

**THE CASE OF ONGOING DOMESTIC WORKER EXPLOITATION
IN NY STATE AND THE STRUGGLE FOR A DOMESTIC WORKER
BILL OF RIGHTS**

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Human Rights and Poverty: Case Studies

December, 2009

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PART ONE: THE CASE STUDY

INTRODUCTION

On November 21, 2008, domestic workers and domestic worker advocates lobbied on behalf of the rights of domestic workers in New York state before the NY State Assembly Committee on Labor in Albany, NY. The testimonials of domestic workers, academic scholars and labor rights advocates drew attention to the fact that domestic workers often “confront a lawless working environment where low pay, long hours, no health care or sick leave, and arbitrary treatment are the norm”.¹ The domestic workers recounted isolated working conditions with little to no regulation in terms of contracts, fair wages, health insurance or proper vacations; cases of physical, mental, verbal and sexual abuse; and, due to the unique and “informal” nature of the job, accounts demonstrated how domestic workers are often excluded from rights and protections enjoyed by other groups of workers.

This case study seeks to bring the poverty and rights issues related to these cases together, using a rights-based approach to examine the ongoing (and steadily worsening) problems of domestic worker exploitation in NY state. The case study specifically focuses on the period of 2005 to the

¹ Data Center, “Home is Where the Work Is: Inside New York’s Domestic Work Industry” (Executive Summary), (New York: July 2006). <http://www.datacenter.org/reports/reports.htm>

present during which Domestic Workers United, the domestic workers union in NY state, has led an active campaign to pass the first New York state domestic worker Bill of Rights in response to exploitative working conditions and the lack of equal rights for domestic workers. While the case study focuses on four testimonies given in 2006, this study considers the conditions of the over 200,000 domestic workers in New York City and the estimated 600,000 total domestic workers in NY state.

In addition, seeing as domestic work is very much a “global phenomenon”, these cases have greater implications in connection to the estimated 2 million domestic workers that work throughout the United States and the estimated tens of millions of domestic workers who labor in similar conditions worldwide.²

WHY A HUMAN RIGHTS-BASED APPROACH?

Because the make-up of the domestic worker labor force includes intersecting categories of race, class, gender and nationality, and because there is a such a “global” nature to this profession, these cases fit well within current debates that aim to move beyond a narrow consideration of

² ACLU, “Trapped in the Home: Global Trafficking and Exploitation of Migrant Domestic Workers” (New York: ACLU, 2007) <http://www.aclu.org>

poverty as a lack of economic income and instead, consider how poverty is directly related to a lack of capabilities and barriers to rights.³ As the rights based approach to development is built on principles and standards of international human rights, the HRBA concerns itself with enabling rights-holders to claim their right to development, thereby, building the capacities of the poor and/or disenfranchised. In addition, the HRBA creates a mandate for precise action from specific individuals or entities that are responsible for respecting those rights. In this way, a rights-based framework reinforces the fact that development is not a privilege, but a right.

Also, due to the intersecting categories involved in this case, there are numerous laws, covenants, declarations and conventions under the overall framework of governance and rights that may apply: for instance, migrant rights, worker rights, women's rights and minority rights, just to name a few. Law and human rights have already begun to play a key role in the issue of domestic worker exploitation in NY state. In 2004, the Domestic Workers Union gathered to envision what fair labor standards might look like and to draw up a proposal for a Bill that would protect the rights of domestic workers in New York state. Similarly, other civil society organizations and

³ This radical approach was championed by Amartya Sen, who broadened the discourse on inequality and poverty by considering the lack of access to resources such as basic services, education, capital, power, rights, participation and other capacities that endow a person with the capabilities to live a life they freely choose. Sen, Amartya, *Development as Freedom* (New York: Anchor Books, 1999) 295

political bodies such as Human Rights Watch, the American Civil Liberties Union and the International Labor Organization at the United Nations have also been working to secure a professional status for domestic workers and to ensure protection for this vulnerable workforce.

WHAT IS A RIGHTS-BASED APPROACH?

The Human Rights Based Approach (HRBA) may be defined as a comprehensive conceptual framework that helps to identify a set of rights-holders with their entitlements, and corresponding duty-bearers with their obligations. In turn, those duty-bearers hold a set of obligations to respect, protect, and fulfill the rights of rights-holders, as well as to refrain from any negative actions that would hinder the full enjoyment of rights.

The HRBA is based on a set of six basic principles:

Universality of Human Rights: Rests upon the notion that “all human beings are born free and equal in dignity and rights” from Article 1 of the *Universal Declaration of Human Rights*.⁴

Interdependence and Inter-relatedness: Recognizes how rights work in concert with one another. For instance, fulfillment of the right to health may depend, in certain circumstances, on fulfillment of the right to development, to education or to information.

Indivisibility: Asserts that there should be no trade-offs or hierarchies to rights. Rights are an inherent part of the human dignity of each person, and should be respected and treated as such. This concept embraces the notion that economic, social, cultural, political and civil rights must come together.

⁴ United Nations, *Universal Declaration of Human Rights* (United Nations: New York, 2009)

<http://www.un.org/en/documents/udhr/>

Accountability: Speaks to the importance of identifying the states or other duty-bearers who may be responsible in a given case and setting a clear set of standards for holding those parties accountable.

Equality and Non-Discrimination: Refers to not allowing issues of age, race, gender, nationality, religion or any other social category interfere with the full enjoyment of an individual's or group's rights.

Participation: Acknowledges the importance of inclusion and the need to fully incorporate the rights-holders into the process of addressing the issues at hand.

These principles are meant to guide the integration of human rights standards into the many stages of addressing development issues such as inequality, poverty and/or marginalization.

These principles should be brought to every step in the process, applying them to issue analysis, strategy setting, development programming, policy-making, treaty writing, advocacy and evaluation.

In order to avoid flattening out issues of poverty, for instance, the HRBA allows one to consider the multi-dimensional aspects of the issue, using the language and principles of a rights-based framework to set standards, to hold the right parties accountable, to empower disenfranchised groups, to identify and address the larger structures and systems of power that may be contributing to the problems, and to create a mandate for clear action.

BACKGROUND INFORMATION

DOMESTIC WORK DEFINED:

A domestic worker is someone who works within the employer's household, performing duties such as childcare, elder care, housecleaning and household maintenance. A household is a domestic unit where an individual and/or a group of individuals reside; it may or may not be considered a “family”. Frequently, but not in all cases, households are comprised of individuals who are related to one another either through blood or through legal status such as marriage or adoption.

The services that a domestic worker provides to individuals or households can vary greatly. Services may include providing care for children and elderly dependents, cleaning/housekeeping, performing household maintenance and/or providing transportation services. Housekeeping responsibilities may include cooking, doing laundry and ironing, darning clothes, food shopping and other household errands. In some cases, domestic workers may be asked to provide educational services such as tutoring or language instruction. They may also be asked to provide dog-walking and animal care services.

Some domestic workers are live-in workers who reside in the household where they work, while live-out workers maintain their own home and come to their employer's household for work. Household employees may receive strictly financial remuneration for their services, while others, (this is often the case with live-in workers), will receive a kind of hybrid remuneration, receiving a combination of housing and financial remuneration for their services. Babysitters and casual/in-frequent caregivers or housecleaners are also considered to be domestic workers, but they are not currently protected by most labor laws.⁵

It is important to define the parameters of domestic work and to set a clear definition for the “domestic worker”, the “household” and/or the “family unit” as these terms are often considered to be “naturally occurring” social categories, i.e., neutral terms that have a universally shared meaning and are devoid of social, historical or political context. By creating a clear definition for these terms, I aim to emphasize here 1, that the terms of domestic work are often left open-ended and have not been clearly articulated and standardized, and 2, that domesticity, domestic labor,

⁵ This definition of domestic work and the household is compiled from numerous sources, namely, documents published by the International Labor Organizations and Domestic Workers United: International Labor Organization, *Decent Work for domestic workers*, (United Nations: Geneva, 2010); DataCenter. *Home Is Where the Work Is: Inside New York's Domestic Work Industry* (NewYork: DWU and DataCenter, 2006)

the household and the family are not “neutral” concepts but, in point of fact, very specific categories that are embedded in and produced by a set of social, political, economic and historic contexts. The socially-constructed and produced nature of the domestic worker, the domestic profession and the household or family in contrast to their perceived “naturalness” and “neutrality” may be a contributing factor in the prevalence of rights infractions and the ongoing mistreatment of domestic workers. These misperceptions may also relate to the subsequent exclusions these workers face in terms of national and international labor laws and protections.

HISTORY OF DOMESTIC LABOR IN THE U.S.:

Domestic labor has been a significant contributor to economic production and development in America since the colonial era. During this period, household manufactures for home consumption prevailed as a system of domestic labor in rural areas. Domestic work and other household subsistence labor were very much a part of the average colonial household, in fact, that labor and the goods produced from that labor often created a surplus that circulated in the marketplace. Ultimately, rural workers, farm hands and household help became commonplace on rural farms and in households throughout the colonies.

According to David Katzman's book, *Seven Days A Week: Women and Domestic Service in Industrializing America*, as the colonial market economy grew under industrialization, settlers were compelled to participate in this market economy more fully.⁶ As they acquired wealth and as they experienced increased incentives to work outside the home, they began to buy slaves, to take on indentured servants or to hire maids to handle household work. Of course, there was a gendered aspect to this labor. During this period, working women of all races had few options besides household work. Katzman states that "by 1870, half of all women workers in the U.S. were domestic servants".⁷

The lucrative cotton plantation was, of course, another key factor in the accumulation of wealth (and the accumulation of domestic labor) in the colonies. This industry notoriously relied on African slave labor to harvest cotton to supply a global demand. In addition to working the fields, slaves were required to perform a series of domestic tasks. Household work performed by slaves sustained plantation life: "spinning thread and weaving fabric, cooking and serving meals,

⁶ David M. Katzman, *Seven Days A Week: Women and Domestic Service in Industrializing America* (University of Illinois Press: 1981) 53

⁷ Katzman, 53.

washing dishes and clothes, cleaning homes, and nurturing [the] masters' children".⁸ Slaves worked long hours, they frequently experienced mistreatment and abuse and they were not recognized as rights-bearing subjects.

During industrialization, as mechanization took over, sectors such as textile, shoe, and garment production grew. This growth initially began in New England and the Middle Atlantic states, but eventually even the states of the South and Middle West became more industrialized. This shift changed the face of the household as household production further diminished and families grew less reliant on subsistence goods.

Many workers during this period would work in their homes producing "outsourced" goods for the booming industrial sector. Rather than producing goods that were used for their household's use, they produced items that were part of a much larger industrial labor chain. "Rural and urban residents alike were drawn into a system of dispersed contracting out, earning wages for domestic labor performed with raw materials owned by their employers and producing goods for sale in distant markets. Industrial outwork flourished initially in rural communities, as wives and

⁸ Leo Huberman, *We, the People: the Drama of America* (Monthly Review Press: 1970), 159; Phyllis Palmer, "Domestic Work," *The Reader's Companion to American History* (Houghton Mifflin Company) http://college.hmco.com/history/readerscomp/rcah/html/ah_025400_domesticwork.htm.

daughters in farming families supplemented farm income by laboring for textile mills, storekeepers, or middlemen who distributed raw materials throughout the countryside and sold the finished cloth, hats, and shoes in widely dispersed markets”.⁹

In the Gilded Age, the garment industry became the leading employer of home-workers, in fact, creating a great demand for home-workers based in *urban areas* as opposed to strictly rural areas. Wealth began to accumulate in the urban centers of the country, namely, Boston, Philadelphia and New York City. Much like the Victorian and Edwardian eras in Britain, the Gilded Age in America saw a dramatic surge in the use of domestic workers, or servants, in the households of upper class urban families. Families would often employ a large staff of domestic workers to look after children, to transport family members, to take care of housecleaning, to entertain and serve guests for family functions and to carry out general house maintenance. While White women would move out of domestic work as they got married and started families, Black domestic workers characteristically remained in the profession well into old age.

