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From Labour of Love to Decent Work: Protecting the Human Rights of Migrant Caregivers in Canada

Sabaa A. Khan *

Introduction

The proliferation of migrant women of colour in the domestic work and caregiving¹ sectors of wealthier nations is a salient feature of the contemporary global economy, which presents a source of concern in relation to international human and labour rights. While the specific legal rules pertaining to migrant domestic caregivers vary significantly among and within major destination countries in North America, Europe, Asia, and the Middle East, this line of work is everywhere perceived as low-status physical labour and has proven to be intimately linked with social exclusion, abysmal working conditions, sub-standard living accommodations, sexual and racial discrimination, and exploitation on the part of employers, labour brokers, and employment agencies.² As a result, the abuse of migrant caregivers is a transnational reality in abusive political regimes and advanced liberal democracies alike.

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¹ There is no global consensus on the legal definition of domestic work or to what extent it includes caregiving duties. Canada's foreign "domestic worker" policy was replaced with a "live-in caregiver" program in 1992. Section 2 of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227, defines a live-in caregiver as "a person who resides in and provides child care, senior home support care or care of the disabled without supervision in the private household in Canada where the person being cared for resides."

² Adelle Blackett, "Making Domestic Work Visible: The Case for Specific Regulation" (Labour Law and Labour Relations Programme Working Paper No. 2, ILO, Geneva, 1998); Ray Jureidini, "Women Migrant Domestic Workers in Lebanon" (International Migration Papers 48, ILO, Geneva, 2002); Mignon Duffy, "Doing the Dirty Work: Gender, Race, and Reproductive Labor in Historical Perspective," *Gender and Society* 21 (2007); Joya Misra and Sabine N. Merz, "Neoliberalism, Globalization, and the International Division of Care," in *Wages of Empire: Women's Poverty, Globalization, and State Transformations*, ed. Amalia Cabezas, Ellen Reese, and Marguerite Waller (Boulder, CO: Paradigm Press, 2007); Dawn Lyon, "The Organization of Care Work in Italy: Gender and Migrant Labour in the New Economy," *Indiana Journal of Global Legal Studies* 13 (2006); Shirlena Huang, Brenda S.A. Yeoh, and Noor Abdul Rahman, eds., *Asian Women as Transnational Domestic Workers* (London: Marshall Cavendish Academic, 2005); Maria Deanna P. Santos, *Human Rights and Migrant Domestic Work: A Comparative Analysis of the Socio-legal Status of Filipina Migrant Domestic Workers in Canada and Hong Kong* (Leiden: Martinus Nijhoff, 2005). Rhacel Salazar Parrenas, *Servants of Globalization: Women, Migration and Domestic Work* (Stanford, CA: Stanford University Press, 2001); Bridget Anderson, *Doing the Dirty Work? The Global Politics of Domestic Labour* (London: Zed Books, 2000).

Long-standing international acknowledgement³ of the unequal and insecure status of migrant caregivers in almost all host societies has not deterred women from developing countries from seeking employment in this realm of work, one of the few opportunities available to them to achieve an adequate standard of living and to ameliorate the quality of life of their future generations. Because of its strong economic potential for women and families on all sides of all borders, the globalized caregiving system has sustained itself over time, despite manifesting profound conflict with human and labour rights. That migrant caregivers are forced to trade off a set of basic human freedoms when they choose to increase their economic possibilities through employment abroad is fundamentally incompatible with what has come to be the international community's overarching goal in relation to labour: the expansion of "decent" work. A concept introduced by ILO Director-General Juan Somavia in his first report to the International Labour Conference, decent work is today recognized as a universal employment objective:

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.⁴

Decent Work for all should be made a global goal and be pursued through coherent policies within the multilateral system.⁵

The question raised in this article is whether the Canadian labour policy pertaining to migrant caregivers, officially titled the Live-in Caregiver Program (LCP), is reflective of contemporary international efforts, through the ILO and United Nations, to ensure the equality and social protection of migrant workers. The special interest in examining the LCP under international legal norms stems from the fact that while most nations have been reprimanded for their restrictive policies toward migrant domestic workers, Canada's LCP has been commended by the UN Special rapporteur on the rights of migrants,⁶ and other nations have considered replicating the policy within their own borders.⁷ At the same time, the LCP has been described as a program that reinforces racial exploitation, and advocacy groups have

³ See International Labour Organization [ILO], *Resolution concerning the Conditions of Employment of Domestic Workers* (International Labour Conference, 49th Session, Geneva, 1965); ILO, "The Employment and Conditions of Domestic Workers in Private Households: An ILO Survey," *International Labour Review* 102 (1970); Blackett, "Making Domestic Work Visible"; ILO, *A Global Alliance Against Forced Labour* (International Labour Conference, 93rd Session, Geneva, 2005).

⁴ ILO, *Decent Work* (Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999), 3.

⁵ World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All* (Geneva: ILO, 2004).

⁶ *Specific Groups and Individuals: Migrant Workers, Report prepared by Ms. Gabriela Rodriguez Pizarro, Special Rapporteur on the human rights of migrants, submitted pursuant to resolution 1999/44 of the Commission on Human Rights, Addendum, Visit to Canada* (UN Economic and Social Council Doc. E/CN.4/2001/83/Add.1, 21 December 2000).

⁷ Daiva K. Stasiulis and Abigail B. Bakan, "Regulation and Resistance: Strategies of Migrant Domestic Workers in Canada and Internationally," *Asian and Pacific Migration Journal* 6 (1997), 31–57.

long argued for its abolition.⁸ Much of the controversy surrounding the LCP relates to the Canadian citizenship possibilities it creates for participating migrants. While access to the full range of economic, social, and political rights that citizenship entails can be seen as a real—and rare—operationalization of the principle of global social equity embodied in international law, the normative framework applicable to migrant caregivers is suspected to engender abusive conditions of work and to discourage workers from exercising their labour rights. One of the objectives of this article is to understand whether the promise of eventual citizenship sewn into a labour migration policy actually improves the quality of employment generated by that policy.

The next section of the article presents an overview of the LCP, comparing its normative framework to those of other Canadian programs for temporary foreign workers; this is followed by an examination of the practical effects of the LCP on the socio-economic capacities of migrant women of colour, who constitute the vast majority of workers employed under the program. The following section addresses the conformity, or lack thereof, between the LCP and global initiatives of the ILO and the UN to protect migrant workers, with an emphasis on the ILO's Multilateral Framework on Labour Migration (MFLM).⁹ Adopted in the 2005 by a tripartite meeting of experts, as part of the plan of action called for under the 2004 ILO Report on Migrants,¹⁰ the MFLM brings together relevant ILO and UN conventions, compiling them as a series of non-binding principles and guidelines intended to assist ILO member states in developing more coherent, effective, and fair labour-migration policies. Annexed to the MFLM are concrete examples of the practical application of its principles and guidelines, in the form of best practices originating from diverse world regions. Assessing the LCP in light of the MFLM allows us to determine whether the Canadian policy can be qualified as a gender-sensitive, rights-based approach to migration.

From Domestic Work to Caregiving

The delegation of domestic labour to foreign women has long been practised in Canada, dating back to the era of European settlement, when young

⁸ See Annelies Moors, "Unskilled Labour: Canada's Live-In Caregiver Program," *Comparative Studies in Society and History* 45 (2003), 386–94; Santos, *Human Rights and Migrant Domestic Work*; Myriam Bals, *Les Domestiques étrangères au Canada: esclaves de l'espoir* (Paris: L'Harmattan, 1999); Nona Grandea, *Uneven Gains: Filipina Domestic Workers in Canada* (Ottawa: Philippines–Canada Human Resource Development Program, North–South Institute, 1996); Deirdre McKay, "Success Stories? Filipina Migrant Domestic Workers in Canada" in *Asian Women as Transnational Domestic Workers*, ed. Shirlena Huang, Brenda S.A. Yeoh, and Noor Abdul Rahman (London: Marshall Cavendish Academic, 2005).

