Convention on Migrant Workers, then examines the Convention through an empowerment perspective.

Migrant workers are present throughout the developed and the developing world. There are 30 million migrant workers and their families in Europe, 20 million in Africa, 18 million in North America, 12 million in Central and South America, 9 million in the Middle East (West Asia), and 7 million in South and East Asia. The largest number of migrant workers comes from Mexico, followed by the Philippines. Workers from the Philippines are more geographically dispersed than those from other countries, prompting some scholars to label Filipinos as the most globalized workforce in the world.

Over the past 30 years, several trends in labor migration have emerged. The first is a growing restrictiveness in the admission of labor migrants, particularly in developed countries. Many countries have attempted to curb migration levels in recent years. In 2001, 44 percent of developed nations had policies aimed at lowering migration into their countries. Thirty-nine percent of developing countries had policies with similar goals.

Second, there has been a sharp increase in the number of countries, particularly developing countries, that host migrant workers. The dominant demographic pattern in labor migration is south to north migration, as Western Europe and Gulf states become major labor recruiters. Poverty is a major factor for migrant workers who leave their home countries. Migrants travel not only from developing nations to developed nations, however, but from one developing nation to another, where employment prospects appear better.

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16 GPP at 9.
17 Courville at 47.
18 Id.
19 UN Report at 20.
20 Id. at 5.
21 Id.
22 Id.
23 Hune at 801.
25 Id.; Hune at 801.
Next, there has been a growing recognition of the need to protect the human rights of migrant workers. In addition to significant attention paid to the plight of migrant workers, a major breakthrough in this area is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Convention on Migrant Workers), discussed in Part V in detail, which entered into force in 2003.

Finally, increasing numbers of countries and regions have adopted agreements on labor migration. Bilateral and multilateral agreements allow countries with labor needs to recruit laborers from abroad with a minimum of procedural difficulty, and provide for government involvement in the employment process. Under such agreements, migrant workers may be recruited in groups tied to a project, or may be recruited individually. Agreements typically include the aims of the treaty, the definition of the labor concerned, admission criteria, the legal status of migrants, the terms of migration, and annual quotas. These agreements can allow both host and home countries to share the burden of ensuring adequate living standards and working conditions, monitoring the agreement, and more actively managing the labor migration process, including the periods prior to and following migration.

The Feminization of Migration

Until recently, women were neglected in the study of international migration. As many commentators have observed, women are often invisible in national statistics. Furthermore, significant barriers exist for social scientists interested in women and migration, including linguistic, geographic, disciplinary, and other barriers. These barriers, combined with a lack of awareness of women’s role in international migration, often result in women migrant workers being studied only on a national or regional basis, if at all.

When not ignored, women have been depicted either as non-migrants who remain in their home countries waiting for male family members to return, or as passive reactors who accompany male migrant workers. However, this treatment of women belies the fact that women have comprised a large percentage of migrant workers for decades, and their numbers continue to climb. Almost as many women as men have migrated since 1960, where 47 percent of migrants were women. In 1990, 48 percent of migrants were female, and in 2000, 49 percent were female.

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26 UN Report at 20.
27 Id.
28 See Hune at 801.
29 Id.
30 GPP at 36.
31 Id.
34 Id.
36 GPP at 9.
percent of migrants were women. Furthermore, in 2000, 51 percent of all migrants in
developed countries were women. In contrast to the significant attention paid to undocumented
workers, that paid to migrant women workers is minimal.

Significant differences in the percentage of women migrant workers exist country by
country. In the United States, a receiving country, documented migrants have been
predominantly female since 1930. In the Philippines, a sending country, women make up 46
percent of all workers who migrate internationally. In Indonesia, 68 percent of migrants are
women, and in Sri Lanka, 75 percent of migrants are women. Major destination countries for
women migrant workers include the Middle East and Pacific Rim nations in Southeast Asia. In
Southeast Asia in 2000, the majority of migrant workers were women, with women migrant
workers outnumbering male migrant workers by 100,000 workers. In many countries, the large
numbers or percentages of women migrant workers do not occur by accident. Indeed, many
countries engage in bilateral or multilateral agreements so that their citizens may more easily
engage in migration for work.

II. The Migration Experience of Women Migrant Workers

The data concerning women migrant workers is significant because of the differences in
the migration experience for women and men. Women and men workers do not typically share a
common migration or work experience. Women migrants work in different industries than
men, and often face greater discrimination while abroad. The discrimination suffered by
women migrant workers can be viewed as double that faced by male migrant workers. Women
migrant workers face discrimination first because they are migrants, and second because they are
women.