⁹ Paul S. Boyer, “Domestic Labor” - *The Oxford Companion to United States History* (Oxford: Oxford University Press, 2001) 1

After World War II, American families “rarely produced goods at home for their own consumption”.¹⁰ At this point, many new employment sectors began to open up, absorbing the American workforce as it modernized and urbanized and providing new job opportunities for women. At first, middle class White women began taking on clerical and administrative duties, retail jobs and positions in the food/hospitality sector. But throughout the latter half of the 20th century, higher paying and higher skilled positions and sectors would open up.

As middle class White women left the home to join the United States’ rapidly expanding work sector, Black women increasingly stepped in to take their place in the household. According to Eros de Souza and Elder Cerqueira’s *From the Kitchen to the Bedroom: Frequency Rates and Consequences of Sexual Harassment Among Domestic Workers in Brazil*, “Maids performed tasks which are considered typically feminine, liberating their mistresses from the activities” so that they could enter the workforce.¹¹ In many ways, “the liberation of the latter is made at the expense (subordination) of the former”.¹² While de Souza and Cerqueira’s article looks specifically at the status of domestic workers in Latin America, this case can easily be made for

¹⁰ Boyer, 2

¹¹ Eros de Souza and Elder Cerqueira. “From the Kitchen to the Bedroom: Frequency Rates and Consequences of Sexual Harassment Among Domestic Workers in Brazil”. (*Journal of Interpersonal Violence*, 24, 2009) 35

¹² De Souza, 35

America's domestic workforce, as well. Until the Civil Rights movement would open more doors to Black women, these women primarily found employment as domestic workers in the households of White middle and upper class families.

Equal rights were slow to come this working population. In fact, one could argue that they still have yet to arrive. Regularly employed domestic workers did not gain the right to Social Security coverage until 1950, and this was provided that they met certain limitations. For instance, for domestic workers to earn social insurance coverage, they were required to earn a minimum of \$50 per quarter and work at least 24 days within the same calendar quarter. Domestic workers could receive coverage from more than one employer provided that they worked 24 days per quarter for each of them. As Luisa Grillo-Chope and Carlos Ramos state in their article, *"Domestic Workers Working Hard to Sustain American Families, Compromising their Social Security"*, "These strict measures were probably implemented to limit coverage of regularly employed workers; casual domestic workers (workers who did not meet the 24 days per quarter requirement) would remain without Social Security coverage."¹³ Similar legal exclusions and rights violations such as these continue to run throughout local and national U.S. law.

¹³ Luisa Grillo-Chope and Carlos Ramos, *"Domestic Workers Working Hard to Sustain American Families, Compromising their Social Security"* (Washington, DC: National Council of La Raza, 2006) 1

GLOBALIZATION OF DOMESTIC LABOR:

Historically, the U.S. has been a main destination for both formal and informal migration. Since the 1970's, immigrant and migrant women of color have left their home countries looking to escape poverty and to find work and opportunity in the U.S. While migrant labor has historically filtered into the U.S.'s agricultural and industrial sectors, today, suburban and urban homes are "increasingly replacing [farms] and inner-city factories as the places of economic incorporation for new immigrants."¹⁴

The expanding wealth and growth of American markets has been a double-edged sword for those who migrate here looking for opportunity. In one way, this expansion of wealth and markets has created a strong demand for labor, creating spaces for laborers that need to be filled. On the other hand, the type of wealth that has been accumulated in the U.S. and the nature of the labor sectors that have been opened, have meant that wealth and resources increasingly fall into the hands of a small, elite portion of the population. This has led to harsh inequality.

According to an interview with economist Edward Wolff, "In the United States, in the last survey year, 1998, the richest 1 percent of households owned 38 percent of all wealth. The top 5

¹⁴ Pierrette Hondagneu-Sotelo, *Domestica*. (Berkeley, University of California Press: 2007) 2

percent own more than half of all wealth, which is a very concentrated distribution”.¹⁵

Essentially, the bottom twenty percent of the population has very little wealth accumulation or savings. They either have few to no assets, or as we have seen during the housing crisis over the past few years, their debt equals or exceeds their assets.

Much attention has been paid to the disappearing middle class. A household in the “middle”, or a median household, currently has wealth of about \$62,000. While \$62,000 is not insignificant, Wolff states that “if you consider that the top 1 percent of households’ average wealth is \$12.5 million, you can see what a difference there is in the distribution”.¹⁶ In many ways, this growing income inequality has contributed significantly to the parallel expansion of paid domestic work.

Who are these domestic workers and what is the make-up of this domestic workforce in the U.S.? Of the close to 600 domestic workers who responded to a DWU survey in 2006, those workers represented 42 different countries. “One-third (33%) came to the United States because they could not support their families in their home country. Workers who live in their employers’ home (51%) were especially likely to have left their home countries due to economic hardship.

¹⁵ *The Wealth Divide: The Growing Gap in the United States Between the Rich and the Rest, an interview with Edward Wolff*. (New York: Multinational Monitor, volume 24, Number 5) 1

¹⁶ Multinational Monitor, 1

Workers also came because they had friends or relatives already working in the U.S. (35%) and because they had no job options in their home country (28%). Nine percent (9%) of live-in workers received sponsorship, or visas, from their employers”.¹⁷

Today, the domestic workforce in the U.S. is primarily comprised of female immigrants or migrants who are members of a minority group. In DWU’s recent survey of domestic workers, “ninety-nine percent (99%) of those surveyed were foreign-born, and seventy-six percent (76%) were non-U.S. citizens. Ninety-three percent (93%) were female. Only one percent (1%) self-identified as non-Hispanic white.”¹⁸

The domestic workforce in NY state is primarily comprised of Black women from the Caribbean, the West Indies and countries in Africa. Women of Latina and Asian origin trail behind in terms of percentages of workers. In New York state, “twenty percent (20%) of domestic workers are Asian; sixty-five percent (65%) are Black; seven percent (7%) are Latina, three percent (3%) are of mixed race and one percent (1%) are White”.¹⁹

¹⁷ DataCenter, 10

¹⁸ DataCenter, 11

¹⁹ DataCenter, 13

The same issues of inequality (in particular, the lack of equal distribution of resources) that characterize the U.S. are now reflected on a global level. Today, the citizens of countries in the global South leave behind the poverty, inequality and insecurity they face in their home countries seeking to benefit from the stronger, more robust economies of the North and West. Sadly, they often trade one set of insecurities and hardships for another once arriving in their country of destination.

Figures from the 2007 Human Development Report give a comprehensive picture of the possible push/pull factors that may lead these women to leave their home countries and to relocate to the U.S.²⁰ Both of the countries represented in the appendix (Jamaica and the Philippines) have comparatively high rates of emigration from their countries to the United States, and these two countries are strongly-represented amongst the ranks of domestic workers in NY state. Following those tables, corresponding U.S. statistics are also been listed for comparison.

The emigration rate from countries in the Caribbean is extremely high – in Jamaica, emigration rates are at almost 27%, making it one of the top 15 countries in the world for emigration. In nearby Antigua and Barbuda, emigration is at 45%, but those emigrants move primarily to Asia,

²⁰ *Human Development Report, 2009 - Jamaica*. (New York: UNDP, 2009)

http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_JAM.html

rather than to the U.S. In Jamaica, more than 73% of emigrants make their way to the United States.²¹

While Jamaica has a slightly higher rate of enrollment for females in primary, secondary and tertiary education than the United States, their total enrollment is still only at 73% and their literacy rates are relatively low, at 86%.²² With an unemployment rate of 11%, job opportunities once leaving school are limited almost exclusively to the tourism and service sectors. There are also significant differentials between female and male income levels in Jamaica. Overall, Jamaica's economy faces serious long-term problems: a sizeable trade deficit, large-scale unemployment, and a debt to GDP ratio of almost 130%. Jamaica's large debt burden, the fourth largest per capita, may hinder government spending on infrastructure and social programs and could be a primary factor in the heavy outflow of labor. In contrast, the labor force participation rate of Jamaican migrants in OECD countries is nearly 70% and 81% of the remittances Jamaican migrants send back to Jamaica come from North America.²³

²¹ *Human Development Report, 2009 – Philippines* (New York: UNDP: 2009)

http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_PHL.html

²² All figures derived from the HDR tables included in the appendix.

²³ HDR

While only about 4% of the population of the Philippines emigrates out of the country, almost 50% of emigrants from the Philippines come to the United States.²⁴ Some 34 – 54% of the Philippine population is sustained by remittances from migrant workers and 66% of those remittances are generated in North America. With 45% of the population living at less than \$2 a day, remittances from migrant workers contribute strongly to the overall economy of the Philippines. The country is increasingly dependent on this migrant workforce as the economic crisis has pushed the unemployment rate to 7.3% and has sharpened an already highly unequal distribution of income in the country.²⁵

The United States is host to nearly 40 million international migrants – more than any other country in the world.²⁶ In the United States, there are 39,266.5 thousand migrants, which represent 13.0% of the total population. While these emigration statistics for Jamaica and the Philippines are dramatic, they also fail to cover the percentage of immigrant and migrant workers who may be trafficked to the U.S. illegally, living and working in the country undetected and

²⁴ HDR.

