



Globalization Comes Home: Protecting Migrant Domestic Workers' Rights

By Nisha Varia

I decided to migrate for work because my parents do not have a home, we do not have any land of our own.... I just really want to build a house like my friend and give happiness to my family.

—Sumiyatun, a 24-year-old woman waiting to board a ferry to Singapore, where she had secured a job as a domestic worker, Batam, Indonesia, May 23, 2006

Introduction

Imagine working sixteen hours a day, every single day, for years, or perhaps getting one day off per month. Then, imagine being rarely allowed to leave your workplace, where you also sleep.

Suppose that to get this job, you will forgo seeing your family for months or years at a time. Furthermore, that you are forced to turn over the first ten months of your salary to pay off the expenses your employer incurred in recruiting you, or else spend years paying off loans with interest rates as high as 100 percent.

Welcome to life as a migrant domestic worker. In the hopes of earning money for a better life, and with few other alternatives, millions migrate to big cities or across borders to work as live-in nannies, caretakers for the elderly, and house-cleaners. Domestic workers around the world, predominantly women and girls, lack basic labor protections that most governments guarantee for other workers. Domestic workers are typically excluded from standard labor protections such as a minimum wage, regular payment of wages, a weekly day off, and paid leave.

The movement of people across borders promises new opportunities and has become extremely lucrative: the US\$167 billion that migrant workers from developing nations sent home in 2005 exceeded foreign aid in many countries—and much of this money directly reaches poor households. Yet this money has often come at a profound human cost. Governments and employers interested in “flexible” labor have been quick to take advantage of a transnational workforce. But they often have turned their backs on labor and immigration protections for migrants and done little to establish a safety-net to address widespread abuses. The situation of migrant domestic workers is a particularly stark illustration of the need for transnational governance in an era of globalization.

In 2006, Hawazi Daipi, Singapore’s Senior Parliamentary Secretary for Manpower, chose to celebrate International Women’s Day by reiterating in Parliament his rejection of decent minimum employment terms for foreign domestic workers. Such labor protections would lead to “inconvenience for many households,” he claimed.

Many employers treat their domestic workers well. But as Human Rights Watch investigations in countries as diverse as the United States, El Salvador, Guatemala, Saudi Arabia, Morocco, Indonesia, and Malaysia demonstrate, far too many others take advantage of inadequate labor protections to exploit domestic workers isolated behind the walls of private homes. Despite regional variations in domestic work, migration patterns, and recruitment systems, striking similarities exist among the abuses confronted by domestic workers around the world. The examples in this essay draw primarily on Asia and the Middle East.

Criminal abuses such as physical and sexual violence, food deprivation, and trafficking into forced labor take place with disturbing frequency. Moreover, labor recruitment systems and punitive immigration laws leave many workers highly indebted, out of legal status, and afraid to report abuse. These problems are made more difficult to address in the case of domestic workers by deep-seated, discriminatory norms about gender roles and the value of tasks considered to be women’s work.

Despite this long catalog of abuses, however, concrete and feasible measures exist that could dramatically improve the working conditions of most migrant domestic

workers. Many governments have argued that it is impossible to treat private homes like a workplace. Yet labor legislation in Hong Kong and South Africa has set positive examples: domestic workers have the right to a minimum wage, overtime pay, a weekly day of rest, maternity leave, and paid annual leave. While the domestic workers in these countries are not immune from abuse, they have legal remedies available, unlike their counterparts elsewhere. Combined with the freedom to form associations and trade unions, many of these domestic workers have greater awareness of their rights, an ability to negotiate better working conditions, and avenues for reporting labor exploitation.

Other important reforms include enhancing local economic and educational opportunities so that domestic workers can migrate based on informed choice; setting standards for and monitoring transnational labor recruitment systems, which are often a determining factor in how such migrants fare; amending restrictive immigration policies that leave such workers particularly at risk of exploitation; and promoting international cooperation between sending and receiving states to prevent and respond to abuse.

While some governments have already started making meaningful reforms to help domestic workers work in greater safety and dignity, others are pursuing superficial changes that fail to address the root causes of exploitation and abuse. Governments around the world have choices to make about the route they will take; this essay identifies some of the positive options available.

Migration Based on Informed Choice

I'm crying inside my heart.... If I can solve my financial problems this time, I will never migrate again.... If we have no money, we have no other choice but to go abroad. We have to get rid of this poverty.