⁹ ILO, *Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a Rights-Based Approach to Labour Migration* (Geneva: ILO, 2005) [MFLM].

¹⁰ ILO, *Towards a Fair Deal for Migrant Workers in the Global Economy: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work* (International Labour Conference, 92nd Session, Geneva, 2004).

Western European women were admitted into Canada with the full benefits of citizenship to meet the need for immediate domestic help and, at the same time, to supply future wives to a growing population of male settlers.¹¹ As larger numbers of Western European women began to refuse domestic work, women from Eastern Europe—including a vast number of war-displaced persons—were allowed entry into Canada as domestic labourers, albeit receiving a less favourable legal status than their Western European counterparts.¹² In 1955, immigrant women of colour began entering Canada to meet domestic labour demands, through an agreement known as the Caribbean Domestic Scheme and involving the governments of Canada, Jamaica, and Barbados. The conditions attached to the entry of Caribbean domestics as landed immigrants were significantly less desirable than those applying to earlier groups of immigrant domestic workers, including specific requirements with respect to education, civil status, and age; tests for pregnancy and diseases; wages inferior to those of other domestics; obligatory live-in service for at least one year; and a constant risk of deportation.¹³ Whether or not landed-immigrant status in any way mitigated the serious economic and social injustices suffered by women of colour in domestic labour work, the Caribbean Domestic Scheme ended in 1973, marking the point at which domestic workers ceased to arrive in Canada as landed immigrants.

From 1973 to 1981, foreign domestic workers were denied all prospects of citizenship and could work in Canada only on renewable temporary employment authorizations. Unlike their predecessors, these women were effectively barred from gaining permanent residence, as the low wages they earned prohibited them from qualifying as economically self-sufficient under immigration criteria. It is estimated that approximately 60,000 migrant women entered Canada during this time, mostly from Caribbean states and the Philippines, for an average stay of three years.¹⁴ The harsh, exploitative realities lived by these women mobilized advocacy groups and prompted protests by domestic workers themselves, which eventually led the federal government to establish the Task Force on Immigration Practices and Procedures to investigate the situation of foreign domestic workers on employment

¹¹ Patricia M. Daenzer, "An Affair between Nations: International Relations and the Movement of Household Service Workers," in *Not One of the Family: Foreign Domestic Workers in Canada*, ed. Abigail B. Bakan and Daiva Stasiulis (Toronto: University of Toronto Press, 1997); Barbara Roberts, "A Work of Empire: Canadian Reformers and British Female Immigration," in *A Not Unreasonable Claim: Women and Reform in Canada, 1880s–1920s*, ed. Linda Kealey (Toronto: Women's Press, 1979).

¹² Daenzer, "An Affair between Nations."

¹³ Bals, *Les Domestiques étrangères*; Audrey Macklin, "On the Inside Looking In: Foreign Domestic Workers in Canada," in *Maid in the Market: Women's Paid Domestic Labour*, ed. Wenona Giles and Sedef Arat-Koç (Halifax: Fernwood Publishing, 1994); Grandea, "Uneven Gains"; Abigail Bakan and Daiva Stasiulis, "Foreign Domestic Worker Policy in Canada and the Social Boundaries of Modern Citizenship," *Science and Society* 58 (1994), 7–33.

¹⁴ Bals, *Les Domestiques étrangères*, 30.

authorizations. In its conclusive 1981 report, the task force acknowledged that foreign domestic workers were prone to abuse and exploitation and recommended that they be granted access to permanent residence.¹⁵ In the same year, the federal government established the Foreign Domestic Movement (FDM), a program that made it possible for foreign domestic workers to apply for permanent residence on completing two years' live-in domestic service for a private household. In 1992, the FDM was reformulated as the Live-in Caregiver Program (LCP). Although several aspects of the program have changed over the years in response to pressure from advocacy groups, the main features of the FDM have all been retained: the temporary legal status of the worker, an employer-specific work permit, and the requirement of two years' obligatory live-in service in order to qualify for permanent residence in Canada.

A major difference between the FDM and the LCP is the change in terminology, from domestic to caregiver. The former policy was intended to fill labour gaps in the private child-care sector, whereas the latter is designed also to meet the home-care needs of elderly and disabled persons.¹⁶ This has greatly expanded the scope of work-related duties that may be assigned to a worker through the LCP, resulting in positions ranging from daytime infant babysitting to providing physiotherapy to handicapped persons. The common factor in all LCP assignments is that the primary responsibilities and daily tasks of live-in caregivers involved provide home-based health care. The high educational and training requirements of the LCP ensure that most women who enter the program are either university graduates or foreign-accredited health professionals.¹⁷ Their activities thus harmonize with those of other health care sector workers in our society: nurses, nursing aids, orderlies, physiotherapists, early childhood educators, day care and geriatric workers. As compared to these other occupations, however, live-in caregivers work under a major socio-economic disadvantage: they have limited employment mobility and restrictive residence rights for at least their first two years of employment in Canada.

LCP characteristics: Working for and living with an employer

One core condition of the LCP is that a live-in caregiver must work full-time for one employer only and must reside within that employer's home.¹⁸ This type of residence restriction is exclusive to the live-in caregiver category and, therefore, sets out a clear distinction between their work environment and housing rights and those of other economic migrants. While the live-in requirement provides a certain degree of short-term economic advantage for

¹⁵ Department of Employment and Immigration, *Domestic Workers on Employment Authorizations: A Report of the Task Force on Immigration Practices and Procedures* (Ottawa: Office of the Minister of Employment and Immigration, 1981), Recommendation No. 5.

¹⁶ See *Immigration and Refugee Protection Regulations*, s. 2.

¹⁷ Daiva K. Stasiulis and Abigail B. Bakan, *Negotiating Citizenship: Migrant Women in Canada and the Global System* (Toronto: University of Toronto Press, 2003).

¹⁸ *Immigration and Refugee Protection Regulations*, s. 113.

caregivers by significantly reducing their living expenses, it also fuels the devaluation of their labour, allowing employers to pay them wages far below those paid to live-out caregivers who perform similar duties.¹⁹ In certain Canadian provinces, live-in caregivers continue to be excluded from basic employment standards such as minimum wage, the standard work week, vacation provisions, and overtime pay.²⁰ Even when covered under provincial labour standards, these migrants experience higher levels of occupational abuse, as the live-in requirement is known to significantly increase an employee's vulnerability to diverse forms of exploitation.²¹ Furthermore, the stringent live-in condition prevents migrant caregivers from achieving socio-economic equality with other members of the national workforce by serving as a legitimate basis for differential, sub-standard conditions of work and remuneration.

Another point of difference in the legal treatment of LCP caregivers is their diminished right to health care, which manifests itself, in part, through denied or delayed access to public health insurance and their exclusion from provincial occupational health and safety legislation.²²

The second core aspect of the LCP is that live-in caregivers are issued a single-employer work permit for the duration of which they are granted temporary resident status. It is only on condition that they fulfil 24 months of work within 36 months of their entry into Canada that they may apply for permanent resident status.²³ Until they are granted permanent residence and the open work permit it entails, live-in caregivers are authorized to work only for the employer mentioned on their work permit. Although a change of employer is permitted under the program, this involves a permit renewal and application fees, as well as processing times of up to one month, during which it is illegal for the caregiver to work.²⁴ Should a live-in caregiver not succeed in fulfilling the required 24 months of work within three years of entering Canada, she is no longer eligible to apply for permanent residence and must leave the country.²⁵

¹⁹ Louise Langevin and Marie-Josée Belleau, *Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-In Caregivers and Mail-Order Brides* (Ottawa: Status of Women Canada, 2001), 57.