²⁵ Barbara Ehrenreich and Arlie Russell Hochschild, *Global Woman*. (New York: Henry Holt and Company, 2002) 69

²⁶ According to the UNDP, as a share of total population, the country of Qatar would actually show the highest number of migrants – there, more than 4 in every 5 people are migrants.

unprotected. For the Philippines, a conservative figure of at least 600,000 emigrated workers has been estimated, but the actual number may far exceed that figure.²⁷

THE DOMESTIC WORKER ISSUE IN NY STATE AND NEW YORK CITY:

Ironically, while the majority of the domestic workforce emigrates from Jamaica to the United States seeking better work opportunities, Jamaican laws appear to have better protections in place for domestic workers. This may be due, in part, to the fact that the sheer size and robustness of the service industry in Jamaica set an immediate precedent for legislation and protections to be put in place. In an article detailing the status of Jamaican domestic workers in the U.S., a domestic worker notes that, "In the islands, we have protection for domestic workers, so I was very aware of my rights."²⁸ Since coming to the U.S. she has worked as a nanny in New York City, Long Island and Connecticut. According to the article, Jamaican law guarantees domestic workers "employer-paid maternity-leave and legal recourse against employers who fail to pay. It also extends a weekly minimum wage of \$51 to household workers".²⁹

²⁷ Ehrenreich and Hoshchild, 69

²⁸ Rebecca Harshbarger, N.Y. Domestic Workers See Bill of Rights in '09 (*Womens ENews*. February 8, 2009) <http://www.womensenews.org/story/law/090208/ny-domestic-workers-see-bill-rights-09>

²⁹ Harshbarger

On arrival in the U.S., immigrant and migrant workers encounter a system of inequality that both fuels the need for domestic labor and contributes to the exploitations that those domestic workers may face. According to Hondagneu-Soletto, “During the 1980’s and 1990’s, income polarization in the United States intensified, setting the stage for further expansion of paid domestic work”.³⁰

In the past two decades, the earnings gap between upper income workers and lower income workers has grown significantly throughout the United States. This trend is fully evidenced in the case of the New York–New Jersey region. According to a report from the Federal Reserve bank, “from 1979 to 1996, regional earnings inequality widened by more than 50 percent”.³¹ The table below from the Federal Reserve bank evidences those sharp earning inequalities:

NY/NJ Earnings Inequality: Year-Round, Full-Time Workers

Ratio of 90th Percentile Earnings to 10th Percentile Earnings

Population	Men			Women		
	1979	1989	1996	1979	1989	1996
United States	3.6	4.6	5.0	2.9	3.9	4.3
New York–New Jersey region	3.4	4.3	5.3	3.0	3.9	4.4
New Jersey	4.0	4.5	5.1	3.1	4.0	4.3
New York City metropolitan area	3.7	4.6	6.8	3.0	4.0	4.8
New York State ^a	3.3	3.6	4.3	2.5	3.5	3.6

Source: Authors’ tabulations, based on data from the U.S. Census Bureau’s March Current Population Survey. ^aExcluding the New York City metropolitan area.

To assess earnings inequality, the table looks at the gap in annual earnings between workers who are near the top of the earnings distribution and workers who are near the bottom. The measure of this gap is the ratio of annual

³⁰ Hondagneu-Sotelo, 6

³¹ “Earnings Inequality: New York–New Jersey Region” *Current Issues in Economics and Finance* (New York: Federal Reserve Bank, Volume 4, Number 7, July 1998) 1

earnings at the 90th percentile of the earnings distribution to annual earnings at the 10th percentile. The table reveals a more pronounced gap between the 90th and 10th percentile in the New York City metropolitan area, as well as growing inequality both regionally and nationally.

In particular, the growth of domestic work alongside inequality growth is most apparent in New York City and its surrounding suburbs. According to Data Center's Report on domestic workers in NY state, "the domestic work industry is largest in cities like New York where income disparity is high. These factors have built a demand for domestic work. U.S. Census data show a 24% increase in the size of the New York domestic workforce from 1990 to 2000".³² Second to Los Angeles, New York City has the highest number of families with domestic workers in the country.

"New York City is a leading force in the global economy", and this productivity is certainly due in part to the 200,000 domestic workers who sustain the city's families and homes.³³ "An estimate cited by the *Chicago Tribune* states that "43% of women working outside the home hire domestic workers, which would bring the number of domestic workers in New York City closer to 600,000 using 2000 Census data of employed women".³⁴

³² DataCenter 8

³³ DataCenter 1

³⁴ Citation taken from Data Center's report: *Chicago Tribune*, 'Maid Services Clean Up as Demand Escalates', Carol Kleiman, 1986.

Just as is occurring on the national level, the gap between high-income and low-income households in New York City continues to expand as middle-income earners decline. A recent study published by the Pratt Center, a not-for-profit focused on sustainable development in New York City, states that in 2000, “the top fifth of earners in Manhattan [are making] 52 times more than the lowest fifth”. Citing this study, Data Center’s report adds that this figure is up from a differential of 21 times in 1980.³⁵

New York City was, of course, built off of immigrant labor. The immigrant story of opportunity and perseverance is central to the character and mythology of the city. And yet, when one looks closer, New York City does not appear to be doing well by its immigrant and migrant population, today. Numerous studies reveal connections between lower income and higher health problems, higher infant mortality rates, lower levels of education, less job security and a higher frequency of worker exploitation, just to name a few (Sohler, et. al: 2003; Karpati: 2006; Giddens: 2007). These issues often intersect with categories of race, class, gender, nationality and demography.

³⁵ Data Center, 34

These issues of inequality and marginalization, which often revolve around “inferior” race, class, gender and/or nationality, are made abundantly clear in regard to the status of domestic workers in New York City and NY state. This case study considers the status of these migrant workers, examines the details of their working conditions and explores many of the development and rights-based issues that may underlie the ongoing problem of domestic worker exploitation.

CASE DESCRIPTIONS:

Rights-holders: Elizabeth, Freda, Angelica, and Mona (their testimonies representing domestic workers in NY state at large)

Duty-bearer: The NY state legislature, specifically the NY state Labor Committee

Location: Albany, NY / United States

Date: November 21, 2008

ELIZABETH:

Elizabeth started working for a family in Manhattan, which lasted for three years. She worked with 8 other people in the household.

During her tenure in this Manhattan household, she allegedly suffered ongoing sexual harassment by her male employer. She states, “ The second day on the job, the employer started in on me. I was in the living room when he went to the shower. From there, he called out to me, “Elizabeth, please get me the phone”. I entered the room and responded, “Where are you?” “In the shower”, he answered. When I entered, he had the curtain opened completely. I was shocked. I grabbed the phone and threw it. I was furious”.³⁶

According to her account, because she needed the money and she had few other viable work options, she remained at the job. The attrition rate in the house was high, and soon, Elizabeth

³⁶ Domestic Workers United, *Testimony from Domestic Workers*. (Albany, NY: DWU, November: 2008)

<http://domesticworkersunited.org/static/testimony>

was hiring all the new staff. She hired her family – her daughter, sister, niece and other people that she knew. This way, she could warn them beforehand about the working conditions.

Elizabeth goes on to outline numerous instances of sexual harassment – her employer making physical passes at her in the kitchen, making salacious comments and repeatedly exposing himself to his workers.

Finally, Elizabeth approached Domestic Workers United about writing a letter to her employer telling him to cease sexually harassing his workers. The letter also demanded holidays, sick days, and vacations because she was never afforded those benefits as part of her labor in the household. When Elizabeth presented the letter to her employer, he fired her immediately. The employers tried to keep on Elizabeth's daughter, Marcela, as an employee but Elizabeth was afraid to let her daughter work in the house alone for fear of further harassment and maltreatment. As a result, none of her family members continue to work for this family.

FREDA:

In 2005, Freda went to work as a nanny for a new family, an attorney and a cardiologist. The family had twin children and an 18-month-old infant.

When the twins were old enough, the employer put the twins in school full-time, from 9am – 2pm. She then let the housecleaner go and informed Freda that she should now take on the responsibilities of the housecleaner. This included laundry, dishes, vacuuming and deep cleaning the household on top of her responsibilities to the couple's three children.

Throughout this time period, Freda states that she received only a flat salary, no overtime, only one week of vacation per year, no sick days or paid sick-leave and she was averaging an 11 – 12 hour workday.

Freda also testified that she allegedly did not work under a job contract for the entire period of employment and that she was not allowed to negotiate for a raise, bonuses or better working conditions.

She also states that she experienced discrimination and mistreatment from the male employer, which she hypothesizes was due to the fact that she is a black woman and he did not know the nanny his wife hired was going to be black.

Finally, the family got a dog and requested that Freda carry out the dog walking responsibilities, as well. When she refused, she was given a week's pay and told to go home and "rest". At the end of the week, she received word that she was being let go, the employer allegedly informing her, "we got someone for less who will do all the work you're not willing to do".³⁷

Freda is a mother of four children who are all in school. In her testimonial, she states that she is currently unemployed and not having a job has negatively affected her entire family.

ANGELICA:

In 2007, Angelica began work with a Manhattan-based family, cleaning their apartment. She then took on added responsibilities taking care of their child. She also reports cleaning, doing laundry, taking clothes to the dry cleaner, food shopping and food preparation for the entire family as part of her duties.

She states that the child used to sleep with her in her bed as the mother had to travel out of town for business, frequently. She took care of him around the clock, "constantly, day and night".³⁸ While the mother was out of town, Angelica reports she was responsible for the household, sometimes purchasing things for the house with her own money.

She states, "in general, I worked between 19 to 20 hours a day, with very bad pay, without overtime".³⁹

When Angelica expressed interest in participating in a nanny course at the Domestic Workers union, she experienced resistance from her employer. Her employer told her that her course was a waste of time and she demanded to see the documents from the union. Angelica was fired a few days later.

According to Angelica, the employer scolded her for not taking the child to the park. She became furious, insulted her and pushed her. She insisted that Angelica return the keys to the house. The

³⁷ DWU, 4

³⁸ DWU, 2

³⁹ DWU, 2

employer then, allegedly, grabbed her by the hair, slapped her and punched her arm. She grabbed Angelica's things, threw them on the floor and began to stomp on them.

The employer then allegedly stated that Angelica was born to be a servant and not a nanny, "and that Domestic Workers United didn't know what they were talking about because [she] did not have any rights."⁴⁰

MONA:

Mona, a Filipina domestic worker, testified to directly experiencing "slavery, abuse, discrimination, sexual harassment and countless violations of [her] human rights".⁴¹

In 2000, she reports that she left the Philippines and agreed to work for a diplomat in the U.S. According to her statements, her employer made her work seven days a week for more than 9 months straight. She was paid an alms wage of \$250 a month for her labor. She performed housework and housecleaning, babysitting duties for a toddler, carried out carpentry and repair work in the house and physically tasking labor such as shoveling snow. She was also asked to be a driver for her employers.

Mona testifies to an erosion of her self-esteem and to feelings of stress on the job as her employer would "unapologetically disrespect and degrade" her.⁴² She reports that she had to work when sick and was never provided with sick days or health care. She describes her ultimate departure from this position as an "escape".