—Chandrika Malkanthi, a 45-year-old woman preparing to migrate to the Middle East as a domestic worker for the ninth time, Kurunegala, Sri Lanka, November 4, 2006

One of the most overlooked and critically important responses to promoting safe migration is offering the choice of not migrating at all. While it is equally important that discriminatory restrictions not be placed on women's mobility, more can be done in countries of origin to provide migrants with alternatives to leaving their families behind and embarking on journeys that often involve a considerable gamble in terms of safety and success. Such a response includes creating viable local employment opportunities and providing children with accessible, quality education.

The numbers are astounding—and growing. Fifty to seventy-five percent of the legal migrants leaving Indonesia, the Philippines, and Sri Lanka are women, most of them hoping to earn money as domestic workers in the Middle East and other parts of Asia. The International Labor Organization (ILO) estimates there are more girls under age sixteen employed in domestic service than in any other form of child labor. Some of these children start working as domestics at the age of six or seven. In Indonesia alone, there are approximately 700,000 child domestic workers.

Access to education carries many important consequences for internal and international migration into domestic work. Prohibitive schooling costs and the need to supplement their families' incomes are key reasons for girls entering domestic work. Many international migrant domestic workers cite earning enough to provide their children or siblings with a decent education as one of the top reasons they chose to work abroad—an emotional sacrifice, since to do so, they must live apart from these family members for years. More could also be done to improve women's and girls' entrance into higher education and vocational training programs that would improve their skill sets and qualify them for better-paying jobs.

Current government policies often actively promote urban and international migration in order to relieve rural unemployment and generate income from remittances. For example, Indonesia sets targets of the numbers of migrant workers it hopes to send abroad in its five-year national economic development plans. Its target rose from 100,000 in 1979-84 to 2.8 million in 1999-2003.¹ Similarly, many other countries have started setting a target for the numbers of workers they hope to “export,” arguably without a similar emphasis on how to create livelihoods at home.

¹ Graeme Hugo, *Indonesian Overseas Contract Workers' HIV Knowledge: A gap in information* (Bangkok: UNDP, 2000), p.3.

The responsibility does not lie only with countries of origin. Foreign investment from wealthy countries has often focused on the exploitation of natural resources and labor without building local capacity or links to other domestic industries. International trade agreements have often failed to include adequate protections for workers' rights; for example, freedom from workplace discrimination. Such policies may particularly affect women's local employment opportunities and their pay. Destination countries often rely heavily on migrant labor without doing their part to ensure transparent and fair recruitment practices, or equal access to the law once migrants begin working.

Labor-sending governments, enamored with the promises of migration, must remember that it may involve profound social costs and that poorly-regulated sectors such as domestic work pose a wide range of risks. Governments should do more to ensure that migration occurs not out of desperation, but out of choice, in safety, and with full information and informed consent. Governments and international institutions have a responsibility to promote fair trade regimes, invest in education, and foster local employment opportunities so that potential migrants have real alternatives.

Good Business: Monitoring Labor Recruitment Systems

The broker brought me to the training center in Tanjung Pinang by ship.... I only paid 100,000 rupiah [US\$12] to the broker but afterwards they deducted my full wages for four-and-a-half months [to repay what they said were up-front costs].... I had to spend two months at the training center though I had expected to wait only a few days.... We were never allowed outside, there was a very high gate and it was always locked. They treated us poorly, always calling us names like "dog."

—Widyaningsih, a 35-year-old woman recently returned from Malaysia describing conditions she had faced while being recruited in Indonesia, East Java, Indonesia, May 21, 2006

Recruiting migrant domestic workers has become a profitable industry, with hundreds and sometimes thousands of licensed and unlicensed labor agencies and brokers in many countries. Local recruiters trawl through villages, painting rosy

pictures of success in urban centers or rich countries abroad. They may promise women the income to help them build new homes for their families or girls the opportunity to continue their education. Labor recruiters and agencies undergo scant monitoring, and in most countries, few regulations exist to contain the recruitment fees charged to workers.

What happens during recruitment can influence a worker's fate heavily. If she is lucky, she will know how to discern a licensed agent from an unlicensed one, obtain a copy of her employment contract, and learn about her rights before she leaves home. More likely, she will become heavily indebted due to huge recruitment fees, be promised certain working conditions but encounter something markedly different when she begins working, have her passport held by her agent, and never even see an employment contract in her own language. Deception or coercion used during the recruitment process sets workers up for abuse, and if they end up in extremely exploitative working conditions, these cases rise to the level of trafficking into forced labor.