“Women’s Work”

Workers’ migration experiences are shaped profoundly by the type of work they perform.
Men typically migrate for a variety of jobs, from low-skilled to highly-skilled. Women, on the
other hand, labor on the bottom rungs of the economy. Women predominantly migrate for
female-dominated jobs in the domestic care, entertainment, service, and light manufacturing
sectors. In host countries, women generally must accept the lowest levels of employment,
regardless of their training or education.\textsuperscript{49} This results not only in low status, but creates a downgrading or waste of human capital and potential.\textsuperscript{50} The jobs in which women migrant workers labor may be in the informal sector, where many nations’ labor laws do not reach, and are overwhelmingly low-skilled and low-paying positions.\textsuperscript{51}

Additionally, many labor-receiving countries have enacted legislation that protects their labor market.\textsuperscript{52} This “priority rule” legislation prevents employment permits from being issued until it is verified that no nationals are available or willing to take the jobs.\textsuperscript{53} Women migrant workers accepting these jobs are employed, therefore, in low status jobs that nationals refuse to accept.\textsuperscript{54}

Much of the inequality faced by women migrant workers may be connected to gender-based stereotypes and the devalued status of women generally. The female-dominated jobs that women migrant workers perform many times are – or are viewed as – an extension of a woman’s role in the home.\textsuperscript{55} The exploitation of women in the home is linked to the exploitation of women in the economic system.\textsuperscript{56} For example, a woman may sew clothes in a factory and be paid a “woman’s wage,” or she may sew clothes in her own home and not be paid at all.\textsuperscript{57}

\textit{Economic (In)security}

As a result of laboring at the bottom rung of the employment ladder, women migrant workers have low economic security and low benefits compared to men migrant workers.\textsuperscript{58} Women must work harder for lower wages, and are afforded few opportunities for advancement. Wage discrimination is present throughout the developed nations of the world; in Japan, for example, women receive only 51 percent of the wages of males.\textsuperscript{59} Wage differences exist despite the fact that women, on the whole, tend to work longer hours than men.\textsuperscript{60} Discrimination in pay does not affect women only, however;\textsuperscript{61} migrant workers are often paid lower wages than their citizen counterparts. Women migrant workers are thus doubly affected by wage discrimination: first as women, second as migrants.

Chances for economic mobility typically are limited severely for women migrant workers.\textsuperscript{62} In subcontracting, for example, women migrant workers have little chance for

\begin{itemize}
\item \textsuperscript{49} Hune at 805.
\item \textsuperscript{50} GPP at 14.
\item \textsuperscript{51} UNIFEM at 1; GPP at 11.
\item \textsuperscript{52} GPP at 17.
\item \textsuperscript{53} Id.
\item \textsuperscript{54} Id.
\item \textsuperscript{55} Morakvasic at 888.
\item \textsuperscript{56} Id.
\item \textsuperscript{57} Id.
\item \textsuperscript{58} Hune at 805.
\item \textsuperscript{59} Circle of Rights, Module 4 (citing UN Development Programme, \textit{Human Development Report 1993}, 25 (Oxford University Press 1993).
\item \textsuperscript{60} Id.
\item \textsuperscript{61} Circle of Rights, Module 10.
\item \textsuperscript{62} Morakvasic at 889.
\end{itemize}
upward mobility.\textsuperscript{63} In the typical system of subcontracting, formally established and organized companies contract out to entrepreneurs, many of whom are a part of an ethnic or immigrant community.\textsuperscript{64} The entrepreneurs are typically men who employ women of the same ethnic origin either as at-home workers or on the site of “hastily established, volatile firms.”\textsuperscript{65} Exploitation of women migrants by their male compatriots is, historically, one of the few ways migrant men can accumulate capital.\textsuperscript{66} This system leaves little room for the advancement of women workers.\textsuperscript{67}

\textit{Health and Safety}

The jobs performed by women migrant workers are among the most hazardous to workers’ health and safety. Jobs performed by women migrant workers have been labeled as SANEP (Shunned by All Nationals Except the very Poorest) or 3-D (dirty, dangerous, and degrading).\textsuperscript{68} Oppressive working conditions, especially when exacerbated by a lack of enforcement measures in a host country, can lead to serious health and safety issues for women migrant workers.\textsuperscript{69}

The vulnerability of women migrant workers’ health and safety is highlighted by a recent outbreak of Steven Johnson Syndrome among women migrant workers in Taiwan.\textsuperscript{70} In 1996, the serious illness struck almost 50 migrant workers, the majority of them women, sent from the Philippines to an electronics factory. Although six of the workers ultimately died from the illness, the next group of workers sent to the factory was not informed of the workplace illness. By 1997, the Philippines government instituted a ban on sending workers to the factory, but lifted the ban a year later based mainly on economic calculations, not the health and safety of the workers. The workers never received a proper diagnosis of their illness nor compensation for their suffering. The difficulties faced by the workers were compounded by the lack of will on the part of either the host or home country to protect the workers.

\textit{Working in Isolation}

Women migrants often work in isolation, in jobs such as housekeeping or child care work in private homes.\textsuperscript{71} Therefore, women are less likely to establish connections with other workers, to form or join unions, to access critical support services offered in the host country, or to be accounted for by host countries.\textsuperscript{72} For some women, the isolation is heightened as women lead the migration chain, leaving their families behind.\textsuperscript{73}

For women whose families accompany them to a host country, their lack of free time

\begin{flushleft}
\textsuperscript{63} Morakvasic at 889-90.  \\
\textsuperscript{64} Id.  \\
\textsuperscript{65} Id.  \\
\textsuperscript{66} Id.  \\
\textsuperscript{67} Id.  \\
\textsuperscript{68} GPP at 29.  \\
\textsuperscript{69} Hune at 805.  \\
\textsuperscript{70} See Circle of Rights, Module 10.  \\
\textsuperscript{71} Hune at 805.  \\
\textsuperscript{72} Id.  \\
\textsuperscript{73} Id.  \\
\end{flushleft}
because of their family responsibilities ensures that they cannot participate in union activities. Migrant workers as a whole are prohibited from forming or joining trade unions in many countries, and women migrant workers face additional barriers to forming or joining unions. Women migrant workers must act as wives and mothers in addition to their work-related activities. When unions negotiate for rights, women workers’ rights are typically given low priority.