This was just the first of many exploitative jobs she held as a domestic worker. She states, "How can I forget a Westchester employer who threw a piece of stale pizza, without a plate, on the table and told me that was my dinner? How can I forget the Park Avenue employer who repeatedly called me stupid and had the habit of smirking and snapping at me without reason? How can I forget the numerous times when I resigned from a fulltime housekeeping position to

⁴⁰ DWU, 3

⁴¹ DWU, 4

⁴² DWU, 4

avoid malicious sexual harassment by male employers? How can I forget an employer who accused me of stealing a \$2 Niagara Cornstarch for ironing clothes?"⁴³

SUMMARY POINTS

The background and the testimonials provided point to the following list of just some of the exploitations and abuses on the job:

- LOW PAY
- DEMEANING TREATMENT
- DISCRIMINATION
- NO REST
- FEW RIGHTS
- ON-THE-SPOT FIRING
- NO BENEFITS
- NO CONTRACT
- ISOLATED WORKING CONDITIONS
- SEXUAL HARASSMENT AND SEXUAL ABUSE
- PHYSICAL AND EMOTIONAL ABUSE
- NO HOLIDAYS
- NO ABILITY TO JOIN TRADE UNIONS
- NO FINANCIAL SAFETY NET
- RACISM
- NO PRIVACY
- EXPOSURE AND VULNERABILITY DUE TO CLASS, RACE, NATIONALITY AND GENDER INEQUALITY

⁴³ DWU, 4

APPENDIX

HUMAN DEVELOPMENT REPORT 2007 – JAMAICA

Jamaica's human development index 2007				
HDI value	Life expectancy at birth (years)	Adult literacy rate (% age 15 and above)	Combined gross enrolment ratio (%)	GDP per capita (PPP US\$)
1. Norway (0.971)	1. Japan (82.7)	1. Georgia (100.0)	1. Australia (114.2)	1. Liechtenstein (85,382)
98. Tunisia (0.769)	87. Tonga (71.7)	85. Libyan Arab Jamahiriya (86.8)	65. Occupied Palestinian Territories (78.3)	96. Belize (6,734)
99. Tonga (0.768)	88. Paraguay (71.7)	86. Gabon (86.2)	66. Belize (78.3)	97. Dominican Republic (6,706)
100. Jamaica (0.766)	89. Jamaica (71.7)	87. Jamaica (86.0)	67. Jamaica (78.1)	98. Jamaica (6,079)
102. Sri Lanka (0.759)	91. Philippines (71.6)	89. Oman (84.4)	69. Lebanon (78.0)	100. Armenia (5,693)
182. Niger (0.340)	176. Afghanistan (43.6)	151. Mali (26.2)	177. Djibouti (25.5)	181. Congo (298)

Selected indicators of human poverty for Jamaica				
Human Poverty Index (HPI-1)	Probability of not surviving to age 40 (%)	Adult illiteracy rate (% ages 15 and above)	People not using an improved water source (%)	Children underweight for age (% aged under 5)
1. Czech Republic (1.5)	1. Hong Kong, China (SAR) (1.4)	1. Georgia (0.0)	1. Barbados (0)	1. Croatia (1)
49. Paraguay (10.5)	82. Honduras (9.3)	85. Libyan Arab Jamahiriya (13.2)	51. Grenada (6)	21. Armenia (4)
50. Azerbaijan (10.7)	83. Dominican Republic (9.4)	86. Gabon (13.8)	52. Iran (Islamic Republic of) (6)	22. Cuba (4)
51. Jamaica (10.9)	84. Jamaica (9.9)	87. Jamaica (14.0)	53. Jamaica (7)	23. Jamaica (4)

Emigrants from Jamaica			
Origin of migrants	Emigration rate (%)	Major continent of destination for migrants	(%)
1. Antigua and Barbuda	45.3	Asia	46.6
9. Guyana	33.5	Northern America	78.6
11. Barbados	29.8	Northern America	64.9
12. Jamaica	26.7	Northern America	73.0
14. Saint Lucia	24.1	Latin America and the Caribbean	40.4

HUMAN DEVELOPMENT REPORT: PHILIPPINES STATISTICS

Philippines's human development index 2007				
HDI value	Life expectancy at birth (years)	Adult literacy rate (% ages 15 and above)	Combined gross enrollment ratio	GDP per capita (PPP US\$)
1. Norway (0.971)	1. Japan (82.7)	1. Georgia (100.0)	1. Australia (114.2)	1. Liechtenstein (85,382)
103. Gabon (0.755)	89. Jamaica (71.7)	52. Thailand (94.1)	56. Mexico (80.2)	122. Vanuatu (3,666)
105. Philippines (0.751)	91. Philippines (71.6)	54. Philippines (93.4)	58. Philippines (79.6)	124. Philippines (3,406)
106. El Salvador (0.747)	92. Saint Vincent and the Grenadines (71.4)	55. Panama (93.4)	59. Mongolia (79.2)	125. Mongolia (3,236)
182. Niger (0.340)	176. Afghanistan (43.6)	151. Mali (26.2)	177. Djibouti (25.5)	181. Congo (298)

Philippines: The GDI compared to the HDI – a measure of gender disparity			
GDI as % of HDI	Life expectancy at birth 2004	Adult literacy rate (% ages 15 and older) 2004	Combined primary, secondary and tertiary gross enrollment ratio 2004
	Female as % male	Female as % male	Female as % male
1. Mongolia (100.0%)	1. Russian Federation (121.7%)	1. Lesotho (122.5%)	1. Cuba (121.0%)
38. Poland (99.6%)	90. Serbia (106.5%)	9. Uruguay (100.8%)	51. Brazil (105.0%)
42. Australia (99.6%)	94. Korea (106.4%)	13. Costa Rica (100.5%)	55. Colombia (104.8%)
155. Afghanistan (88.0%)	190. Swaziland (98.0%)	145. Afghanistan (29.2%)	175. Afghanistan (55.6%)

Emigrants			
Origin of migrants	Emigration rate (%)	Major continent of destination for migrants	(%)
1. Antigua and Barbuda	45.3	Asia	46.6
5. Samoa	37.2	Northern America	16.6
83. Lao People's Democratic Republic	5.9	Northern America	62.9
95. Brunei Darussalam	4.9	Europe	31.9
112. Philippines	4.0	Northern America	49.9

HUMAN DEVELOPMENT REPORT: UNITED STATES STATISTICS

United States: Human Development Index 2007			
HDI value	Life expectancy at birth (years)	Combined gross enrollment ratio (%)	GDP per capita (PPP US\$)
1. Norway (0.971)	1. Japan (82.7)	1. Australia (114.2)	1. Liechtenstein (85,382)
11. Luxembourg (0.960)	24. United Kingdom (79.3)	19. Barbados (92.9)	7. Singapore (49,704)
13. United States (0.956)	26. United States (79.1)	21. United States (92.4)	9. United States (45,592)
14. Austria (0.955)	27. Greece (79.1)	22. Lithuania (92.3)	10. Ireland (44,613)
15. Spain (0.955)	28. Costa Rica (78.7)	23. Italy (91.8)	11. Hong Kong, China (SAR) (42,306)
182. Niger (0.340)	176. Afghanistan (43.6)	177. Djibouti (25.5)	181. Congo (298)

U.S. Gender Disparity Statistics:		
GDI as % of HDI	Life expectancy at birth (years) 2004	Combined primary, secondary and tertiary gross enrollment ratio 2004
	Female as % male	Female as % male
1. Mongolia (100.0%)	1. Russian Federation (121.7%)	1. Cuba (121.0%)
103. Cameroon (98.6%)	109. Gambia (106.0%)	20. Jamaica (110.3%)
104. Brunei Darussalam (98.5%)	110. Sao Tome and Principe (106.0%)	21. Sweden (110.2%)
105. United States (98.5%)	111. United States (105.9%)	22. United States (110.0%)
106. Switzerland (98.5%)	112. Northern America (105.9%)	23. Honduras (109.9%)
107. Israel (98.5%)	113. Canada (105.9%)	24. Panama (109.7%)
155. Afghanistan (88.0%)	190. Swaziland (98.0%)	175. Afghanistan (55.6%)

U.S.: Immigrants			
Destination of migrants	Immigrant stock (thousands)	Destination of migrants	Immigrants as a share of pop. (%) 2005
1. United States	39,266.5	1. Qatar	80.5
		4. Andorra	63.1
1. United States	39,266.5	34. United States	13.0
3. Germany	10,597.9	35. Germany	12.9
4. France	6,478.6	37. Sweden	12.3
164. Liechtenstein	11.9	129. Japan	1.6

PART TWO: ANALYSIS

INTRODUCTION

The testimonies recounted in this case study attest to cases of domestic workers being discriminated against and taken advantage of due to “inferior” nationality, race, gender and class status; inequality issues rendering this labor group more vulnerable to exploitation and less able to access legal assistance or justice; domestic workers being excluded from labor protections and laws on the local, national and international level; a growing demand in the West and North for cheap labor from the developing countries of the global South; a history of neoliberal policies that have fomented harsh imbalances of resources, power and capital, bringing about inequality and dependency; and, a lack of legitimacy for domestic work fed by a socio-cultural devaluation of domestic labor in the U.S. and worldwide.

This section seeks to analyze these factors in depth, using a rights-based perspective to re-frame the lingering issue of domestic worker exploitation – an issue that appears to be getting worse by the week. For instance, reports were released in early November 2009 that pointed to a spate of domestic worker deaths in Lebanon (either by suicide or homicide). On the grimly named *Ethiopian Suicides* blog, a website dedicated to monitoring media reports on the deaths of foreign migrant domestic workers in Lebanon, the blog noted that in a 3 week period, four

Ethiopian women died: Kassaye Atsegenet, 24, Saneet Mariam, 30, Matente Kebede Zeditu, 26 and Tezeta Yalmiya, 26.⁴⁴

In a profession marked by a lack of legitimacy, a lack of clear definition, a lack of visibility, a lack of legal protections, as well as an equally severe lack of accountability, the rights-based approach enables us to identify the rights-holders and duty-bearers in this case and to use human rights to create a clear framework for action. This section:

- 1, analyzes what rights were violated;
- 2, examines the nature of those violations;
- 3, explores the possible causes of those ongoing rights infractions; and,
- 4, considers what policies have been applied to the issue, thus far.

I conclude with a series of proposals for how human rights and development can be further brought together to hold duty-bearers accountable and to set clear benchmarks for addressing the ongoing exploitation of this valuable, yet, invisible, workforce. This analysis also aims to generally illustrate how rights-based approaches may serve as normative or guiding frameworks to shape policy, to encourage full voice and participation of marginalized groups and to bring about systemic change.

⁴⁴ *Ethiopian Suicides*, (November 9, 2009) <http://www.ethiopiansuicides.blogspot.com>

WHO ARE THE RIGHTS-HOLDERS?

Rights-holders can be defined as individuals or groups who are entitled to a set of rights without distinctions based on gender, age, race, nationality, religion, social, economic and/or any other conditions. The rights-based approach emphasizes that the rights-holders associated with a given case or issue must be taken into account and must fully participate in the matters that directly affect their lives and livelihoods. Rights-bearers must be assured the ability to fully exercise and enjoy their rights, and in instances in which rights have been violated or denied, rights-holders should be able to make claims and to seek redress.

The primary rights-bearers in this case are the five immigrant and migrant women who gave testimony to the ongoing abuse and/or violations of rights that they experienced while working as domestic laborers in households in NY state. But, because these cases are, in fact, just a few instances of a larger, more wide-spread and systemic problem of domestic worker exploitation, the rights-bearers may also include all of the individuals who make their living as domestic workers throughout New York state. As the family members and dependents of those workers were also directly affected by the violations and exploitation recounted in these cases, they are also rights-bearers.

WHO ARE THE DUTY-BEARERS?

According to the general guidelines of international human rights practice, a duty-bearer is an individual, group or entity that is responsible to a rights-holder for respecting, protecting and fulfilling their rights.

How, then, do we define responsibility in this instance? According to United States domestic law, “responsibility” essentially lies in the hands of who can be held liable, in other words, who one can sue. As the legal frameworks for international human rights currently function as a set of guiding principles, the notion of responsibility becomes a bit more open to interpretation. An essential concept behind the Human Rights Based Approach is to create a means of adapting universal norms and standards of human rights to respond to local contexts and to address specific development issues.

By agreeing to become signatories to the *Universal Declaration of Human Rights* and other international treaties and conventions, governments become responsible to rights-holders to uphold these norms. Accordingly, they have the obligation to respect and to enforce rights and to take immediate, clear action towards the progressive realization of the rights in question. Also, in instances when third party individuals, groups or entities fail in their responsibilities to respect,

protect and fulfill the rights of another individual, group or entity, the State (its legislative, judicial and law enforcement bodies) becomes the primary duty-bearer, charged with the obligation to respect, protect and fulfill human rights based on international standards and national laws. In some instances, the State, itself, may be both the violator of rights and the duty-bearer at the same time, which calls for a specific set of strategies to hold them accountable.