²⁰ Levels of exclusion vary among provinces. For example, Prince Edward Island excludes live-in caregivers from minimum wage protection but entitles them to maternity leave; in New Brunswick, live-in caregivers are completely excluded from provincial labour protection. See *Employment Standards Act*, R.S.P.E.I. 1988, c.E-6.2, s. 2(3)a; *Employment Standards Act*, S.N.B. 1982, c. E-7.2.

²¹ Stasiulis and Bakan, *Negotiating Citizenship*, 92; Audrey Macklin, "Foreign Domestic Workers: Surrogate Housewife or Mail-Order Servant?" *McGill Law Journal* 37 (1992), 681–760.

²² Jacqueline Oxman-Martinez, Jill Hanley, Lucyna Lach, Nazilla Khanlou, Swarna Weerasinghe, and Vijay Agnew, "Intersection of Canadian Policy Parameters Affecting Women with Precarious Immigration Status: A Baseline for Understanding Barriers to Health," *Journal of Immigrant Health* 7 (2005).

²³ *Immigration and Refugee Protection Regulations*, ss. 72(2)(a), 110–15.

²⁴ *Ibid.*

²⁵ *Ibid.* s. 63.

Live-in caregiver profiles: Who are these women?

A predominant trait of the LCP is the significant number of Filipino women hired under the program. According to the National Alliance of Philippine Women in Canada (NAPWC), figures from the Canadian embassy in Manila reveal that in 2005, Filipino women accounted for 95.6% of Canada's live-in caregivers.²⁶ Since the 1980s, Canadian employers and recruitment agencies have shown a strong preference for sourcing live-in caregivers from the Philippines over other countries. This racialized and gendered pattern of recruitment has been fuelled by the Philippine government's aggressive labour-export policy and by devastating unemployment and poverty rates in the Philippines, as well as by persisting stereotypes within Canada of Filipino women as obedient, nurturing, complacent, and, thus, as ideal domestic workers.²⁷ The contractual framework of the LCP is undermined by global socio-economic inequalities. Likewise, there is no recognition, let alone counterbalancing, of the heightened vulnerability to exploitation that characterizes this truly unique transnational employment relationship engaging citizens of disparate economies. Unlike some of Canada's other international labour-migration schemes, the LCP has entirely failed to respond to the social and economic needs of the migrant workers it employs.

Unequal migrants: Live-in caregivers and other foreign labour categories

The inequalities experienced by live-in caregivers with respect to employment mobility, residence rights, and social benefits are not unique; they are also characteristic of other temporary unskilled or low-skilled foreign worker groups, such as seasonal agricultural workers.²⁸ With respect to other migrant groups, however, LCP workers nevertheless qualify as one of the most vulnerable, as their labour is carried out in private households, where government interference remains absent and unionization implausible. They work in an isolated environment and are solely responsible for enforcing the terms of the private contracts under which they are employed.²⁹ Unlike Mexican and Caribbean agricultural workers employed in Canada under the Seasonal Agricultural Workers Program, live-in caregivers do not benefit from bilateral negotiations between participating governments; there is no multi-stakeholder administration of their labour migration program, and no workplace inspection processes. Their

²⁶ House of Commons Standing Committee on the Status of Women, *Evidence*, 39th Parl., 1st Sess. (April 19, 2007), 1550, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2848871&Language=E&Mode=1&Parl=39&Ses=1#T1550>.

²⁷ See Bals, *Les Domestiques étrangères*; Stasiulis and Bakan, *Negotiating Citizenship*.

²⁸ Commission for Labour Cooperation, *Foreign Worker's Guide to Labour and Employment Laws in Canada*, http://www.naalc.org/migrant/english/pdf/mgcan_en.pdf.

²⁹ Citizenship and Immigration Canada, *Live-In Caregiver Program: How Are Contracts Enforced?* <http://www.cic.gc.ca/ENGLISH/information/faq/work/caregiver-faq04.asp>.

employment agreements do not take into consideration the special socio-economic needs of migrants, such as facilitated access to remittances for family members in sending countries. Nor do live-in caregivers benefit from the technical assistance of the International Organization for Migration, as do Guatemalan agricultural workers employed under the Canada–Guatemala Project.³⁰

Nonetheless, the seemingly better labour arrangement of migrant agricultural workers has not protected them from the highly exploitative and racially discriminatory employment practices of the agricultural industry.³¹ Furthermore, the exclusionary tradition of immigration law continues to prohibit seasonal agricultural workers from ever permanently residing in Canada. This state of permanent temporariness is also a feature of the Pilot Project for Occupations Requiring Lower Levels of Formal Training, a federal program targeting a broad category of migrant workers including live-out caregivers and domestic workers, day care and health agency workers, meat cutters, sales and service industry workers, hotel chambermaids, and other manual labourers. Under the pilot project, it is possible for foreign workers to continually renew their temporary employment authorizations, on condition that they return to their country of origin for a minimum of four months at the end of each 24-month authorization period.

In light of the citizenship restrictions imposed on these other migrant workers, LCP participants may appear to be a more privileged group, as the possibility of Canadian citizenship that is uniquely offered to their category of “unskilled” labour³² hints at a path toward real social and political equity, upward labour mobility, and family reunification. In real migration processes, however, these incentives remain difficult to reach, and economic and social insecurities continue to plague live-in caregivers even after they have qualified for permanent residence.

Social and economic impacts of the LCP: Employer efficiency, worker decline

The cumulative effect of the residence and work-permit limitations imposed on live-in caregivers is the diminution of their ability to exercise fundamental labour rights, including the almost complete erosion of their ability to negotiate conditions of work. Though they may have theoretical access to provincial mechanisms for settling labour disputes, any complaint or disruption of

³⁰ See International Organization for Migration, Seasonal Agricultural Workers Project, Guatemala–Canada (IOM Guatemala, 2008) <http://www.oim.org.gt/Seasonal%20Agricultural%20Workers%20Project.pdf> (accessed November 20, 2008).

³¹ Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada* (Montreal: McGill-Queen's University Press, 2002); Kerry Preibisch and Leigh Binford, “Interrogating Racialized Global Labour Supply: An Exploration of the Racial/National Replacement of Foreign Agricultural Workers in Canada,” *Canadian Review of Sociology and Anthropology* 44 (2007), 5–36.

³² The term “unskilled” is used here strictly in the context of Citizenship and Immigration Canada's refusal to recognize live-in caregiving as a skilled occupation; in no way does it reflect the actual qualifications or education backgrounds demanded of live-in caregivers.

work is likely to have drastic consequences for their immigration prospects, potentially leading to termination of employment, subsequent loss of living accommodations, and even deprivation of the right to work. Their real capacity to address workplace injustice is virtually nil, as access to legal protection is inherently tied to a risk of deportation. Several other incapacitating factors may also hinder LCP workers' access to legal rights: a lack of information about labour rights, debt or poor financial status, isolation, and cultural and language barriers. Under these circumstances, it is not surprising that few LCP-related cases are presented to provincial labour tribunals. In fact, live-in caregivers' strategies for dealing with oppressive work environments rarely involve taking legal action, tending instead toward the use of external resources such as community organizations and family members, as well as internal and cognitive resources such as reducing productivity and reversing power imbalances by changing their mental perception of the work situation.³³

Many researchers have suggested that the overall structure of the LCP and the conditions under which live-in caregivers are admitted into Canada perpetuate long-term social and economic inequalities by securing a pool of "unskilled" and highly exploitable migrant labour that liberates Canadian women from the domestic realm, allowing them to engage in higher-value labour. Sedef Arat-Koç has described domestic work as being "ideologically invisible as a form of real work [...] even when it is paid for."³⁴ Audrey Macklin points out that the commercialization of domestic labour through the LCP has not led to the professionalization of the occupation but, rather, has reinforced the devaluation of social reproductive labour while globalizing power inequalities between employer and employee.³⁵ Habiba Zaman's recent study on the prospects of decommodifying immigrant women's labour shows that the occupational immobility imposed on live-in caregivers during their temporary status, combined with Canadian immigration authorities' refusal to recognize the real value of foreign educational and professional credentials, has deskilled immigrant women and rendered them permanently commodified.³⁶ It appears that despite the attainment of permanent residence rights, substantive equality often remains illusory for immigrant caregivers, who face several structural and cultural obstacles in obtaining employment outside low-status, low-wage, unskilled realms of work.