The isolation of women migrant workers’ workplaces also increases the threat of sexual harassment. Sexual harassment is often ignored in discussions of labor rights. Very few countries have enacted laws or put enforcement mechanisms into place so that the problem of sexual harassment may be addressed.

**Human Rights and Women Migrant Workers**

The differences in the migration experiences of women and men workers affect the types and severity of human rights violations they experience. Women are more vulnerable to human rights violations because of the nature of their work, so-called “women’s work” that may not be highly valued by host countries. Further, because they are often solitary workers or expected to perform familial duties outside of work, they are less likely to join organizations or labor unions through which to assert their labor rights. For these same reasons, women migrant workers also may have difficulties in creating social relationships with fellow migrants or nationals within the host country.

Because of migrant women workers’ marginalized status, there is a profound need for protection and fulfillment of their rights. The protections needed by women migrant workers in host countries include the protection of family unity, the creation of employment and economic opportunities, equal pay, equal conditions of work, the provision of health care and other benefits, and the elimination of racial and other forms of discrimination.

Human rights violations faced by women migrant workers (and to a large extent, all migrant workers) do not occur solely in host countries. Violations can begin in a worker’s home country, with corruption, denial of fundamental rights, and discrimination. Human rights violations may continue en route to a host country in a transit country, where workers may face harassment or exploitation. Women migrant workers are affected by each of these types of violations.

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74 Circle of Rights, Module 10, “The Right to Work and Rights at Work.”
75 GPP at 16.
76 Hune at 806.
77 Circle of Rights, Module 10.
78 Id.
79 Id.
80 Hune at 805.
82 Id.
83 Id.
III. The Victimization Perspective

As a result of decades of effort at the international and national levels – including work by the International Labor Organization and workers’ initiatives around the world – human rights standards involving the right to work are highly developed.84 This stands in sharp contrast to the labor rights of women migrant workers, which largely have been ignored. Although women make up an increasingly large percentage of all migrant workers, and in some nations vastly eclipse the number of male migrant workers, much of the discourse on women migrant workers has centered on victimization. When international organizations discuss women migrant workers at all, their discussions are usually limited to violence and human trafficking.

The years 1976 to 1985 marked the United Nations’ Decade for Women, “the most comprehensive global undertaking” devoted to improving the status of women.85 Despite the significant attention brought to women and the struggle for equality, the special circumstances faced by women migrant workers remained largely invisible.86

In its brief discussion of women migrant workers in a fact sheet on migration, the UN focuses on issues of violence and sexual exploitation.87 “The plight of women migrant workers is also of concern to the United Nations, as they have been victims of violence and sexual exploitation.”88 The UN also points to a preliminary report of the Special Rapporteur of the Commission on Human Rights on violence against women.89 In that report, the Special Rapporteur makes several recommendations for States to protect women migrant workers.90 These recommendations, while important safeguards for women, nonetheless promote a view of women migrant workers as victims.

Later attention to women migrant workers also centers on the women as victims. The UN’s 2002 report on migration fails to mention women migrants or gender-related issues in its discussion of the focus of the UN Secretariat on international migration, and in its overview of the attention paid to migration throughout the UN system.91 The role of women in migration is only specifically addressed in the report’s section on undocumented migration, where the report notes the importance of information campaigns in deterring the trafficking of women for sexual exploitation.92

A 2002 UN resolution, one that specifically addresses women migrant workers, focuses solely on violence against women.93 The Violence Resolution was written out of concern over

84 Circle of Rights, Module 10.
85 Hune at 803.
86 Id.
87 Fact Sheet at 13.
88 Id.
90 Id.
91 See UN Report at 1-6.
92 See Id. at 29.
the large numbers of abuse and acts of violence against women migrant workers.\textsuperscript{94} Unfortunately, the Resolution emphasizes criminalization and victimization. The Resolution calls for States to enact penal sanctions against perpetrators of violence against women migrant workers, provide victims with assistance, and enact legal measures against smugglers who exploit women migrant workers.\textsuperscript{95} It further encourages States to consider ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Convention on Migrant Workers); the Convention against Transnational Organized Crime; the Protocol against the Smuggling of Migrants by Land, Sea, and Air; the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children; and the Slavery Convention of 1926.\textsuperscript{96} With the exception of the Convention on Migrant Workers, these instruments tend to focus on the criminalization of trafficking and smuggling, with women cast as victims.

Even the Fourth World Conference on Women (the Beijing Conference of September 1995), which paid considerable attention to women migrant workers, called on states in its Platform for Action to recognize the vulnerability of women migrant workers to violence.\textsuperscript{97} Although the Conference engaged in a more even-handed treatment of women migrant workers than other international efforts have demonstrated, it is nonetheless telling that women migrant workers were cast in a role of victimization.