Taking advantage of migrants' desperation to find work, agents and employers have shifted the burden of recruitment fees, including airfare, visas, and administrative fees on to the workers themselves, while employers pay nominal fees. This has led to an unreasonable debt burden on international migrant domestic workers. Many Indonesian domestic workers migrating to Persian Gulf countries take out loans from local moneylenders with interest rates as high as 100 percent to pay these fees, while those traveling to Asia typically use a "fly now, pay later" scheme. In Singapore and Hong Kong, Indonesian migrant domestic workers often spend up to 10 months out of a two-year contract without a salary since they must turn over these wages to repay their recruitment fees. The resulting financial pressure makes it difficult for workers to report abuse for fear of losing their jobs and having no way to pay off their debts.

International labor recruitment is a fast-growing industry that requires more stringent licensing requirements and more rigorous monitoring. If migrant domestic workers are to have a chance, governments need to acknowledge the unequal bargaining power between potential migrants, employers, and labor agents and shift the burden of recruitment costs back to employers. Reforming current practice means tough

measures, including unannounced inspections of labor recruitment agencies and real penalties for those committing violations.

These steps have the added benefit of probably doing more to combat human trafficking than many other steps taken to date as they address the heart of what puts individuals at risk: misinformation from labor recruiters, heavy debts, passport confiscation, and improper immigration processing.

Transforming such ideals into actual practice may be simpler to implement than expected. Migrants and governments have some unlikely allies in the campaign to clean up the labor recruitment industry—labor agencies themselves. Far from being a monolithic group, they vary greatly in size, experience, and ethics. Among them are reformers operating legally and who view unlicensed, fly-by-night operations as unfair competition. Others take personal responsibility for the workers they place and become effective advocates on their behalf.

An interesting example is the Association of Employment Agencies of Singapore (AEAS) which has a mission to professionalize and raise the standards of labor agencies in Singapore. It has developed accreditation criteria that are slowly improving the accountability of labor agencies. The government supports the association's efforts by making accreditation a requirement for licensing. While it has yet to make important reforms like caps on recruitment fees, it has introduced incremental improvements and raised awareness about good practice.

Comprehensive Legal Protections and Enforcement

*The government gets a good profit from us, they must take care of us.
They must do more to protect us.*

—Sitakumari, a 38-year-old woman who worked in Bahrain and Dubai as a domestic worker for a total of 10 years, Kurunegala district, Sri Lanka, November 6, 2006

Households turn to hiring migrant domestic workers to meet the demands of cleaning, child care, and elderly care, especially if they have little access to affordable day care or a flexible, family-friendly workplace.

For many families around the world, there is nothing more precious than their children and their homes. Yet the caretakers who clean, cook, feed, wash, and love these most valuable parts of our lives are singled out for exclusion from most countries' main labor laws. The current arrangement, leaving many domestic workers overworked and underpaid, is in the best interest of neither the worker nor the employer.

As already noted, governments in Hong Kong and South Africa are setting the standard by guaranteeing domestic workers equal protection under labor laws, providing them opportunities to form associations and trade unions and greater access to meaningful legal remedies in cases of abuse.

In the name of labor reform, many governments have begun introducing standard employment contracts for domestic workers. Although these represent a step forward by setting forth the terms of work, the elaborated conditions rarely meet the minimum standards guaranteed to other workers. These contracts also do not have the enforceability of provisions protected under labor laws.

While labor law reform can do much to address the labor exploitation confronted by migrant domestic workers, strong criminal laws and law enforcement are also essential to combat physical, psychological, and sexual abuse, forced labor, and forced confinement. In increasing the criminal penalties for certain abuses against migrant domestic workers by a factor of 1.5, Singapore has rightly acknowledged the particular risks faced by these workers. Good laws become meaningful when accompanied by public awareness campaigns and training of law enforcement, labor, and immigration officials. Laws that could be used to protect child domestic workers, such as Indonesia's Child Protection Act as well as minimum age for employment laws in most countries, are rarely invoked.

The domestic violence movement illustrates an important lesson learned: governments have an obligation to prevent and respond to abuses taking place in

the private sphere. Currently, monitoring of workplace conditions—a critical element in enforcing domestic workers’ rights—remains weak to non-existent in most countries, in part due to restrictions on the ability of labor inspectors to enter private households. Lawmakers should reform such policies and ensure that accessible complaint mechanisms and support services such as health care, shelter, and legal aid are available to survivors of abuse. These mechanisms and services should be especially sensitive to the needs of child domestics, whose age and curtailed education often make it even harder for them to escape abusive employers and gain access to the assistance they need.