A closer examination of the practical functioning of the LCP reveals that it is a program initiated by private employers and recruitment agencies. With little coherence among provincial employment standards and relatively little federal government oversight, the LCP lacks adequate mechanisms to ensure the economic and social security of the migrant workers it engages.

³³ Rina Cohen, "Women of Colour in White Households: Coping Strategies of Live-In Domestic Workers," *Qualitative Sociology* 14 (1991), 197–215.

³⁴ Sedef Arat-Koç, "In the Privacy of Our Own Home: Foreign Domestic Workers as Solution to the Crisis of the Domestic Sphere in Canada," *Studies in Political Economy* 28 (1989), 46.

³⁵ Macklin, "On the Inside Looking In."

³⁶ Habiba Zaman, *Breaking the Iron Wall: Decommodification and Immigrant Women's Labour in Canada* (Oxford: Lexington Books, 2006).

Employment agencies, which have come under global scrutiny for their disturbingly high rates of malpractice,³⁷ are regulated only in British Columbia and Alberta, and only to the extent that they need a licence to operate.³⁸ Similar legislation in Ontario was repealed.³⁹ Furthermore, only British Columbia requires that employers register their caregivers on a Domestic Workers' Registry.⁴⁰ In the rest of Canada's provinces, it is impossible to provide an exact account of LCP employers and employees at any given time.

In this globalized, unregulated process of recruitment and employment within private homes, the Canadian government's role has essentially been limited to processing applications. As for the labour-sending governments, which in the overwhelming majority of the cases are the Philippines and Caribbean nations, the LCP leaves them out of the recruitment and employment processes altogether, failing to acknowledge their protective role in the overseas employment of their citizens. Interestingly, this negation of the need for transnational governance of international employment schemes seems to apply uniquely to the unskilled occupation of live-in caregiving, a migrant category that has been explicitly excluded from recently adopted bilateral agreements between the government of the Philippines and the governments of Saskatchewan and British Columbia that provide for joint governance of migration for employment.⁴¹ The absence of similar co-governance efforts for caregiving labour suggests that the LCP is designed to operate with little interference from the international community, securing the productivity of Canadian households at the risk of violating the human and labour rights of the migrant caregivers they employ.

Harsh criticism of the LCP by labour and civil society groups persuaded Citizenship and Immigration Canada to host a multi-stakeholder roundtable discussion on the program, during which concerns relating to eligibility criteria, conditions of work, and transition to permanent residence were raised.⁴² Shortly afterwards, the Standing Committee on the Status of

³⁷ ILO, *Protecting the Most Vulnerable of Today's Workers: Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration* (Geneva: ILO, 1997); International Confederation of Free Trade Unions, "Modern-Day Slavery for Temporary Migrants," *Trade Union World* 3/97 (November 1997).

³⁸ *Employment Agency Business Licensing Regulation*, Alta. Reg. 189/1999, ss. 2–4; *Employment Standards Regulation*, B.C. Reg. 396/1995.

³⁹ *Employment Standards Act*, S.O. 2000, c. 41, s. 144(4).

⁴⁰ *Employment Standards Regulation*, B.C., s. 13.

⁴¹ *Memorandum of Understanding between the Department of Labour and Employment of the Government of the Republic of the Philippines and the Ministry of Economic Development of the Government of British Columbia, Canada Concerning Co-operation in Human Resource Deployment and Development* (January 29, 2008) art. 1(a); *Memorandum of Understanding between the Department of Labour and Employment of the Government of the Republic of the Philippines and Her Majesty the Queen in the Right of the Province of Saskatchewan as represented by the Minister Responsible for Immigration and the Minister of Advanced Education and Employment Concerning Cooperation in the Fields of Labour, Employment and Human Resource Development* (December 18, 2006).

⁴² Citizenship and Immigration Canada, *Departmental Performance Report 2004–2005*.

Women recommended that the live-in requirement be made optional and that the program be reformed to ensure better protection of the human rights of migrant workers.⁴³ The federal government offered the following response:

The live-in requirement is a vital component of the LCP. Although there are Canadians qualified to work as caregivers, there is a shortage of those willing to work as live-in caregivers. Recommendation 8, suggesting that the live-in requirement be made optional, would mean that temporary foreign workers would be taking jobs for which there is already a sufficient labour supply of Canadians.⁴⁴

The Canadian government's justification for maintaining the live-in requirement appears to be based on the existence of a specific void in the labour market. However, it does not account for the fact that a significant majority of employers and employees agree on partial or complete live-out arrangements, despite their legal obligations under the LCP⁴⁵—which suggests that Canadian families continue to participate in the LCP not because the program corresponds to their actual care needs but because there is a lack of other home-care options offering employer incentives as advantageous as the LCP's low wages and minimal regulation. In addition, the federal government's support of the live-in requirement ignores fundamental labour concerns, overriding widespread evidence that living in undermines caregivers' capacity to protest against unfair conditions of work⁴⁶ and seemingly disregarding the international consensus that unskilled migrants constitute a highly vulnerable population for whom the confines of restricted work and residence are likely to exacerbate pre-existing socio-economic inequalities.⁴⁷

Before accepting the imposition of severely restrictive terms of entry on a single category of migrant workers, greater reflection is needed on the legitimacy of taking such action, particularly when it concerns a sector of employment with strong historical and modern-day ties to slavery, servitude, and the subordination of women.⁴⁸ The main concern with the LCP is that the

⁴³ *Improving the Economic Security of Women: Time to Act* (21st Report of the House of Commons Standing Committee on the Status of Women), 39th Parl., 1st Sess., June 2007), Recommendation No. 8.

⁴⁴ Government Response to the Twenty-First Report of the Status of Women (House of Commons Committees, FEWO 39-2).

⁴⁵ Stasiulis and Bakan, *Negotiating Citizenship*, 16.

⁴⁶ Mary Romero, *Maid in the USA* (New York: Routledge, 1992); Elizabeth Clark-Lewis, *Living In, Living Out: African-American Domesticity in Washington DC, 1910–1940* (Washington, DC: Smithsonian Institution Press, 1994), 147; Bals, *Les Domestiques étrangères*, 33.

⁴⁷ ILO, *Towards a Fair Deal for Migrant Workers*; Global Forum on Migration and Development, *Report of the First Meeting of the Global Forum on Migration and Development, Belgium July 9–11, 2007* (Brussels: Bruylant, 2008); Fernand de Varennes, "Strangers in Foreign Lands: Diversity, Vulnerability and the Rights of Migrants" (UNESCO Discussion Paper, Geneva, 2003); Philip L. Martin, *Sustainable Migration Policies in a Globalizing World* (Geneva: International Institute for Labour Studies, ILO, 2003).