Violence against women migrant workers and the trafficking of women is a serious worldwide problem, and the international community must address it. However, at issue is the extent to which the world focuses on violence and victimization to the exclusion of all other aspects of women’s migration. As stated in Part II, women migrant workers face discrimination, the denial of basic workers’ rights, and other forms of exploitation. The international community must address all types of human rights violations faced by women migrant workers, and not simply address human rights when the women’s lives are at risk.

The problem of a victimization perspective is not just a deficiency in rhetoric. The focus on the criminalization of trafficking and violence against women migrant workers often does little to prevent abuses.\textsuperscript{98} Often, the “victims” of such abuses, when rescued, face quick deportation because of their immigration status.\textsuperscript{99} This creates a revolving door, where women and girls return to their homes and are likely to be re-trafficked because little has changed in their home countries.\textsuperscript{100} Additionally, overemphasizing trafficking and taking it out of the migration context is counterproductive to the fulfillment of women’s human rights.\textsuperscript{101} Rather than focusing on migrants’ human rights first, trafficking puts migration in a crime control and

\textsuperscript{94} Id.
\textsuperscript{95} Id.
\textsuperscript{96} Id.
\textsuperscript{97} Fact Sheet at 13.
\textsuperscript{98} GPP at 14.
\textsuperscript{99} Id.
\textsuperscript{100} Id.
\textsuperscript{101} Id. at 28.
prevention context. Further, trafficking is sometimes used by governments as a reason to develop more restrictive laws and regulations dealing with migration.

IV. Empowerment: An Alternative Perspective

Without doubt, women migrant workers are more vulnerable to exploitation than male migrant workers or female nationals of host countries. The challenge for human rights advocates, however, is how to view this situation – should women migrant workers be cast as victims or as possible agents of change? Should the international community look at issues faced by women migrant workers through a victimization perspective, or through a perspective of empowerment? Clearly, this paper argues for the integration of concepts such as agency and empowerment in the discourse on women migrant workers.

What this author terms an empowerment perspective has also been labeled a rights-based approach. A rights-based approach involves “a process of enabling and empowering those not enjoying their economic, social, and cultural rights to claim their rights.” Legal, policy, social, and other institutions must respect human rights, and ensure appropriate and enabling enforcement and monitoring mechanisms to give legal effect to these rights. Countries that have a strong respect for human rights have achieved this respect through internal struggle from the bottom up, not the top down. An empowerment perspective will allow women migrant workers, quite simply, to stake a claim to their human rights.

This paper further suggests that advocates might turn to South and East Asian organizations for examples of effective empowerment perspectives. Grassroots organizations and other non-governmental organizations (NGOs) are a potential force for dramatic change in women migrant workers’ rights. First, migrant workers are marginalized and vulnerable because of their temporary status in the society of the host countries, and secondly because governments, left alone, often lack the political will to protect or empower migrant workers. South and East Asia has emerged as a leader in migrant activism.

In the Philippines, for example, MIGRANTE is one of the most successful of the country’s migrant worker NGOs. The Philippines has initiated comprehensive measures to protect Filipino/a overseas workers, in particular, laws, rules, and regulations that provide worker protection even in countries where labor enforcement is nonexistent or lax. MIGRANTE is grassroots-based and is staffed by former migrant workers. The organization addresses the

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102 Id.
103 Id.
104 See Id. at 13.
105 Circle of Rights, Module 1.
106 GPP at 49.
107 Hune at 814.
108 Courville at 47-48.
109 Id.
110 Id. at 49.
112 Courville at 49.
root causes of migration in the Philippines, while member organizations outside the country protect overseas workers.\textsuperscript{113}

In this author’s view, an empowerment perspective entails not just the grassroots action of women migrant workers. For human rights to be claimed, there must be policies or mechanisms through which workers can claim their rights. For an in-depth look at such policies, the paper now turns to UNIFEM’s Regional Programme on Empowering Migrant Workers in Asia.

A strong proponent of an empowerment, rights-based approach to women migrant worker issues is UNIFEM’s Regional Programme on Empowering Migrant Workers in Asia (Regional Programme).\textsuperscript{114} The Regional Programme’s participants include Indonesia, Nepal, the Philippines, Sri Lanka (all countries of origin for women migrant workers), and Jordan (a host country).\textsuperscript{115} The objectives of the Regional Programme include promoting gender responsive migration policies that help realize women’s human rights; promoting sustained dialogue between home and host countries to empower women migrant workers; strengthening the capacity of women migrant workers and their organizations to access and claim their rights; and piloting innovative reintegration projects for women who return to their home countries.\textsuperscript{116}

\textit{What Does an Empowerment Perspective Look Like?}

An empowerment perspective in addressing women migrant issues has several components.\textsuperscript{117} First, there must be a shift from a victimization perspective to a rights-based perspective. Issues of migration, a woman’s right to work, and the exercise of choice as fundamental human rights should inform the discussion on women migrant workers. The international community should not focus solely on the physical safety and integrity of women migrant workers, but should emphasize that workers’ rights too are human rights.