While most of the duties and responsibilities lie in the hands of the State, there are, however, non-state actors (international bodies, civil society organizations and individuals) who have a duty to aid in the realization of rights.

The following is a list of potential duty-bearers in these cases of NY state domestic worker exploitation:⁴⁵

DUTY-BEARERS

Employers of domestic workers;

Domestic worker recruitment agencies who may be involved in the recruitment/employment of domestic workers both in the U.S. and in the country of origin;

The NY state domestic workers union (which has a duty to those women and men who are members);

⁴⁵ The duty-bearers listed above may have different levels of responsibility in the case.

The New York City and NY state government and its related legislative, judicial and law enforcement agencies;

The nations of origin of migrant domestic workers;

The United States federal government (specifically, the U.S. Department of Labor and the USCIS, as well as federal legislative, judicial and law enforcement bodies);

The United Nations (specifically, the International Labor Organization).

The following chart taken from the UNFPA illustrates the relationship between rights holders and duty bearers. The chart also clearly notes the connections between accountability on the part of duty-bearers and the need for participation on the side of the rights-holders.⁴⁶



Human Rights: The Human Rights Based Approach.

UNFPA website, December, 2009.

⁴⁶ *The Human-Rights Based Approach* (New York: UNFPA December 4, 2009) <http://www.unfpa.org/rights/approaches.htm>

For the purposes of this case study which focuses both on testimony brought to the NY state Senate and on the domestic worker led campaign for new legislation in NY state, I will focus primarily on the employers of domestic workers, local recruitment agencies, the New York City local government and the NY state government as the principle duty-bearers.

WHAT LAWS AND/OR RIGHTS ARE RELEVANT TO THESE CASES?

Domestic workers, particularly live-in workers, often have to work anywhere from 9 – 19 hours a day with few rest days and little compensation for overtime; they generally receive low wages that do not give them enough to uphold a decent standard of living; they frequently lack health insurance coverage; they are often exposed to physical and sexual harassment, violence, abuse and degradation; in some instances, they are held against their will working in slave-like conditions; and finally, pay and/or legal documents are often withheld from them as a means of control and manipulation. These events often unfold in the private, intimate spaces of the household, meaning working conditions are not standardized, there are few witnesses to the abuse or violations and domestic workers experience difficulty finding support networks and/or organizing to protect their interests at work.

In 1948, at its 31st session, the International Labor Conference adopted a resolution on the conditions of employment of domestic workers. It requested the Governing Body to “consider the advisability of placing on the agenda of an early session of the Conference the question of the status and employment of domestic workers”.⁴⁷ In the 60 years since that motion was made, the issue has never been put on the agenda again.

As the problems domestic workers face appear to be getting worse and as the profession seems to be growing worldwide, government organizations such as the ILO and NGO’s such as Human Rights Watch and the ACLU are taking up the issue with vigor. The issue of decent work for domestic workers will be on the agenda at the 2010 International Labor Conference.

Since the resurgence of advocacy around this issue beginning in approximately 2005, organizations such as the ILO, Domestic Workers United, Human Rights Watch, the ACLU and others have identified the following sets of rights as being relevant to the case of domestic worker exploitation:

⁴⁷ Luc Demaret, *Decent work for domestic workers Report IV(1) International Labour Conference, 99th Session*, (New York: United Nations, 2010) 1

2005 Domestic Workers Human Rights Tribunal

According to a 2005 Tribunal on Domestic Work convened by DWU and by Global Rights, a human rights advocacy NGO that partners with local activists to challenge injustice and to amplify minority voices in struggles for social equity, the following rights of domestic workers have been violated.⁴⁸

- a. the right to non-discrimination based on gender, race, nationality, class, religion, and other social categories;
- b. the right to security of person;
- c. the right not to be held in slavery;
- d. the right not to be subjected to cruel, inhuman or degrading treatment;
- e. the right to be treated equally under the law;
- f. the right to freedom of movement;
- g. the right to decent work and to favorable conditions of work;
- h. the right to form and join trade unions;
- i. the right to rest and leisure including limits on working hours and holidays;
- j. the right to an adequate standard of living; and,
- k. the right to social security.

Universal Declaration of Human Rights⁴⁹

The following articles support respect and recognition for domestic workers, and provide a guide for future policies and protections.⁵⁰

ARTICLE 1

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

ARTICLE 2

Freedom from Discrimination

ARTICLE 4

Freedom from Slavery or Servitude

ARTICLE 5

Freedom from Torture and Degrading Treatment

ARTICLE 6

⁴⁸ *Domestic Work Human Rights Tribunal*. (New York: Global Rights and Domestic Work United, October 8, 2005)

⁴⁹ United Nations.

⁵⁰ This list reflects the relevant rights laid out in a report on domestic workers by Data Center, 2006.

Right to Recognition as a Person before the Law

ARTICLE 12

Freedom from Interference with Privacy, Family, Home & Correspondence

ARTICLE 13

Right to Free Movement in and out of the Country

ARTICLE 20

Right of Freedom of Peaceful Assembly and Association

ARTICLE 22

Right to Social Security

ARTICLE 23

Right to Desirable Work with equal pay for equal work and to Join Trade Unions

ARTICLE 24

Right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay

International Covenant on Economic and Social Rights⁵¹

Article 6, 7, 8 & 9

These articles cover the right to freely chosen work and the technical and vocational training to achieve those goals; favorable conditions of work (decent for themselves and their families); the right to join trade unions; and, the right to social security.

Convention on the Elimination of All Forms of Discrimination Against Women⁵²

Article 11: Elaborates on the rights of women in the field of employment.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁵³

⁵¹ United Nations, *International Covenant on Economic, Social and Cultural Rights* (Geneva: United Nations, 1976) <http://www2.ohchr.org/english/law/cescr.htm>

⁵² United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women* (Geneva: United Nations, 1979) <http://www.un.org/womenwatch/daw/cedaw/>

⁵³ International Labor Organization, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Geneva: United Nations, December 1990) <http://www2.ohchr.org/english/law/cmhw.htm>

Article 8: Freedom of movement for migrants and their family members

Article 10: No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11: No migrant worker should be held in slavery or servitude or perform forced or compulsory labor.

Article 14: No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications.

Article 18: Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals.

Article 21: It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents.

Article 24: Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

Articles 25, 27 & 28: Principle of equality of treatment as it pertains to remuneration, terms of employment, work conditions; social security; and the right to receive urgent medical care.

ILO resolutions and conventions⁵⁴

Decent work for domestic workers, 2010

FAILURES OF DUTY-BEARERS:

We have been forced here because U.S. foreign policy has created poverty in our home countries. Once we are here in the U.S., searching for a way to survive, we are pushed into exploited jobs where our work is not recognized, respected or protected.

Joycelyn Campbell, Nanny in Hoboken and Manhattan, from Barbados⁵⁵

Historically, most UN development agencies have pursued a policy of seeking to fulfill the

⁵⁴ International Labor Organization, *Decent work for domestic workers*, (Geneva: United Nations, 2010)

http://www.ilo.org/global/What_we_do/Officialmeetings/ilc/ILCSessions/99thSession/reports/lang--en/index.htm

⁵⁵ Data Center, 14.

“basic needs” of populations. In following this strategy, development agencies would identify “the basic requirements of beneficiaries and [would] either support initiatives to improve service delivery or advocate for their fulfillment”.⁵⁶

The rights-based approach asks development agencies and other duty-bearers to work to fulfill the *rights* of populations, rather than just responding to immediate needs of beneficiaries. The critical distinction is that when a *need* is not fulfilled it leads to dissatisfaction, but when a *right* is not respected, it becomes a violation. The redress or reparation of this kind of claim becomes legally binding and legitimate. The HRBA, therefore, summons a different kind of action and accountability from duty-bearers.

Amnesty International defines the general responsibilities of the duty-bearer as follows:

Respecting rights means that State laws, policies, programs and practices must not violate rights. States must avoid interfering with people’s pursuit of their rights, whether through torture or arbitrary arrest, illegal forced evictions, or the introduction of medical fees that make health care unaffordable for poor people.

Protecting rights means that States must prevent violations by others, and must provide affordable, accessible redress, for example: ensuring that employers comply with basic labor standards, preventing monopoly ownership of the media, or preventing parents from keeping their children out of school.

Fulfilling rights means that States must take positive actions to realize rights, for example: creating legislation that enshrines equal pay for equal work or increasing budgets to the poorest regions.⁵⁷

⁵⁶ UNFPA, *HUMAN RIGHTS: The Human Rights-Based Approach* (New York: United Nations, December 7, 2009) <http://www.unfpa.org/rights/approaches.htm>

⁵⁷ Amnesty International (November 26, 2009) <http://www.amnesty.org>

Who failed to respect, protect, fulfill? And, why?

While later sections of this case study examine the particular idiosyncrasies of the profession which ultimately make domestic work difficult to standardize and regulate, at this juncture, I want to comment more generally on the power inequalities that appear to play a role both in the exploitation of domestic workers and in the inability of duty-bearers to adequately respond to domestic worker issues. First and foremost, one must ask why it has been 60 years since the issue of decent work for domestic laborers has been added to the agenda at the ILO.

The United Nations and the ILO: According to Human Rights Watch, “Although the protections of many existing ILO conventions technically apply to domestic workers, traditional perceptions of domestic workers as “helpers” rather than “workers” and the location of employment in private households rather than commercial enterprises has meant that in practice, these protections have not extended to domestic workers.”⁵⁸

So often, governments respond more quickly and efficiently to issues that affect mainstream society or an elite few, rather than fighting for marginalized, disenfranchised groups. But more

⁵⁸ Human Rights Watch, *Decent Work for Domestic Workers*, (New York: HRW, July 10, 2009).

<http://www.hrw.org/en/news/2009/07/20/decent-work-domestic-workers>

than this, domestic work seems to hold a lower status within the field of already low status positions such as agricultural workers, restaurant workers and factory workers. In many countries, the profession has been slow to unionize and once unionized, it has been difficult for domestic work to gain full recognition from other workers unions and labor groups. National-level legislation and existing conventions have often failed to address the unique circumstances of domestic workers and the need to provide additional and specific legal guidance to protect their rights.

The United Nations, the U.S. federal government, NY state government and New York City

local government: The U.S. has been slow to fully acknowledge the rights of migrants and of workers, in general. In fact, for a country that has been such a strong proponent of human rights and so integral to the spread of human rights norms throughout the world, it has been slow to adopt and/or ratify many of the international human rights treaties put forth by the U.N.

The U.S. has demonstrated a reluctance to sign on to many of the U.N. conventions that are relevant to the case of domestic worker exploitation. For instance, the U.S. has only signed two out of eight core ILO labor conventions: forced labor convention and worst forms of child labor convention; the U.S. has not signed on to the Convention on the Rights of the Child; the U.S. is

also the only industrialized country that has not ratified the CEDAW and it has also failed to ratify the convention on the protection of the rights of all migrant workers.