⁴⁸ ILO, *Stopping Forced Labour: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work* (International Labour Conference, 89th Session, Geneva, 2001); Clark-Lewis, *Living In, Living Out*; Bonnie Thornton Dill,

shortage of Canadians willing to work as live-in caregivers may be due to the fact that the live-in requirement itself compromises human dignity and freedom in a way incompatible with contemporary international human-rights and labour law regimes. To determine whether the LCP is an equitable work arrangement, we must analyse the program in the context of international standards pertaining to labour migration, which provide important regulatory parameters that enable us to identify unjust distinctions in foreign workers' rights.

International Legal Standards Pertaining to Migrants: What Is Fair?

Although the differential treatment of non-citizens and their access to a limited range of civil, political, social, and economic rights is generally accepted under the principle of national sovereignty and contemporary concerns for national security, the notion of minimum standards in the treatment of all human beings is the foundational principle of international human-rights and labour law:

All human beings are born free and equal in dignity and rights.⁴⁹

[A]ll human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.⁵⁰

The primary universal human-rights instruments—the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁵¹ and the International Covenant on Civil and Political Rights (ICCPR)⁵²—aim to protect many rights and freedoms that are relevant to employment, most notably the right to work and free choice of employment,⁵³ the right to social security,⁵⁴ the right to just and favourable conditions of work;⁵⁵ and the right to freedom of association.⁵⁶ However, these instruments include broad limitation clauses⁵⁷ that have been interpreted as potentially justifying any state-imposed restriction on migrants' entitlement to these rights.⁵⁸ Furthermore,

Across the Boundaries of Race and Class: An Exploration of Work and Family among Black Female Domestic Servants (New York: Garland, 1994).

⁴⁹ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), 71 [UDHR].

⁵⁰ *Declaration Concerning the Aims and Purpose of the International Labour Organization* (Declaration of Philadelphia), October 9, 1946, 15 U.N.T.S. 35, art. I.

⁵¹ *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, 993 U.N.T.S. 3 [ICESCR].

⁵² *International Covenant on Civil and Political Rights*, December 16, 1966, 999 U.N.T.S. 171 [ICCPR].

⁵³ UDHR, art. 23(1); ICESCR, art. 6(1).

⁵⁴ UDHR, art. 22; ICESCR, art. 9.

⁵⁵ UDHR, art. 23(1); ICESCR, art. 7.

⁵⁶ UDHR, art. 20(1); ICESCR, art. 8; ICCPR, art. 22.

⁵⁷ UDHR, art. 29(2); ICESCR, arts. 2(2) and 2(3).

⁵⁸ Ryszard Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Oxford: Clarendon Press, 1997), 61.

since nationality is not included among the prohibited grounds of discrimination, these major human-rights treaties may not be the most effective instruments in targeting the abusive treatment of migrants.

In contrast, the international human-rights norms developed by the ILO offer substantial protection to foreign workers with respect to their economic, social, and residence rights. The ILO Declaration on Fundamental Principles and Rights at Work⁵⁹ lists eight core ILO conventions⁶⁰ as containing universal, non-derogable human rights, applicable to all people in all ILO member states. In its preamble, the ILO Declaration explicitly mentions migrant workers as a group with “special social needs,” requiring “special attention” in relation to the protection of their fundamental labour rights. Indeed, since its establishment in 1919, the ILO has attempted to improve global labour conditions, in part through the “protection of the interests of workers when employed in countries other than their own.”⁶¹

With respect to fundamental labour rights embodied in the ILO core conventions, we saw in the previous section that the legal framework of the LCP gravely hinders unionization and collective bargaining rights (addressed in ILO Conventions No. 87 and No. 98). There is also room for debate as to whether or not the LCP sufficiently distinguishes itself from practices of forced or compulsory labour, as defined in ILO Convention No. 29:

All work or service which is extracted from any person under the menace of any penalty for which the said person has not offered himself voluntarily.⁶²

In essence, it is not clear that a live-in caregiver’s consent to the sub-standard living and working conditions imposed through the LCP is actually voluntary. While LCP workers are able to choose their employers, restrictions of their social and economic rights are not negotiable terms of work. That the element of choice with respect to the exercise of human and labour rights is so restrained under the constant menaces of unemployment and deportation suggests a tacit denial of economic and social freedoms akin to a modernized version of forced labour or servitude.⁶³ In fact, migrant domestic workers have even been identified in reports issued under the ILO Declaration’s follow-up

⁵⁹ *International Labour Organization Declaration on Fundamental Principles and Rights at Work*, June 18, 1998, 37 I.L.M. 1233 [ILO Declaration]

⁶⁰ *Forced Labour Convention*, 1930 (No. 29), *Freedom of Association and Protection of the Right to Organize Convention*, 1948 (No. 87), *Right to Organize and Collective Bargaining Convention*, 1949 (No. 98), *Equal Remuneration Convention*, 1951 (No. 100), *Abolition of Forced Labour Convention*, 1957 (No. 105), *Discrimination (Employment and Occupation) Convention*, 1958 (No. 111), *Minimum Age Convention*, 1973 (No. 138), *Elimination of the Worst Forms of Child Labour Convention*, 1999 (No. 182).

⁶¹ *ILO Constitution*, June 28, 1919, 49 Stat. 2712, 225 Consol. T.S. 378, Preamble.

⁶² *Convention concerning Forced or Compulsory Labour* (ILO Convention No. 29), 39 U.N.T.S. 55 (1932), art. 2(1).

⁶³ For further discussion on the notion of consent see Joseph H. Carens, “Live-In Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy,” *Journal of Political Philosophy* 16 (2008); Virginia Mantouvalou, “Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers,” *Industrial Law Journal* 35 (2006).

mechanism as being especially susceptible to abuse as a result of their insecure legal status in an isolated and unregulated occupation that, worldwide, constitutes one of the main contemporary instances of forced labour.⁶⁴

Migrant-Specific Conventions

The only international legal instruments that have the specific intention of providing minimum global standards for the treatment of migrant workers and their families are the ILO Migration for Employment Convention, 1949 (No. 97);⁶⁵ the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);⁶⁶ and the UN International Convention on the Protection of the Rights of All Migrant Workers, 1990 (ICMW).⁶⁷ The ILO and UN Conventions are considered complementary, in that the former provide a framework for the protection of regular migrant workers' social and economic rights whereas the latter provides additional protection to migrants and their family members with respect to civil, political, cultural, and educational rights, as well as including a limited scope of protection to irregular migrants.

ILO conventions

ILO Convention No. 97 applies to migrants in a regular situation, making no distinction between temporary or permanent status.⁶⁸ The convention was adopted to encourage and facilitate migration for employment, under fair labour conditions, from labour-surplus countries toward industrialized nations.⁶⁹ By the time ILO Convention No. 143 was adopted, the international community had become more concerned about the negative social consequences of migration, and thus the primary objective of the latter convention was not only to ensure fair labour conditions for regular migrants but also to overcome underdevelopment and unemployment in labour-surplus countries and to eliminate "illicit and clandestine trafficking in labour."⁷⁰

Both conventions establish the principle of equality of treatment and opportunity, between nationals and migrant workers, on employment matters such as remuneration, conditions of work, unionization, collective bargaining, and access to social security.⁷¹ Both call on states to establish mechanisms for social dialogue, to provide migrant workers with access to information and legal protection, and to facilitate fair recruitment practices.

⁶⁴ ILO, *Stopping Forced Labour*; ILO, *Global Alliance Against Forced Labour*.

⁶⁵ *ILO Migration for Employment Convention* (No. 97), 120 U.N.T.S. 70 (1949).