Why Fair Immigration Policies Matter

Countries with a highly-educated, highly-skilled workforce often have difficulty finding local workers for low-paying jobs and have created special immigration schemes for domestic workers.

Despite the contributions these workers are making to destination countries, immigration policies may exacerbate conditions that put migrants at risk of abuse. For example, several countries impose “security bonds” on employers, penalizing them if their migrant domestic worker runs away. Such bonds appear to have little impact on the stated policy goal of staunching undocumented migration, whereas employers use the bonds as justifications for confining domestic workers to the workplace, holding their passports, and withholding their wages—conditions that are abusive and may rise to the level of forced labor.

In several countries, migrant domestic workers lose their legal status once they leave their employers, since their visas are tied to their employer. This makes it difficult for them to run away from abusive situations, change employers, or to negotiate their conditions of employment. The consequences may be dire: in Malaysia, punitive immigration laws mean that migrants can face up to five years’ imprisonment, heavy fines, caning, and indefinite detention for an immigration offense.

Immigration policies often strip migrants of some of their fundamental civil and political rights—including the right to marry and the right to form associations. Inadequate government intervention with respect to labor rights pair with overly

intrusive policies on other rights. The Singaporean government imposes a lifetime ban on foreign domestic workers marrying Singaporean citizens, even after they have finished their employment. Although exceptions to this policy can be made on application, the government treats these requests like job interviews. Those with less marketable skills and education may be rejected. As Mr. Hawazi Daipi explained, “Those who are financially self-reliant or who are better qualified should have no problem in securing permission to get married.”

For those migrant domestic workers who enter the country as undocumented workers, or who lose their legal status while abroad, access to redress may become unattainable. Governments should promote immigration rules that permit migrants to report abuse without fear of imprisonment or criminal penalties. Coordination between labor and immigration ministries is essential.

Governments should tackle the links between poverty, unsafe migration, and inadequate labor standards by reforming immigration policies that drive migrants underground to unlicensed recruiters and smugglers. Anti-trafficking programs monitoring borders and women’s mobility also threaten to compound the problem. Rather than restricting women’s and girls’ right to migrate and seek work, the real challenge lies in creating the guarantees for them to do so safely and with dignity.

Rights-Based International Cooperation

An increasingly mobile labor force is an ineluctable consequence of globalization. Humane treatment of such workers, however, requires that governments agree on ground rules and work together to enforce them. International treaties, like the Convention to Protect the Rights of Migrant Workers and Their Families and several ILO conventions, already embody the outlines of an international regulatory framework. But these instruments will only become more effective with widespread ratification and enforcement. Countries that host migrant workers have been particularly slow to ratify these conventions and have often used their positions of greater bargaining power to negotiate bilateral labor agreements that have largely avoided human rights protections.

More could be done for migrant domestic workers, for instance, multilateral agreements that establish minimum standards for recruitment and working conditions. Such

agreements are needed to avoid a “race to the bottom,” in which labor-sending countries compete for jobs by lowering their protections for their workers. The United Nations can support such efforts. To do so, it must expand from the politically cautious focus on the money migrants bring to economic development through their remittances, highlighted in the September 2006 UN High-Level Dialogue on Migration and Development. Instead it should centralize a rights-based approach to migration that seeks to end the abuses migrants confront and incorporates the kinds of ideas sketched here. A good time to start would be the next global meeting of governments on migration due to take place in Belgium in March 2007.

Conclusion

Millions of migrants labor as domestic workers—most of them women and girls. Rather than receiving the respect due them and a proper recognition of the critical role they play in supporting families and providing care for the young and elderly, such workers are met with disregard and, too often, neglect and abuse. Remedies are known and feasible, but action requires political will.

Experience shows that governments gain, not lose, by providing protections for such workers. Large-scale labor migration is a prominent feature of globalization today, but this force is best harnessed to serve economic growth through rules that respect the dignity and protect the basic rights of the workers, whatever job they perform.

Extending and enforcing the protections of existing labor laws, monitoring the labor recruitment industry, and reforming immigration policies are steps that successful governments are already taking which can be usefully emulated by others. Such changes not only encourage safe migration and safe work, but help reduce human trafficking and undocumented migration. Protecting the migrants’ right to form associations and raising public awareness among employers can also facilitate passage of needed reforms and generate public pressure for accountability. Domestic workers should not have to gamble with their rights.

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