The U.S. government, and specifically, the NY state government, have met some of their obligations as duty-bearers by bringing domestic worker abuse cases to court, by successfully prosecuting those cases and by passing relevant laws such as the 2003 Nanny Bill, which requires domestic worker employment and recruitment agencies to supply a “Code of Conduct” document to potential domestic worker employers. Yet, these actions on the part of government pale in comparison to the size and scope of the problem.

Employers: In addition, very often, the very individuals who run these government bodies (government heads, diplomats, aid workers, professionals) are the ones who have the need for domestic workers in the first place. They may have little incentive to advocate for the rights of those workers, as they often benefit from the informality of their domestic worker’s position. This informality enables employers to juggle their difficult and demanding work schedules, to bend rules to their needs, to keep the worker’s remuneration low and to avoid paying benefits or dealing with bureaucracy. There are numerous instances of government officials paying migrant laborers under the table, disrespecting the rights of their household workers and trying to sneak

“under the radar”. Equally, there are many cases of the government “looking the other way” as these violations of law and rights occur.

The ACLU has highlighted how domestic workers have historically had little success with complaints of abuse against diplomats. For example, according to a report in the Washington Post, “Mildrate Yancho Nchang said she toiled for three years without pay or a day off and then was hospitalized after being beaten by a Cameroonian diplomat's wife. She sued in federal court in Maryland, but the case was dismissed in 2006 when the diplomat asserted immunity”.⁵⁹

Advocates and lawyers assert that the U.S. government has done very little to protect workers or hold these foreign diplomats accountable. Local law enforcement is often the first to learn of allegations. But, one major obstacle here is the “often haughty or indifferent attitude of the police if a migrant worker does report abuse”.⁶⁰ In addition, with a diplomat involved, local authorities must wait for guidance from the Justice Department.

⁵⁹ Sarah Fitzpatrick, “Diplomatic Immunity Leaves Abused Workers in Shadows” *The Washington Post* (Washington: Sunday, September 20, 2009)

⁶⁰ ILO, 46.

Federal law enforcement may not have the capacity to take on every allegation of abuse and local law enforcement may not always be equipped to respond or interested in responding, therefore victims of abuse and trafficking find themselves in the gap between. A rights-based approach can be used as a guiding framework in these cases to bring government bodies, budgets, policies and actions in line with these specific failures and problems.

Recruitment agencies: The migration of domestic workers often involves the intervention of recruitment agencies, which stand to profit greatly off of this burgeoning labor sector. This process likely begins in the home countries of workers, while placement and employment agencies in the country of destination also play a role. As the ILO's report on decent work for domestic workers states, "Without these agencies, the would-be migrants would have great difficulty in reaching a country where they can find work".⁶¹

Again, this relationship creates a particular power dynamic wherein prospective workers are dependent on these intermediaries to arrange their employment and passage to host countries. In some instances, these dealings have fed a global trade in human beings, fomenting the demand for slave labor and even contributing to the growth of the international sex-trade. Unfortunately,

⁶¹ ILO, 28.

many of these agencies are involved in unscrupulous recruitment and training methods that make prospective workers extremely vulnerable, thereby limiting a worker's ability to negotiate the terms of employment and making it difficult for them to gain accurate information regarding the specifics of their work agreements and work/visa status in the destination country.

Countries of Origin: The countries from which these domestic workers originate also have little impetus to take responsibility for these abuses and violations. First, why spend limited financial resources on training and protecting this workforce when workers are going to leave the country? Second, as seen in the case of the Philippines, the remittances that get sent back to the home country as a result of labor performed by immigrant and migrant women have now become an integral part of the economies of many of these developing countries. Finally, allowing host countries to take on the problem of domestic worker exploitation enables countries of origin to avoid accountability, while still receiving much needed income. These nations are absolved of responsibilities such as addressing corruption connected to the trafficking of labor out of their country or investing resources in the creation of job programs, education and training programs and other costly, complicated development initiatives that target the poor.

Overall, female domestic workers appear to get caught in a kind of power vacuum. Rendered powerless in both their home countries and in their country of arrival, duty-bearers on both sides have little incentive to act in the best interests of this marginalized labor group. The strong global demand for cheap domestic labor feeds off of the critical and immediate needs of poor, disenfranchised groups. This dynamic heightens the likelihood of worker exploitation and the violation of basic rights. In addition, injustices and inequalities are amplified by the fact that these individuals may belong to an “inferior” gender, class, racial, national and/or labor group.

The result is often a severe lack of respect for rights and an ongoing pattern of abuse and neglect.

The following table outlines the primary duty-bearers in these cases and how they may have

failed *to respect, protect or fulfill* the rights of domestic workers:

ORGANIZATION	RESPECT	PROTECT	FULFILL
THE UNITED NATIONS (AND ITS RELATED AGENCIES, I.E., THE ILO, ETC.)	Excluded domestic workers from international law and provisions that protect other migrant workers or vulnerable populations		Repeatedly failed to add the issue of domestic worker exploitation to the ILO agenda; Did not pay sufficient attention to the need for international law and policy to protect domestic workers
THE UNITED STATES FEDERAL GOVERNMENT, THE NEW YORK STATE AND NEW YORK CITY GOVERNMENT	Excluded domestic workers from existing laws that protect other vulnerable workers –	As the testimonials speak to ongoing abuses and rights	Failed to put inclusionary laws or special laws in place to address the needs of domestic workers; Failed

(LEGISLATURE, LAW ENFORCEMENT AND JUDICIAL BODIES)	these exclusions barred domestic workers from rights such as the right to join trade unions, the right to favorable work conditions, the right to fair wages, etc.	violations, the duty-bearers failed to protect domestic workers by ensuring that employers abide by labor laws; Failed to prosecute individuals responsible for forcing laborers to work against their will, often in slave-like conditions	to create adequate educational and training programs available that could specifically address the needs of migrant and immigrant workers in the domestic field; Failed to ensure that the Code of Conduct was being enforced in households
DOMESTIC WORKER RECRUITMENT AND PLACEMENT AGENCIES	May have failed to notify employers of their responsibilities to workers; By law, agencies must provide employers with a “code of conduct” document; May have participated in and promoted the illegal trafficking of domestic laborers	Failed to intervene on behalf of domestic workers when evidence of exploitation and abuse was evident	Failed to adopt active policies and protocol to enhance to safety and security of immigrant and migrant employees
EMPLOYERS	Violated existing laws in regards to wages, hours and fair treatment; Failed to respect the NY state law regarding “code of conduct” for employers; May have knowingly participated in the illegal trafficking of domestic workers; In the cases of diplomats, their abuse of diplomatic privileges directly led to the violation of their employees’ rights		Did not take active steps to create a decent work environment or to ensure the full enjoyment of the rights of their employees; Employers have a responsibility to know the laws and rules of conduct and to set up the job so that those rules can be adhered to in the household

WHAT ARE THE CAUSES OF DOMESTIC WORKER EXPLOITATION? WHAT ARE THE POLICY DEBATES BEHIND THE ISSUE?

DISCRIMINATION AND INEQUALITY

Women of color and/or immigrant and migrant women, in general, may be more vulnerable to exploitation because the categories of race, gender, nationality and class often come together in situations of inequality. While it may be difficult to empirically prove that cases of domestic worker exploitation resulted because of racial, gender or class bias, according to the International Labor Organization, “There is evidence...of wage discrimination on grounds of gender and nationality among domestic workers. In some regions, certain nationalities seem to be better remunerated than others, irrespective of education, competence or experience”.⁶²

A report by Data Center on domestic workers in NY state supports these connections between discrimination and inequality in the domestic workplace: “Race and immigration dynamics exacerbate the wealth differential between domestic workers and their employers. Employers of the workers surveyed are white and U.S. born while the overwhelming majority of workers are immigrant women of color. This color line reflects larger trends of racial and gender-based inequality in the workforce. Negotiation of a domestic worker’s job responsibilities, wages and

⁶² ILO, 7

working conditions takes place within a context of vast structural inequality”.⁶³ While domestic workers often report that, “they like what they do and see it has social value”, they often recount that “domestic work is undervalued and underpaid not just because it is done by women, but because it is done by poor black women”.⁶⁴

In addition to discrimination based on one’s race, gender, class or nationality, there also appears to be discrimination based on the nature of the work being carried out. Domestic work has notoriously been placed on the very bottom of the labor “food chain” and only recently has domestic work – washing, cooking, cleaning, caretaking – been recognized by mainstream society as work. In a report by the ILO on decent work for domestic workers, they state, “One explanation may be that it is associated in people’s minds with the unpaid work performed by mothers and ‘housewives’ – work they perform throughout the day to help those around them, but which is not regarded as a real job”.⁶⁵

⁶³ Data Center, 4.

⁶⁴ Maria Garcia Castro, “The Alchemy Between Social Categories in the Production of Political Subjects: Class, Gender, Race and Generation in the Case of Domestic Workers’ Union Leaders in Salvador-Bahia, Brazil” (*European Journal of Development Research*, 1993) 3

⁶⁵ ILO, 9

Domestic work is often invisible to the rest of the public as it is carried out in private homes. In addition, the home is considered to be a private, apolitical and neutral sphere; according to many families, the home is not meant to be a workplace and it is certainly not meant to be an environment that is regulated and controlled by outside forces, particularly the State.

These issues also underline a deeper social, historical and cultural problem: care and the act of caregiving are not often valued in societies that may have long histories of patriarchal hierarchy. There is a “personal, idiosyncratic nature” to domestic work, especially because it involves the daily caretaking of children or the elderly.⁶⁶ As Pierrette Hondagneu-Sotelo elaborates in her book, *Domestica*, “caring work is inherently relational, involving not only routine bodily care, such as bathing and feeding, but also attachment, affiliation, intimate knowledge, patience, and favoritism”.⁶⁷ Because domestic work has these characteristics, it can be difficult to put frameworks of “efficiency and productivity” around this type of labor. Even if there are ways to standardize the work and to ascribe a monetary value to it, culturally, we are not used to looking at care in this way. It is not that the work these women do in the household cannot be standardized and accounted for, rather, there seems to be a strong cultural resistance to giving

⁶⁶ Pierrette Hondagneu-Sotelo, *Domestica* (Berkeley: University of California Press, 2007) 10

⁶⁷ Hondagneu-Sotelo, 10

caregiving its due. Domestic work, therefore, continues to carry a stigma and as such, it holds a lower status in the spectrum of labor.

EXPLOITATION, INFORMALITY AND MARGINALIZATION

Admittedly, domestic work has proven hard to quantify as a commodity because it stays within the home and does not move amongst the open marketplace like other commodities. Domestic work is unique in that the domestic worker's labor is "bought" and "consumed" by the employers and their family and it does not necessarily circulate in the market for exchange like other commodities. Scholars have debated whether or not domestic work fits within a pre-capitalist or a capitalist mode of production (Jelin: 1976 and 1977; Kowarick: 1975; Saffioti: 1978; de Souza: 1978). As evidenced in Part One of this case study, domestic work is "old as the hills" and has some of its origins in early colonial subsistence labor practices. But, on the other hand, domestic work has also been inextricably linked with the emergence of markets and household members' desires to compete more strongly in that emerging marketplace (as evidenced by the use of slave labor to carry out domestic work and boost productivity in plantation households of the South).