⁶⁶ *ILO Migrant Workers (Supplementary Provisions) Convention* (No. 143), 1120 U.N.T.S. 324 (1975).

⁶⁷ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, G.A. Res. 45/158, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), Annex [ICMW]

⁶⁸ ILO, *Migrant Workers—General Survey: Report of the Committee of Experts on the Application of Conventions and Recommendations* (International Labour Conference, 87th Session, Geneva, 1999), para. 107.

⁶⁹ Cholewinski, *Migrant Workers*, 94.

⁷⁰ ILO Convention No. 143, Preamble.

⁷¹ ILO Convention No. 97, art. 6.

In addition, ILO Convention No. 143 addresses migrations in abusive situations, with an emphasis on controlling illegal migration and illegal employment. The convention obliges ratifying member states to respect the basic human rights of all migrants, irrespective of their status (temporary or permanent, irregular or regular), and to suppress clandestine migration.⁷²

Excluded from the scope of ILO Conventions No. 97 and No. 143 are frontier workers, seamen, "liberal" (self-employed) professionals and artists on short-term assignments.⁷³ In addition, Convention No. 143 also excludes persons coming specifically for training or education, as well as "project-tied migrants"—that is, persons with special qualifications carrying out specific short-term technical assignments.⁷⁴ Thus, temporary migrants performing domestic and caregiving work are not excluded from either convention.

Of particular importance to the analysis of the LCP is art. 8(1) of ILO Convention No. 143, which provides that loss of employment "shall not in itself imply the withdrawal of authorization of residence [...] or work permit." This provision, which applies to all migrants irrespective of their status, recalls that the right to work is a basic human right and should not be subject to the unilateral control of a single employer. A labour policy like the LCP, under which termination of employment automatically invalidates a work permit, contravenes the terms of art. 8(1) and thus constitutes a clear infringement of the right to work that is established both in international human-rights law and international labour law.⁷⁵

Another provision of ILO Convention No. 143 that merits special attention is art. 14(a), which recommends that migrant workers enjoy unrestricted choice of employment at the end of their initial work contract and, at most, after two years of employment. Because this provision so obviously undermines the entire system of temporary foreign worker programs, it is considered to have been the reason that European countries, the United States, and Australia did not support the adoption of the convention.⁷⁶ Were this provision to apply to the LCP, live-in caregivers would enjoy full occupational mobility immediately after the end of their initial 24-month employment period, instead of having to wait until they attain permanent residence to gain access to the free labour market. This type of policy change would greatly expand the economic potential of live-in caregivers, especially given applications for permanent residence can take several years to process.⁷⁷

That live-in caregivers or other unskilled migrant groups are authorized to enter Canada only under the curtailment of social rights such as freedom of

⁷² ILO Convention No. 143, art. 1.

⁷³ ILO Convention No. 97, art. 11(2).

⁷⁴ Cholewinski, *Migrant Workers*, 102; see also W.R. Böhning, "The Protection of Migrant Workers and International Labour Standards," *Yearbook (International Institute of Humanitarian Law)* 1986–1987 (1989), 251.

⁷⁵ See UDHR, art. 23(1); ICESCR, art. 6.

⁷⁶ W.R. Böhning, "The ILO and the New UN Convention on Migrant Workers: Past and Future," *International Migration Review* 25 (1991), 698–709.

⁷⁷ See Bals, *Les Domestiques étrangères*.

movement and freedom of employment, in conditions that restrict their fundamental rights of unionization, collective bargaining, and equal remuneration, is in evident conflict with international norms equality embodied in both the ILO conventions discussed above. The LCP's employer-specific work permit introduces a transient quality to the right to work, profoundly aggravating inequalities in the employment relationship. Framing the right to work so that it is entirely dependent on the will of the employer creates a profound human security risk, as laid-off caregivers may be forced to accept unprotected work in the informal sector as the only means to sustain themselves until they are issued a new LCP work permit. In this respect, the LCP works against one of the overarching goals of ILO Convention No. 143: preventing illegal migration.

The fact that ILO Convention No. 143 aims to protect the equality of treatment and opportunity of migrant workers as well as to combat illegal migration has made its ratification a controversial issue both for developed countries—whose economic competitiveness depends largely on the unequal terms of labour set by most temporary foreign worker programs—and for developing countries, for which illegal migration provides considerable economic relief in the form of remittances, while also decreasing domestic unemployment rates. It is the conflicting interests of ILO member states—in their capacity as either immigration or emigration countries—with respect to the equality of treatment of migrants, on the one hand, and the control of illegal migration, on the other, that led to negotiations for a new UN convention.⁷⁸

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)

The ICMW builds on the ILO conventions in that it aims to guarantee a set of basic human rights, including labour rights, to all migrants, including informal-sector workers. The convention establishes the fundamental human rights of all migrants, stressing their importance with respect to irregular migrants, while providing an enhanced set of rights to regular migrants. There is a significant amount of overlap between the ICMW and the migrant-specific ILO conventions (Nos. 97 and 143), as well as certain core ILO conventions, as regards equality of treatment and opportunity with respect to employment and conditions of work, freedom of association and collective bargaining guarantees, freedom from forced labour, and protection from discrimination. But the ILO conventions and the ICMW conflict in the sense that the latter significantly dilutes the rights to free choice of employment and to social security as formulated in the ILO conventions.⁷⁹ In addition, certain categories of workers (project-tied migrants, students, trainees, seasonal workers, and itinerant workers) enjoy a wider scope of

⁷⁸ Michael Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention," *International Migration Review* 25 (1991), 687–97.

⁷⁹ ICMW, arts. 27, 52, 53.

protection under the ILO conventions. Another example of a diluted standard is the ICMW's stipulation of irregular migrants' rights to education, health, and social security, which fall below existing levels of protection set in the ICESCR.⁸⁰ As a result, the ICMW has come under criticism for its apparent regression in certain areas of rights protection. At the same time, it is widely regarded as a pioneering international treaty, because it is the first instrument to provide a clear set of rights to all migrants, irrespective of their residency or employment status.

Weaknesses of the ILO and UN conventions in protecting migrant women

Together, the ICMW and ILO Conventions No. 97 and No. 143 are considered to offer a high level of human-rights and labour protection to migrants. However, the concept of equality with nationals may be insufficient grounds to ensure the advancement of certain migrant groups, particularly when nationals themselves are not offered a high level of labour protection or when there is no group of nationals comparable to the migrant group in question. This is certainly the case for LCP workers: few Canadian nationals occupy the live-in caregiver position, and, when they do perform similar work, it generally qualifies as unpaid household labour. Furthermore, while using live-out caregivers as a basis to measure the equal treatment of migrant live-ins would certainly imply an improvement over the current socio-economic status of latter, inequalities in their situation would persist nonetheless, given that social reproductive labour remains highly depreciated and excluded from the scope of labour legislation in most nations. In its Resolution concerning the Conditions of Employment of Domestic Workers (1965) and in several comprehensive reports on migrants that have followed since, the ILO has highlighted the gendered and undervalued nature of domestic work, whether performed by nationals or by migrants.⁸¹

In an era in which the preponderant trait of labour migration, on a global level, is its feminization,⁸² gender inequalities need to be addressed by international treaty regimes aiming to secure the equal treatment of migrants. In this respect, the greatest weakness of both the ILO's and UN's migrant-specific conventions is that they are not gender-sensitive instruments and thus fail to offer a meaningful level of protection to "unskilled" migrant women of colour, such as those who predominate in the LCP, from the multiple levels of discrimination they face in the labour market. In fact, the situation of migrant working women seems better advanced through the UN Convention on the Elimination on All Forms of Discrimination against Women (CEDAW), which, although it does not explicitly address migrants,

⁸⁰ See ICESCR, art. 12.