Second, both host and home countries must recognize the contributions of women migrant workers. Host countries benefit from women migrant workers as a source of cheap labor, while home countries often rely on women migrant workers as a source of remittances.\textsuperscript{118} For the host country, particular attention should be paid to the women who perform domestic care work. Domestic care work and other informal sector work should be viewed as work, and women migrant workers should be viewed as workers with legal rights.\textsuperscript{119} Jordan, for example,

\begin{itemize}
  \item \textsuperscript{113} Id.
  \item \textsuperscript{114} UNIFEM East and Southeast Asia Regional Office, “Empowering Women Migrant Workers in Asia,” at 1 (2003) available at \url{www.unifem-eseasia.org/projects/migrant/programme%20description.htm} (hereinafter UNIFEM).
  \item \textsuperscript{115} Id.
  \item \textsuperscript{116} Id.
  \item \textsuperscript{117} The following description is based on a listing of the objectives and successes of the UNIFEM Regional Programme. I examined the Programme’s list of outcomes and reshaped it as a series of steps advocates might take in securing the rights of women migrant workers. See UNIFEM at 7-8.
  \item \textsuperscript{118} Hune at 807.
  \item \textsuperscript{119} See Grace Chang, \textit{Disposable Domestics: Immigrant Women Workers in the Global Economy} (South End Press, 2000).
\end{itemize}
recently has made a change in policy allowing domestic workers protection under its labor laws, and has acknowledged the importance of domestic workers in its economy.\textsuperscript{120}

An increased emphasis on the contributions of women migrant workers should also include recognition of the impact of remittances, the forwarding home of wages by migrant workers. Remittances are an extremely important aspect of migration. Remittances to home countries by migrant workers working in developed countries equaled $100 billion in 1999; international development aid in the same year came to $40.3 billion.\textsuperscript{121} In 2000, remittances accounted for more than ten percent of the gross domestic products (GDP) of Albania, Bosnia and Herzegovina, Cape Verde, El Salvador, Jamaica, Jordan, Nicaragua, Samoa, and Yemen.\textsuperscript{122} In addition to being an important addition to a country’s GDP, remittances are a major source of foreign exchange earnings for home countries.\textsuperscript{123} For the families who receive the money, remittances can be used to import capital goods and provide investment funds, increase household income and savings, and purchase products and services.\textsuperscript{124}

The available data on remittances should be improved, and the data analyzed by sex, so as to better understand how women contribute to their home countries’ economies. One study points to the impact of remittances sent by Filipina migrant workers. Over 95 percent of Filipina domestic workers in Malaysia send remittances to family members in the Philippines.\textsuperscript{125} In Sri Lanka, women migrant workers contributed over 62 percent of the more than $1 billion total remittances in 1999, accounting for over half of the country’s trade balance and 145 percent of gross foreign loans and grants.\textsuperscript{126} Other studies of young girls’ migration from Latin America, the Philippines, and the South Pacific, indicate that migration of women may be a part of a household’s survival strategy, as women are often seen as a reliable source of remittances.\textsuperscript{127}

Third, human rights advocates must work to strengthen the fulfillment of women migrant workers’ rights in host countries. Many countries do not cover the work performed by women migrant workers in their labor laws. For example, the United States lacks an effective enforcement mechanism for labor violations against domestic care workers. The U.S. Department of Labor’s Wage and Hour Division investigated only 231 cases involving domestic workers in private households from January 1, 1995 through October 1, 1999.\textsuperscript{128} According to calculations from the human rights organization Human Rights Watch (HRW), the Division investigated only 0.006 percent of employment relationships involving domestic care workers, while in 98 percent of cases investigated by HRW, domestic care workers reported unpaid wages in violation of U.S. law.\textsuperscript{129} Limited enforcement measures are scarce for invisible workers in

\textsuperscript{120} UNIFEM at Section II.
\textsuperscript{121} ICMC at 21, (citing P. Gammeltoft, “Remittances and Other Financial Flowers to Developing Countries,” in The Migration-Development Nexus (2003)).
\textsuperscript{122} UN Report at 5.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Fitzpatrick at fn. 95.
\textsuperscript{126} GPP at 12.
\textsuperscript{127} Morakvasic at 896.
\textsuperscript{128} Human Rights Watch, Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States, Sect. 6 (Human Rights Watch).
\textsuperscript{129} Id.
many host countries. Access to effective remedies, however, is essential to the fulfillment of human rights.

Fourth, the international community can investigate alternatives to migration, promote community-based development, and enact anti-poverty programs. This strategy acknowledges the particular needs of migrant workers before migration or upon returning to their home countries. Such programs may include reintegration programs for women migrant workers who return to their home countries, but find few employment opportunities. Effective reintegration programs might allow women to secure economic opportunities in their home countries, eliminating the need to migrate again.

V. Using the Convention on Migrant Workers as a Model of Empowerment

The Human Rights of Migrants and Migrant Workers

Human rights related to migration and to migrant workers are long-established in many international human rights instruments. The right to freedom of movement is recognized in the Universal Declaration of Human Rights:130 “Everyone has the right to freedom of movement and residence within the borders of each state,” and “everyone has the right to leave any country, including his own, and to return to his country.”131 The right to work was the first of the specific rights recognized under the International Covenant on Economic, Social, and Cultural Rights.132 Article 6 of the ICESCR includes in its definition of the right to work “the right of everyone to the opportunity to gain his living by work.” The right to unionize is enshrined in the main human rights instruments, but also in the International Labor Organization (ILO) Conventions 87 and 98.133 These ILO conventions are extensive elaborations on the preamble section of the ILO Constitution that deals with the freedom of association and the right to unionize. ILO Nos. 87 and 98 also enjoy widespread acceptance, with 121 and 137 ratifications, respectively. Despite the high numbers of ratifications, many workers throughout the world face serious problems in exercising their right to unionize, including violence against union members and leaders, as well as restrictions on the right to unionize for certain kinds of workers.134