The existence of this lower class, mainly migrant workforce, to step in and perform household tasks directly enables middle and upper (primarily White) families to compete strongly in the workforce and the marketplace. This more productive and more efficient labor force adds to U.S.'s overall productivity. In this way, domestic workers contribute to the generation of a surplus, and they are very much a part of a capitalist model. Therefore, the main issue is not whether domestic work is or is not a part of a pre-capitalist or capitalist framework, but that it has not been fully *integrated into* or *recognized by* the modern marketplace as a legitimate commodity.

Informality, marginalization and lack of complete integration seem to plague this profession across the board:

1: As stated earlier, domestic workers labor in private spaces. Employers want to preserve the domestic sphere as private and protected, while domestic workers need a more regulated, work environment. In these private spheres, they often find it difficult to make friends, to establish relationships and to build networks. Cut off from the outside world, they are left vulnerable to exploitation. Ironically, even though they are often kept within the private sphere of the family, domestic workers are also given surprising little privacy. They often are not given their own

rooms (sometimes sleeping in the children's bedrooms); they do not have many personal belongings; and, they frequently do not have locks on their doors. These practices reflect an extreme lack of respect for workers and an inability to treat them as human beings (and as adult women) who should be treated with dignity and afforded rights.

2: Due to the seeming informality of the job, working conditions such as formal contracts, regulated hours, fair wages and regular payment are not standardized. Domestic workers are often given a set of responsibilities only to have additional responsibilities layered on. As evidenced by the testimonies, they rarely receive overtime pay for this extra labor.

3: Added to this, the individuals who often carry out this work come from the least privileged of social groups. Domestic work is one of "the few employment opportunities open to the poor" or to members of "marginalized ethnic groups".⁶⁸ As the women who carry out domestic work are often considered second-class citizens, the profession becomes a second-class job.

Discrimination and informality continues because their lower status, their lack of integration and their exclusion from laws renders these workers, "second-class citizens". In the most extreme

⁶⁸ ILO, 10

cases, they are denied citizenship rights altogether.⁶⁹ This lack of citizenship and full participation further isolates this workforce, allowing problems on the job to go unaddressed and to worsen. There can be little change to the terms and to the specifics of the profession with such inequality and such a lack of participation on the part of the workers, themselves.

4: Not only is their workplace untraditional, but domestic workers have untraditional “bosses”, i.e., their bosses are heads of a household and may not be aware of labor laws and work regulations, which can lead to mistreatment. These “bosses” have little accountability to their “staff” – they have no superiors to report to and being a good boss does not necessarily help them to earn more money or to advance as bosses. The responsibilities of the domestic worker can become very blurred in these instances as the employer/employee relationship straddles one of extreme intimacy and familiarity on the one hand, and distance, even cold professionalism, on the other.

EXCLUSION FROM LAWS AND PROTECTIONS

The marginalization that these workers face is not only reflected in the day-to-day realities of the job, but it is also reflected in the very fabric of local, national and international law and policy.

⁶⁹ ILO, 10

The domestic worker testimonies made in Albany in 2008 attest to the fact that these workers are often excluded from local and federal laws, as well as from protections provided by international covenants. Again, we see how these exclusions not only negatively affect workers in the workplace, but they also prohibit their full participation as citizens and as equal members of society. In turn, this marginalization negatively affects their families and dependents as the well-being of the entire household is held back in the process. Domestic workers experience exclusions from following national and state laws.⁷⁰

National Labor Relations Act (NLRA)

The NLRA guarantees U.S. employees the right to organize, but specifically excludes domestic workers from its definition of “employee.”

Fair Labor Standards Act (FLSA)

The FLSA sets a federal minimum wage rate, maximum hours, and overtime for employees in certain occupations. Until 1974, domestic workers were completely excluded, and today the Act still excludes from coverage “casual” employees such as babysitters and “companions” for the sick or elderly. Furthermore, live-in domestic workers, unlike most other employees in the U.S., cannot get overtime under FLSA.

Occupational Safety and Health Act (OSHA)

OSHA regulations explicitly exclude domestic workers from the Act’s protections “[a]s a matter of policy.”

Civil Rights Laws

⁷⁰ These exclusions were compiled in part from the Data Center Report, *Home Is Where the Work Is: Inside New York's Domestic Work Industry* (NY, NY: DWU and Data Center, 2006)

Title VII bars employment discrimination on the basis of “race, color, religion, sex, or national origin,” but applies only to employers with 15 or more employees. Thus, virtually every domestic worker in the U.S. is de facto excluded from Title VII’s protections.

New York Labor Law

Under New York state law, while domestic workers who do not live in their employer’s home are entitled to overtime at a rate of one and a half times their regular rate after 40 hours of work in a week, live-in domestic workers are only entitled to overtime at a rate of one and a half times the minimum wage and then only after 44 hours of work in a week.

GLOBAL LABOR FLOWS AND HUMAN TRAFFICKING

In its proposal for a convention on domestic work, the ILO refers to domestic work today as a “global phenomenon”.⁷¹ As situations in the home countries of migrant domestic workers deteriorate and they are left with fewer and fewer options for gainful employment, they seek out opportunities abroad where demand for cheap labor is high. Rapid globalization has accelerated this process, creating an excessive demand for cheap labor and fomenting imbalances in the flow of capital, resources and labor. Connected to this, this century has seen a rapid rise in human trafficking, particularly the trafficking of women.

⁷¹ ILO, 5

While this case study looks more closely at daily rights violations and exploitation on the job, the issue of domestic worker exploitation is entangled with larger issues of migration, remittances, sex and human trafficking, forms of modern day slavery and a rapidly “globalizing” economy.

As “a growing crisis of care troubles the world’s developed nations”, women from underdeveloped countries step in to fill what feminist scholar, Rhacel Salazar Parrenas, calls a “care deficit”.⁷² Seeking economic opportunities abroad, women turn to a variety of resources, including newspaper ads, acquaintances, labor recruiters, employment agencies and underground networks. Migration and trafficking can easily become interlinked, as traffickers often exploit the processes by which individuals migrate for economic purposes. As Human Rights Watch states in their paper, *Swept Under the Rug: Abuses against Domestic Workers Around the World*, “through traffickers, corrupt officials, unscrupulous labor agents, and poor enforcement of the law, economic migrants may be deceived or coerced into situations of forced labor or slavery-like practices”.⁷³

⁷² Barbara Ehrenreich and Arlie Russell Hochschild. *Global Woman* (New York: Henry and Holt, 2002) 39

⁷³ Human Rights Watch, *Swept Under the Rug: Abuses against Domestic Workers Around the World* (New York: Human Rights Watch, July 2006) 28

Many times these recruitment and employment agencies will require that prospective domestic workers engage in training before setting off to their new jobs. These “training camps” do not involve specialized training in rights and laws, instead, they strictly train women in domestic work and it appears, in servitude and obedience. “The camp is like a prison”, a domestic worker states in a recent paper published by the ILO. She goes on to describe a training camp where over 700 women live for between 3 to 6 months, forced to learn domestic work while sleeping on the floor and being deprived of proper food and decent living conditions.⁷⁴

The result is the feminization of migration as this global movement takes a particular toll on the lives of women. Globalization has contributed to a high demand for a specific kind of “gendered labor”, which capitalizes on gender inequalities and relies on the use of poor women from developing countries to carry out tasks traditionally given to women in the private sphere. As a result, while women may be migrating to take on domestic work, increasingly they are also finding employment in the growing global sex trade and/or filling the demand for “mail-order” brides and other kinds of organized marriage. Obviously, due to their unequal status upon arrival in their countries of destination, these women can be left vulnerable to further exploitation.

⁷⁴ ILO, 29

Another interesting outcome of this feminization of migration is that the demand for female migrant labor seems to have initiated a dialogue (or conflict) regarding the roles of women in their respective home countries and cultures, as well as globally. For instance, in the Philippines, many women argue that this global demand for female labor has opened up opportunities for them to travel, to work, to gain independence and to be the “breadwinners” for their families, which has in turn, challenged and shifted traditional gender roles. The counter argument, spread primarily by the Philippine government and the media, has been to vilify migrant laborers, charging that they have abandoned their families and created fractures both in the family unit and in the moral foundation of Philippine society. In 1995, Philippine president, Fidel Ramos, called for government initiatives to keep migrant mothers at home, arguing that this migration was “at the cost of family solidarity” and he implied that this type of migration for work is only acceptable when undertaken by single, childless women.⁷⁵

POLICY RESPONSES AND APPROACHES TO THE ISSUE

While the actions by duty-bearers have not been enough to put a halt to worker exploitation and the speed at which the domestic profession is expanding has been accelerating exponentially, there has been some effort on the part of governments, international bodies, labor unions and

⁷⁵ Ehrenreich and Hichschild, 40

NGO's to address the issue of domestic worker exploitation. The proposed 2010 Conference held by the ILO and the Bill of Rights, which is currently under consideration in NY state, both signal positive movement on this issue. There is more that can be done.

- **Legitimizing the Profession/Regulating and Standardizing the Job:**

Through the work of trade unions, in coordination with civil society and through the efforts of the ILO, the state and federal government, these bodies have begun to set clearer regulations and guidelines for the job. The ILO has worked on an international level and Domestic Workers United and other NY state-based organizations have worked on the local, state and national levels to define the specifics of domestic work. These local and international organizations have initiated a dialogue about the concerns of domestic workers and have begun to implement strategies for regulating and putting a cap on work hours, securing health benefits, social security and unemployment insurance, and advocating for paid sick leave and vacations.

There does, however, appear to be a need for movement on the issue of live-out versus live-in workers as live-in workers are particularly vulnerable to abuse. Questions have emerged as to

how to regulate this specific position. How do policymakers and stakeholders on this issue promote transparency in the workplace while respecting a family's right to privacy?

Regulations will help to set clear standards both in terms of respecting and protecting human rights, but also on a very practical level, these regulations will help to set clear guidelines for employers, employees and employment agencies to follow. Violations of regulations, laws and rights on the job (in the household) will, therefore, become easier to identify, which consequently, will make it easier to then target and prosecute guilty parties and to hold them accountable.

- **Inclusion in Law, More Protections and a Bill of Rights:**

The ILO asserts that domestic worker inclusion in national/international laws and protections is one of the most critical means of assuring the rights and overall well-being of domestic workers worldwide. While the ILO's early efforts sought to cover domestic workers' rights to social security, there are still many gaps in protection. The ILO's proposed Convention on Domestic Work in 2010 will attempt to address many of those gaps.

The advocacy efforts of organizations such as Domestic Workers United and Global Rights have also done much to draw attention to the issue of domestic worker exclusion from laws and protections, and they have also emphasized the international human rights aspects of the issue. In 2005, they held a domestic worker tribunal that presented testimony from victims and brought together a coalition of critical actors in the field of domestic work, labor advocacy and human rights.