⁸¹ See ILO, *Global Alliance Against Forced Labour*; ILO, *Stopping Forced Labour*; Blackett, "Making Domestic Work Visible."

⁸² United Nations, *World Survey on the Role of Women in Development: Women and International Migration* (New York: United Nations), 2006. See also ILO, *Towards a Fair Deal for Migrant Workers*.

provides a definition of discrimination under which any policy or action having a disproportionately disadvantaging effect on migrant women would be considered a violation of their fundamental human rights.⁸³ The UN Committee on the Elimination of Discrimination against Women has even recommended, in reviewing Canada's fifth report under the CEDAW, that the LCP's live-in requirement be reconsidered over concerns of abuse and exploitation, that the social-security protection of LCP workers be enhanced, and that their access to permanent residence be accelerated.⁸⁴

Whether we frame the LCP debate within the realms of labour law, human rights, or women's rights, the core issue remains that the Canadian economy's reliance on migrant workers, in the absence of an effective rights-based framework, appears to be spawning temporary labour migration programs that have the secondary effect of expanding and feminizing the poorly paid and precarious workforce.⁸⁵ Rights-deficient foreign labour programs also heighten human and national security risks by fuelling the growth of predatory lenders, exploitive labour agencies, and human traffickers, all of which tend to prevail wherever individuals are offered insufficient opportunities for legal decent work.⁸⁶ Furthermore, by widening the inequality gap between newcomers and Canadian citizens, restrictive migration policies heighten the potential for persistent poverty, ghettoization, poor health, crime, and violence among immigrant communities, effects that have been observed across Canada by advocacy groups that provide social support to LCP immigrants and their families.⁸⁷

It is evident that government policies that rely on the discriminatory treatment of migrants—through low income, limited access to rights, and exclusion from social benefits—in order to achieve economic efficiency do not correspond with contemporary international legal norms embodied in various ILO and UN treaties. At the same time, these instruments of international law are considered inadequate safeguards of migrant women's rights, because their fragmented approach to the protection of rights and their overly generalized stipulation of equality do not respond to the

⁸³ See M.L. Satterthwaite, "Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers" *Yale Human Rights and Development Law Journal* 8 (2005), 28.

⁸⁴ *Report of the Committee on the Elimination of Discrimination against Women*, 58 U.N. GAOR Supp. (No. 38) at 366, U.N. Doc. A/58/38 (2003).

⁸⁵ Salimah Valiani, *Analyse, solidarité, action: le point de vue des travailleurs et travailleuses sur la demande croissante de main-d'œuvre migrante au Canada* (Service des politiques sociales et économiques, Congrès du travail du Canada, 2007).

⁸⁶ ILO, *Towards a Fair Deal for Migrant Workers*.

⁸⁷ See UKPC, Filipino Canadian Youth Alliance, and Kalayaan Resource and Training Center, *Bridging the Gap: The Legal Needs of Filipino Youth* (Vancouver: Kalayaan Resource and Training Center, 1999); Philippine Women's Centre of British Columbia [PWCBC] and Filipino Nurses Support Group, *Filipino Nurses Doing Domestic Work in Canada: A Stalled Development* (Vancouver: PWCBC, 2001); PWCBC, *Trapped! Holding On to the Knife's Edge: Economic Violence against Filipino Migrant/Immigrant Women* (Vancouver: PWCBC, 1997); UKPC-Ontario, "Members of Filipino Community in Toronto Mourn the Death of Filipino Youth in Vancouver" (press release, January 29, 2008).

challenges posed by intersectional discrimination on the basis of race, ethnicity, and gender.⁸⁸ If the international human and labour rights regimes are to be useful to this process, there needs to be some form of consolidation of the various legal protections relevant to migrant working women, which are dispersed across several ILO and UN instruments. In 2005, the ILO took a first step in this direction through its adoption of the ILO Multilateral Framework on Labour Migration (MFLM).

The ILO Multilateral Framework on Labour Migration (MFLM)

The MFLM is a non-binding multilateral framework for a rights-based approach to migration, adopted in 2005 as part of the ILO's plan of action for migrant workers and based on the conclusions and recommendations of the 2004 ILO report *Towards a Fair Deal for Migrant Workers*.⁸⁹ That the principles and guidelines of the MFLM are not legally binding is reflective of states' traditional hesitation to commit themselves to the advancement of migrants' rights. However, because it manages to fuse together principles of human rights and labour rights embodied in all migrant-relevant international instruments, place them in the modern context of globalization by recognizing advancements that have been made under other international forums on the issue of international migration,⁹⁰ and, finally, translate these principles into best practices, the MFLM is an innovative and practical tool to transform global human-rights objectives into concrete gains for socially and economically marginalized workers.

The MFLM advances global migration governance by incorporating a gender-sensitive and development approach to existing principles of international law. It draws special attention to the "multiple disadvantages and discrimination often faced by migrant workers on the basis of gender, race and migrant status"⁹¹ and advises states to ensure that foreign labour policies address the "problems and particular abuses women often face in the migration process."⁹² On the protection of migrant domestic workers, the MFLM calls on states to adhere to international standards, further recommending that, given the specific risks of their occupation, additional measures be taken to ensure the health and safety of these workers.⁹³

The first MFLM principle addresses decent work, calling on states to promote "opportunities for all men and women [...] to obtain decent

⁸⁸ Nicola Piper and Margaret Satterthwaite, "Migrant Women," in *International Migration Law: Developing Paradigms and Key Challenges*, ed. Ryszard Cholewinski, Richard Perruchoud, and Euan MacDonald (The Hague: T.M.C. Asser Press, 2007); see also Jean Grugel and Nicola Piper, *Critical Perspectives on Global Governance: Rights and Regulation in Governing Regimes* (London: Routledge, 2007), 35.

⁸⁹ See note 10 above.

⁹⁰ E.g., the World Commission on the Social Dimension of Globalization, the Global Commission on International Migration, the International Organization for Migration, the Berne Initiative, and the Geneva Migration Group. Many regional initiatives are listed in the MFLM's Annex II on best practices.

⁹¹ MFLM, Introduction.

⁹² Ibid., Guideline 4.5.

⁹³ Ibid., Guidelines 9.7, 9.8, 9.12.

and productive work in conditions of freedom, equity, security and human dignity.”⁹⁴ The best practices presented in an annex to the MFLM indicate that the realization of decent work involves co-development strategies between sending and receiving nations. The importance of adopting a development approach to labour migration policy is reiterated in the second MFLM principle, which calls on governments to engage in international multi-stakeholder cooperation on employment migration. It is worth noting that Canada’s Seasonal Agricultural Workers’ Program is presented as a best practice, in relation to this principle, for its use of bilateral agreements.⁹⁵

The MFLM also highlights the LCP among its best practices, praising it for providing a pathway to regular labour migration and for offering domestic workers an opportunity for social integration by providing access to permanent residence.⁹⁶ It is precisely these features of the LCP that have made it the best option for domestic workers in the globalized domestic labour market. In Japan and South Korea, domestic work is not even recognized as a legitimate sector of employment, and in places such as Singapore and Taiwan, where migrant domestic workers are granted legal status, they remain excluded from national labour protection.⁹⁷ In this respect, Canada has made considerable advances over other nations on the issue of migrant women’s rights. Still, several aspects of the LCP do not follow the guidelines of the MFLM.