The ILO was the first international body to enact standards to protect specifically the rights of migrant workers.135 The ILO Migration for Employment Convention (Revised) (No. 97) of 1949 requires that States Parties treat legal migrant workers as they treat nationals.136 The Migrant Workers Convention (Supplementary Provisions) (No. 143) of 1975 requires States to respect the basic human rights of migrant workers, including taking steps to stop smuggling and

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131 UDHR at Art. 13.
133 ILO Freedom of Association and Protection of the Rights to Organize Convention (ILO No. 87) 68 UNTS17, entered into force July 4, 1950; ILO Right to Organize and Collective Bargaining Convention (ILO No. 98), 96 UNTS257, entered into force July 18, 1951.
134 Circle of Rights, Module 10.
135 Id.
trafficking activities. The UN first became involved in 1978, when the first World Conference to Combat Racism and Racial Discrimination recommended the UN draft a convention on the rights of migrant workers. The UN General Assembly also requested a draft convention on the subject, and in 1980, the UN established a working group to draft a convention. By 1990, the Convention on Migrant Workers was complete.

The Convention on Migrant Workers

The Convention on Migrant Workers seeks to protect migrant workers from exploitation and to provide the international community with universal standards of treatment of migrant workers. Although previous UN and ILO conventions deal with rights related to migrant workers, Convention drafters felt the rights of migrant workers should be emphasized and elaborated upon. The Convention on Migrant Workers is not the first convention to take the approach of consolidating the rights of one specific group of persons in a single instrument. The 1979 Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1989 Convention on the Rights of the Child also apply established international human rights norms to specified groups.

The Convention on Migrant Workers is innovative, however, in a number of ways. First, the Convention emphasizes the idea that migrant workers are entitled to enjoy their human rights regardless of their legal status. This idea, however, is perhaps best expressed as an ideal, as many of the provisions of the Convention apply only to workers whose immigration status is regularized. The hope of the drafters of the Convention is that irregular migration will be discouraged if the human rights of all migrant workers are more strongly recognized. The lowering of irregular immigration is perhaps the least understood aspect of the Convention by nations that are not willing to ratify the Convention; many such nations may fear that ratifying the Convention will increase the numbers of migrants in their midst, whether they be lawfully or unlawfully present. In fact, little support for the Convention on Migrant Workers exists among labor-receiving countries, which stands in sharp contrast to the other group-specific conventions, which enjoy wide support – and ratification – around the world.

138 Circle of Rights, Module 10.
139 Id.
141 Hune at 814.
142 ICMC at 5.
143 For a comprehensive comparison of the provisions of seven core international human instruments, see ICMC at 13-17.
144 Fact Sheet at 10.
145 See Convention at Parts III-V.
146 ICMC at 6.
147 Id.
148 Courville at 49.
Further, the Convention includes a groundbreaking definition of exactly who is a migrant worker. Under the Convention, “the term ‘migrant worker’ refers to a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national.” Migrant worker categories specifically enumerated in the Convention include frontier workers, seasonal workers, seafarers, workers in offshore installations, itinerant workers, project-specific workers, and self-employed workers.

The Convention is the first international instrument to provide a comprehensive definition of a migrant worker based on “remunerated activity.” Through this definition, the Convention drafters make a distinction between migrants and migrant workers, and note that not all migrants are migrant workers. Migrant workers are not just economic entities, however, but social entities as well. The Convention recognizes this by including members of the family in its provisions. Finally, the definition of migrant workers is broad, including those who are planning to become migrant workers, those who are actually working outside their home country, and those who have returned home from work abroad. Such a broad definition allows application of the Convention at any stage of migration for work, and takes into account the experiences of migrant workers in origin, transit, and destination countries.

Women Migrant Workers and the Convention

The Convention on Migrant Workers is significant for women, and not just because the Convention specifically covers women migrant workers. Article 1 states that the Convention is applicable “without distinction of any kind such as sex,” and Article 2(1) defines a migrant worker in gender-inclusive language as “a person who is to be engaged … in a State of which he or she is not a national.”

The Convention’s inclusive language, however, was not automatic. Only at the end of the drafting process did the Convention Working Group adopt the “he or she” terminology and apply it throughout the instrument. Some representatives in the Group argued that such terminology would create translation problems. The result is that, at least in the English language version of the Convention, women as well as men are specifically recognized as migrant workers.

The Convention is also significant for women migrant workers because it outlines specific measures that States Parties should undertake to promote migrant workers’ rights.

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149 Art. 2 (1).
150 Art. 2 (2).
151 Art. 2 (1); see ICMC at 19.
152 ICMC at 19.
153 Art. 4; see ICMC at 19.
154 ICMC at 18.
155 Fact Sheet at 11.
156 Hune at 809.
157 Id.
158 Id.
159 Id. The Spanish language version, for example (the only Convention that this author can translate) does not utilize the “he or she” terminology.
Perhaps these extensive measures explain why only 30 nations have ratified the Convention, and why only labor-sending countries have ratified it. This paper proposes that the Convention, with its numerous provisions related to migrant worker policy, can be an effective tool specifically for promoting the rights of women migrant workers. If viewed through an empowerment perspective, the Convention can inform advocates, policy makers, and workers themselves on workable strategies for fulfilling women migrant workers’ rights. This is the challenge faced by human rights practitioners: to take the human rights norms enunciated in international instruments, and put them to practical use in improving people’s day-to-day lives.