As elaborated earlier, transforming the live-in caregiver’s occupation into “decent work” requires policy reform in the direction of greater conformity with ILO labour standards, the ICMW, and other UN human-rights treaties. Successful translation of the concept of decent work from international instruments to the Canadian labour market would involve transforming the domestic caregiving occupation from a survivalist economic activity, located at the very lowest end of the pay scale, into a secure and dignified profession. Since most LCP workers are accredited health professionals in their countries of origin, protecting them from discrimination and ensuring their equal treatment with nationals would require, above all, removing them from the unskilled immigration category and allowing them to enter the Canadian workforce as skilled workers.⁹⁸ The unskilled categorization is an obstacle to migrant caregivers in their demand for wages corresponding to the real market value of the services they offer. Facilitating professional accreditation would allow migrants to achieve higher levels of economic and social integration and would contribute to alleviating the nursing shortage in the Canadian health care system, which is expected to reach crisis levels by 2011.⁹⁹

⁹⁴ Ibid., Principle 1(a).

⁹⁵ Ibid., Annex II.

⁹⁶ Ibid.

⁹⁷ Grugel and Piper, *Critical Perspectives on Global Governance*, 71.

⁹⁸ MFLM, Guideline 12.6.

⁹⁹ Canadian Nurses Association [CNA], *Planning for the Future: Nursing Human Resource Projections* (Ottawa: CNA, 2002), http://www.cna-nurses.ca/CNA/documents/pdf/publications/Planning_for_the_future_June_2002_e.pdf. See Nicole Dunsdon, “Nursing

The MFLM reminds us that in addition to providing access to freely chosen employment and recognizing fundamental rights at work, the promotion of decent work involves providing access to an income that enables individuals to meet their economic, social, and family needs and providing them and their families with an adequate level of social protection.¹⁰⁰ In a transnational labour market, decent work can be realized only by creating an emergent, forward-looking structure of rights adapted to the burgeoning needs of today's globalized workforce. It is evident that the distinctive life circumstances of migrant populations introduce a diverse set of economic and social needs into work arrangements. For instance, the numerous transnational aspects of the lives of LCP workers produce a special set of needs in relation to remittance transfers, employment agencies, bi-national medical insurance schemes, and access to the Internet and telecommunications services. The transnational communication and other needs of migrant caregivers and the businesses that serve them are currently ignored under the LCP. As a result, there is room for greater transnational linkage and partnership between stakeholders, including sending-country governments, private employment agencies, and financial institutions in the receiving countries. The basic social needs of migrant caregivers also require attention. For example, given the isolated, private work environment of domestic caregivers, their health and safety may largely depend on the availability of services such as free and efficient Internet access, work-placement and language-learning resources, and reduced costs for remittance transfers and telecommunications. Furthermore, capacity-building activities and education on developing and protecting financial assets may significantly enhance the quality of life of domestic workers and the scope of their contribution to the transnational communities they inhabit.

In relation to the MFLM principles of protecting workers against abusive practices¹⁰¹ and ensuring an orderly and equitable migration process,¹⁰² the Canadian government, through its embassies, can play a greater role in assessing recruitment practices abroad and can contribute to the elimination of information asymmetries through information sessions geared toward potential LCP candidates. Domestically, the Canadian government could strengthen efforts to educate employers on their obligations in relation to decent work and provide financial support and capacity building to civil society organizations that assist migrant communities. Most importantly, the mandatory live-in condition could be made optional and the single-employer work

Shortage Makes Colleges Get Creative in Training RNs," *The Globe & Mail* (4 February 2009), in which Rachel Bard, CEO of the CAN, confirms that despite an increase in the output of nursing programs since the 2002 CAN study was released, its predictions remain accurate. See also CAN, "CAN Sees Small Gains in RN Numbers, Will Release Report Containing Tested Solutions to Address the Continuing Shortage" (press release, December 1, 2008); CAN, "Canada's Health System Faces Another Year of Nursing Student Graduate Shortfalls" (press release, June 18, 2008).

¹⁰⁰ MFLM, Principle 1.

¹⁰¹ Ibid., Principle 11.

¹⁰² Ibid., Principle 12.

permit system abandoned. The higher costs of living out could be mitigated by increasing wages and entering into new partnerships with Canadian public and private institutions that have access to housing resources, such as university residences. Introducing workplace-monitoring mechanisms and creating forums for public dialogue are also basic and essential strategies to discourage abusive labour practices. In addition, requiring caregivers to assess the LCP at different periods of enrolment via an online questionnaire could produce an unprecedented, comprehensive evaluation of the program's real social and economic impacts.

Conclusion

The costs and benefits of international labour migration have not been evenly distributed among the diverse actors involved. While establishing fair and mutually beneficial labour arrangements is imperative under international legal norms and the global decent work agenda, such arrangements are rarely in place for "unskilled" work categories such as domestic caregiving.

It is important to note that the socio-economic insecurity generated by the LCP does not come to a halt on completion of the program but, instead, follows LCP workers into the open labour market, where their opportunities and wages are largely determined by their past employment experience. Although the long-term labour and health impacts of the LCP are not thoroughly documented, the literature reviewed above—which spans almost two decades, from the work of Sedef Arat-Koç (published in 1989) to that of Habiba Zaman (published in 2007)—suggests that the labour program does not eliminate poverty so much as newly contextualize it. While LCP workers are able to lessen their families' poverty by sending remittances to family members left behind, they simultaneously experience a new poverty in Canada, trapped in a low-wage occupation that does not guarantee them sufficient resources to live autonomously and is socially regarded as subordinate work. That almost all LCP workers choose to live out as soon as they have fulfilled their mandatory 24 months of service, and that most arrange to live out even during that period, is proof of the negative consequences of living in for an individual's quality of life. In the end, it is clear that were it not for the incentives of permanent residence and the open work permit this status entails, the occupational category of live-in caregiver would simply not exist, given its inherent conflict with current norms for personal service work and with the basic principle of human dignity, the source of all human rights.

The Canadian government's reluctance to address the social injustices built into its labour migration policies is challenged by a wide set of international human-rights norms. The globalized nature of labour demands that issues of human rights and human security be integrated into labour migration policies, in order to ensure a minimum social and economic balancing of international work arrangements and to transform them into real opportunities for decent work.

Résumé

Cet article explore la notion de protection des travailleuses et travailleurs migrants ainsi que d'autres aspects du développement durable se rapportant à la division internationale du travail dans le secteur canadien des soins domestiques. L'auteur examine *Le Programme des aides familiaux résidents* (PAFR) en se penchant sur la question du droit international des droits de la personne, des normes internationales du travail, de la protection des travailleurs migrants et des objectifs de développement durable propres à la réglementation canadienne d'immigration. Démontrant comment les bases légales du PAFR empêchent les travailleurs migrants de jouir de certains droits humains et de certains droits fondamentaux du travail, l'auteur revendique l'abolition des obstacles structurels de ce programme de travail. Elle propose un ré-aménagement du PAFR à partir d'une approche favorisant le développement humain, où davantage d'emphasis est mise sur l'élargissement des capacités et du potentiel socioéconomique des travailleurs migrants au sein du marché du travail canadien.

Mots clés: aide familiale résident, emplois temporaires, travail des migrants, citoyenneté, droits de la personne

Abstract

This article examines Canada's federal Live-in Caregiver Program (LCP) from the perspective of international human-rights and labour norms pertaining to the protection of migrant workers. Showing that the current legal framework of the LCP restricts migrant caregivers from effectively exercising a range of human and labour rights, the author argues for the removal of the labour (im)migration program's unnecessary structural obstacles and proposes a reformulation of the LCP under the principles and guidelines of the International Labour Organization's Multilateral Framework on Labour Migration, in order to transform this controversial labour policy into a decent work opportunity.

Keywords: live-in caregiver, temporary work, migrant labour, citizenship, human rights

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