*Protecting Women Migrant Workers’ Rights at Work*

As noted previously, women migrant workers face employment problems unique to them. Women migrant workers’ employment opportunities are more restricted than for men, and women typically bear the major responsibility for care of the family and for cultural maintenance. Therefore, measures to fulfill women migrant workers’ rights must improve the treatment of women migrant workers as workers, and must minimize the hurdles women migrant workers face in maintaining their family and cultural obligations.

The Convention on Migrant Workers offers a potential framework for protecting women migrant workers’ basic rights at work. If followed by national policy makers, the Convention’s framework might strengthen the laws affecting migrant women workers. Article 25 (1) states that migrant workers should not be remunerated less favorably for their work than are nationals. This Article can be applied to women migrant workers, so that women too are entitled to equality in treatment with nationals. Other conditions of work also covered by the Convention include overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship, and any other conditions of work covered by national law and practice. The Convention also provides for equality in treatment with nationals in the areas of social security and medical care, although the Convention does not recognize an absolute right to these services. Access to social security and medical care would increase the economic security and well-being of women migrant workers, perhaps allowing them to escape the trap of economic inequality.

Although equality of treatment with nationals is integral to the Convention, the Convention provides no protection from unequal wages between men and women, nor from gender-based, occupational segregation. Furthermore, the Convention does not specify which

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160 The Convention’s 30 ratifying nations are: Algeria, Azerbaijan, Belize, Bolivia, Bosnia & Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Kyrgyzstan, Libya, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Syria, Tajikistan, Timur Leste, Turkey, Uganda, and Uruguay.
161 This thought was eloquently expressed by Gay McDougall, Executive Director, Global Rights, “Lessons for Human Rights Practitioners,” Speech given at the American University Washington College of Law, April 29, 2004.
162 Hune at 810.
163 Id.
164 Art. 25(1)(a).
165 Art. 27 and Art. 28, respectively.
166 Hune at 812.
nationals, men or women, it intends to reference. In other words, the Convention does not take into account disparate treatment between men and women workers that may occur in host countries. Although such treatment would be contrary to UN principles of non-discrimination, the issue of disparate treatment is not specifically addressed in the Convention on Migrant Workers.

The Convention also specifies a respect for the cultural identity of migrant workers, including not preventing workers from maintaining cultural ties with their home country. The Convention urges States, when crafting migration policies, to contemplate not just their labor needs and resources, but also to ensure the social, economic, cultural, and other needs of migrant workers and their families. If applied to women, these provisions might allow women to more effectively balance their employment with their cultural responsibilities. The provisions also might significantly improve the mental health of women migrant workers who are isolated from their families and communities.

The Convention does not, however, address the more practical question of work-family balance. The Convention does not address the fact that women are generally primary caregivers of their children. The Convention does not mention access to child care, or the need for women to move in and out of the labor force while raising their children.

Self-employed workers abroad are specifically recognized as migrant workers. The inclusion of self-employed workers in the definition of migrant worker recognizes the large number of migrant workers who operate small family businesses. However, advocates for women migrant workers might argue that self-employed workers include women in the informal economy, such as domestic workers and others who are typically excluded from nations’ labor laws. This definition would apply to documented workers only. Despite this limitation, advocates may be able to extend labor laws to cover traditionally excluded women migrant workers by maintaining that such workers are self-employed, and thus specifically protected under the Convention on Migrant Workers.

Unionizing and Organizing Opportunities

Migrant workers have a right to information under the Convention. Migrant workers who are documented have a right to be informed of their rights under the Convention. The duty to inform is not limited to host countries, but applies to origin, transit, and destination countries. Moreover, States are directed to disseminate the information widely, through employers, trade unions, or other appropriate bodies or institutions, cooperating with other States if appropriate. The information must be provided to migrant workers free of charge and in a language the

167 Art. 31.
168 Hune at 813.
169 Id.
170 Art. 63.
171 ICMC at 20.
172 Art. 63.
173 Art. 33.
174 Art. 33 (1)
175 Art. 33 (2).
worker can understand. The Convention also covers access to information for undocumented migrant workers, though these provisions do not guarantee a right to information for undocumented workers. Rather, such workers may receive information from government agencies regarding migration and work-related laws and regulations, as well as information about country and employment conditions.

Promoting workers’ access to information may be a powerful first step to fulfilling workers’ rights to organize. Promotion of access to information is particularly beneficial for women migrant workers, who often labor in isolated jobs. A systemic outreach program on migrant worker rights, one that targets multiple sources, might succeed in informing women migrant workers of their rights. Furthermore, information campaigns based in home countries and disclosing exploitative employment practices abroad might discourage smuggling and trafficking.

Article 40 (1) of the Convention grants workers “the right to form associations and trade unions in the state of employment for the promotion and protection of their economic, social, cultural, and other interests.” Far more than establishing the right to unionize, this article enables women in typically non-unionized work, such as domestic workers, to form organizations to secure their interests. This broad definition is significant for women migrant workers, who face obstacles to union participation, particularly in leadership positions. “Associations” protected under the Convention include trade unions as well as other groups to promote and protect their interests. A major barrier to realization of this right, however, is that Article 40 only applies to host countries that are States Parties to the Convention, and only applies to documented workers. As noted above, no major labor-receiving country has ratified the Convention.

Article 26 offers an alternative to Article 40. States Parties recognize the right of migrant workers and members of their families “to take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural, and other interests, subject only to the rules of the organization concerned.” Like Article 40, the definition of associations is sufficiently broad to include a variety of NGOs. Unlike Article 40, Article 26 does not apply only to host countries, but to all States Parties. Therefore, the right of women migrant workers to organize or join associations to protect their interests in home countries or transit countries is recognized. Furthermore, Article 26 applies to all workers, regardless of their legal status.

The Convention protects the rights of women migrant workers to form organizations geared towards societal change, whether in their home countries, transit countries, or host countries. NGOs such as MIGRANTE in the Philippines and UNIFEM’s Regional Programme on Empowering Migrant Workers in Asia, discussed above, serve as powerful examples of the

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176 Art. 33 (3).
177 Art. 65.
178 Art. 65 (1)(d).
179 Hune at 810.
180 Art. 40 (1).
181 Art. 26 (1).
kinds of organizations women migrant workers and their advocates might form. The actual
organizations formed, either by women migrant workers themselves or by their advocates, are
limited only by the women’s needs and goals.

Economic Opportunities

The standard of “equality of treatment with nationals” applies not just to migrant
workers’ rights at work, discussed above, but applies to access to economic opportunities as
well. The Convention’s Article 43 gives documented migrant workers equality of treatment with
nationals in access to a number of educational and social services, including vocational training
facilities and educational institutions. Through these opportunities, women migrant workers can
improve their economic situations and countries can open new paths to women’s development.182

Unfortunately, the Convention has no specific provision for language instruction, so that
women migrant workers can become competent in the local language.183 Without language
skills, many women will be unable to take advantage of their right to access educational and
employment programs.184 Language barriers also prevent women from reporting human rights
abuses, or from accessing crucial services and programs.

Protecting the Families of Migrant Workers

The Convention on Migrant Workers is not limited to workers. The Convention
recognizes family as the fundamental group unit of society.185 As such, family unification is a
major goal of the Convention. States Parties are directed to “take appropriate measures to ensure
the protection of the unity of the families of migrant workers.”186 This provision benefits not just
women who are “left behind” by their migrant worker husbands, but it benefits women migrant
workers who wish for their husbands and children to join them.187 Furthermore, the Convention
requires appropriate measures to be taken not just by host countries, but by all States Parties to
the Convention. Home countries also have a role in family reunification.

Family unification may be particularly important when it is the mothers, rather than the
fathers, who migrate for work.188 When women migrate for work, leaving their children behind,
the children are more likely to suffer academically, have emotional problems, suffer from
substance abuse, be forced into the labor force at an early age, and suffer physical or sexual
abuse.189

The Convention offers opportunities for economic advancement of family members who
migrate with the worker. Even members of the family, including non-working spouses, have a

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182 Hune at 811.
183 Id.
184 Id.
185 Id. at 811.
186 Art. 44 (1).
187 Hune at 811.
188 GPP at 14.
189 Id.
right to access to education and vocational training under the Convention. Like Article 43, Article 45 provides for equality of treatment with nationals in access to educational and social services, including vocational training facilities and educational institutions. A major difference between Articles 43 and 45 is that family members do not have any right to access to co-ops and self-managed enterprises. The Convention nonetheless provides an important opportunity for family members to be less dependent on the migrant worker, and gives families more economic security overall.

VI. Conclusion

Labor migration brings both gains and losses for women. Economic and other forms of exploitation may increase, but women also may gain independence, respect, and the awareness that they have power over their lives. Women migrant workers are more likely to achieve these gains if policies are in place that promote their rights, and if policy makers and others acknowledge the unique experiences of women migrant workers.

The Convention on Migrant Workers is a good place to start. Although the Convention sets forth universal standards for all migrant workers, universal standards applied to men and women do not always adequately address the special circumstances of women as females, workers, and foreign born. By examining the Convention through an empowerment perspective, looking for ways to apply its provisions to the unique experiences of women migrant workers, we make an important advance in the fulfillment of women migrant workers’ rights.

An empowerment perspective is not just important as an exercise in theory. By focusing on how to promote and protect women migrant workers’ human rights at work, we can avoid some of the more egregious cases of abuse. Indeed, there is a link between economics, violence, and women. Economically disadvantaged women are more vulnerable to abuses such as sexual harassment, trafficking, and sexual slavery. The denial of economic power prolongs women’s vulnerability and dependence. The societal costs of violence against women are enormous.

Rather than paying attention to women migrant workers only when they are victims of abuse and crime, we should emphasize the fulfillment of their human rights, seeking ways to empower women migrant workers so that such abuse can be avoided altogether. Through this strategy, human rights advocates and women migrant workers themselves can improve the day-to-day lives of all.

190 Art. 45.
191 Morakvasic at 893.
192 Id.
193 Hune at 814.
194 Circle of Rights, Module 4.
195 Id.
196 Id.
197 Id.
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