Finally, the domestic worker Bill of Rights marks a significant step in the struggle for equality and inclusion under law. According to the Data Center report, “The Domestic Workers’ Bill of Rights is a New York State legislative proposal that addresses the longstanding, unfair exclusion of domestic workers from labor protections, and the unique conditions and demands of the industry in which they work, by amending the New York State Labor Law to ensure workers”.⁷⁶

The Bill ensures that workers will receive a livable wage and are paid for overtime; time off for family care and medical care; at least one day of rest off each week; paid personal days, sick days, vacation and holidays; advance notice of termination and paid severance in accordance with number of years worked; and, protection from trafficking. In addition, the Bill proposes to

⁷⁶ Data Center, 3

eliminate language excluding domestic workers from the definition of “employee.” It also eliminates exclusion from coverage of other New York State Labor Law and Human Rights law provisions “to end the cycle of slavery and gender and race-based exclusionary laws at last”.⁷⁷

By bringing rights-based standards to the issue of domestic worker exclusions from law, the issue is no longer reduced to the question of a marginal group asking to be “included” in rights that belong to other sectors of the population. This potential for human rights regimes to engender precisely the kind of power imbalances that they are trying to fight against has been critiqued by academic scholars in the fields of human rights, political science, anthropology, law and feminist theory. The idea behind many of the critiques is that human rights and law essentially create a status between the state and the disenfranchised citizen who is trying to claim his rights and between those who hold rights and those who have been stripped of their rights (Asad: 2003; Esmeir: 2006; Ranciere: 2004). So often, the right-less individual (who is in fact a holder of rights) must then ask for his/her rights to be re-instated by the very persons or institutions (often, the State) that may have played a part in taking away their rights in the first place. These actions may serve to further entrench dependencies and power imbalances, rather than to eradicate them.

⁷⁷ Data Center, 3

A rights-based approach to development may help to re-frame what has often been referred to as the “paradox of rights” as it focuses on acknowledging the myriad factors that contribute to the marginalization and exploitation of groups, on identifying the individuals or institutions who are doing the marginalizing and on creating a multi-dimensional, highly participatory strategy for holding those persons or groups accountable. In this way, duty-bearers are being pressured to bend to the demands of right-holders and not the other way around.

- **Enforcement of Labor Laws and Access to Justice:**

While new laws may be enacted and gaps in legal protections may be addressed, the cases outlined in this paper emphasize that those laws must then be enforced. Perpetrators must be brought to justice and victims need access to justice in order to make their claims. The ACLU has been a primary advocate on this issue, specifically addressing the problem of government heads and diplomats abusing power and privilege to escape accountability.

In fact, policies should also be put in place to better enforce the laws that already exist to protect domestic workers, as well as to provide workers with easy access to the judicial system without risk to their personal safety or security. These actions fall under the notion of duty-bearer

responsibilities to fulfill rights, actively taking steps to enhance an individual's or group's ability to exercise and enjoy their rights.

- **Addressing the Issue of Human Trafficking:**

The ACLU, together with coalition partners such as Global Rights and other NGO's and academic institutions, have been working on several fronts to fight the problem of trafficking and to provide a means for workers to seek redress. Their efforts in this area include litigation, federal legislative advocacy, the convening of conferences and tribunals on the issue, and the filing of a petition before the Inter-American Commission on Human Rights (IACHR).

In particular, the issue of trafficking was taken up strongly as part of the Bush agenda in Washington. This administration emphasized the criminal aspects of trafficking and focused on the use of law enforcement to address the issue. The administration stressed the direct connections between the trafficking of domestic workers and other kinds of migrant workers and the larger global sex and slave trade. While these connections do exist and trafficking has become an increasingly pressing problem in recent years, many scholars critiqued what they perceived as the Bush administration's outright moral condemnation of trafficking. Literature on the topic has argued that this moral stance has eclipsed a more nuanced investigation of the

forces that contribute to these underground industries and the factors that propel women to look for this kind of “work”. There are also arguments that in many cases, the outright criminalization of these practices may worsen the dangers of trafficking, taking the roughest toll on women (Hathaway: 2008).⁷⁸

- **Addressing Overall Poverty and Inequality:**

This problem of trafficking draws attention to another policy issue that may, in fact, be the more critical problem underlying the trafficking debate. While this case study comes at the issue of domestic work from a rights-based approach, the issue of domestic worker exploitation must also be examined within the context of overall discourses on poverty, inequality and development.

Drawing from Amartya Sen’s radical re-framing of poverty as he ushered in a more critical consideration of poverty’s relationship to the lack of human development and the building of human capabilities, this “capabilities approach” to development brings rights and development closer into alignment. Sen’s theories acknowledge the ways in which access to food, sanitation, capital and other resources interlock with issues of access to power, rights and the enjoyment of

⁷⁸ James C. Hathaway, *The Human Rights Quagmire of “Human Trafficking”* *Va. J. Int’l L.* 49, no. 1 (2008): 1-59

basic freedoms. The rights-based approach takes these ideas one-step further, operationalizing these theories through the normative framework of rights.

One can see how easy it is to lose sight of the development aspects behind this issue. For instance, to return to the Philippine President's comments about how female migrant workers are denigrating society by abandoning their families, his comments fail to acknowledge the socio-political and socio-economic factors that propel this mass exodus of the female population, as well as the contributions that this female labor force makes to the overall economy of the Philippines.

- **Education and Training Initiatives for Workers:**

Clearly, education and training can play a strong role in both the development and rights-based aspects of this issue. Proper training not just in domestic skills, but in job skills, basic rights and law, negotiation, as well as literacy, math and language skills could be useful strategies in addressing the multi-dimensional aspects of this issue.

Domestic workers unions in the U.S. have implemented programs to address the educational and training needs of domestic workers. For instance, Domestic Workers United in New York City

offers courses in Nanny Training, English as a Second Language, Basic Computer Literacy, Leadership Training and Advanced Leadership Training. There are also cases in which domestic workers have used this training to go on to run their own nanny agencies and/or to lead workshops for other domestic workers in rights or in care-giving skills. Education and training can do much to create possibilities for social mobility and for the empowerment of workers.

From a capabilities perspective, the idea here is to use education and training to enhance a worker's ability to make choices for themselves and their families, rather than locking migrant workers into only one job option. This lack of choice is often what creates such a toxic work environment for domestic workers, entrapping them in work situations in which they have no leverage to negotiate their terms of work. With targeted education and training opportunities, domestic work can become a stepping-stone to other work opportunities and/or to greater responsibility within the career that they already have, rather than being a dead end.

- **Organizing and Creating Networks:**

The advocacy work led by organizations like the DWU in New York state, Global Rights and other NGO's illustrates the supreme importance of creating local, national and international networks for domestic workers. As isolation and exclusion are such a strong characteristic of this

profession, these “coalitions” and networks may be critical to the safety and security, as well as to the overall wellbeing of domestic workers.

In addition, these links must be formed not just laterally, but vertically, as trade unions and NGO’s forge partnerships and get in communication with government and international bodies.

The case of the domestic worker Bill of Rights in New York state represents a fine model for this kind of organizing, advocacy and strategic partnering across many organizations and communities.

The use of coalition building and networks amongst organizations also highlights the interdependence and indivisibility of rights. These networks across different professional fields, different ethnic/national groups and even different countries acknowledge that many different rights apply to the singular issue of domestic worker exploitation. By advocating for the issue from many different angles, participating groups can be sure that legislation and/or policy reflect the multi-dimensional and intersecting aspects of the issue.

- **Re-defining Domestic Work and Making it more Visible:**

Finally, a rights-based perspective can also be brought to the more cultural and social aspects of the problem of domestic worker exploitation. Change can and should be incited not only through law, but through the use of media and culture. By using the assistance of civil society and the media, information campaigns could build public awareness around the issue and perhaps, even prevent future cases of domestic worker exploitation.

As evidenced throughout this case study, domestic work carries a strong stigma as it is considered to be “women’s work” and holds a lower status in the hierarchy of labor. When one also considers the isolation and the invisibility that this labor group frequently experiences, the need for enhanced social/cultural representation and more visibility becomes quite compelling. The problem calls for greater voice and participation from domestic workers.

There are a number of ways that art, culture and media can be particularly instrumental in addressing these issues:

Providing Context: So often, the conditions of the job reduce these women to purely anonymous workers – stripped of their sex, their nationality, ethnicity, their family, their history, and their citizenship. The use of art, media and culture can be integral to “re-humanizing” a workforce that may have been de-humanized through indecent labor practices, spotty legal coverage and questionable citizenship status.

Providing Exposure: The isolation and anonymity of this workforce highlights a need to address the issue in many spheres: in the private spaces of the household, out in the streets, in legislative forums, in the news and on the media. Art, culture and media can be used to shame and expose perpetrators, as well as to highlight the contributions of this workforce.

Representation: As this profession suffers from such a negative stigma, positive and powerful images of domestic workers could do much to shift cultural attitudes of domestic work, domestic workers and immigrants and migrants in the U.S. These positive representations could also do much to aid domestic workers who often suffer from low self-esteem and stress on the job. At one point, the domestic worker's union in NY state developed and toured a solo show that was written and performed by a domestic worker and told the story of her journey to the U.S. and her struggles on the job.

Outreach and Recruitment: Art, culture and media can also be used to recruit more workers to join unions and to encourage migrant workers to come up from underground if they are living in the U.S. illegally and/or need visa assistance.

Education: Finally, arts, culture and media can be powerful tools in the education not only of domestic workers, but of employers, recruitment agencies and the general public, building a deeper level of understanding about the specifics of the jobs and each person's responsibilities when hiring domestic help.

CONCLUSION

There are numerous factors that lead to the outcome of domestic worker exploitation with numerous players involved all along the "chain" of domestic labor. Many issues may originate in the worker's home country while other issues only begin to emerge once the domestic worker is employed in the household in the US. How does one deal with the multidimensional, international and "multi-temporal" aspects of this issue? The framework of human rights can be,

and has already proven to be, instrumental in addressing these contributing factors at each point along the chain.

In summary, I would like to focus in on five key areas and/or concerns that the rights-based approach has been able to address or could be useful in addressing in the bear future:

Coalitions and Networks: As the rights-based approach helps to clearly identify the rights-bearers and duty-bearers who are connected to an issue, this approach creates a clear picture of who is involved, who is responsible, who has a stake in the issues and what precisely is at stake. This kind of normative framework is extremely instrumental in creating coalitions and networks of individuals, groups and organizations who may be key players in the process of addressing the claims of rights-bearers. In the case of domestic worker exploitation, these networks have proven to be essential to bringing about real, systemic change. In addition, these networks can draw on the tools and resources of their constituents (above and beyond just taking legal measures) to advocate and fight for change.

Challenging Issues of Citizenship: As evidenced throughout this case study, the global nature of the domestic worker issue has brought about critical questions regarding the nature of

citizenship. The rights-based approach can play a stronger role in this area as a rights-based framework draws connections between poverty, inequality and exploitation and barriers to justice, power and full and equal access to citizenship rights and participation. The case of domestic worker exploitation clearly signals the need for a deeper interrogation of citizenship and rights for migrant and immigrant workers who, in straddling nations and cultures, often fall into the wide gap in between.

The Power of Education: As education and training both in home countries and in the countries of destination appears to be critical in addressing the needs and concerns of migrant domestic workers, a rights-based approach can be instrumental in making a case for the right to education and the right to information. According to the rights-based approach, duty-bearers must uphold a commitment to (and have a responsibility to) provide adequate education, training and information for domestic workers.

While domestic workers who are members of unions may be able to access education and training opportunities, a greater effort to address these needs should be made across the board, both in countries of origin and in destination countries. In addition, education and training should

be used to reach those most vulnerable workers who may never join a union and who may be in the U.S. illegally.

Finally, when domestic workers attempt to gain more education and training, these efforts are often restricted or condemned by employers who may be leery of unions or feel threatened by their employees' actions. Education and training for employers may also be necessary to address these issues.

The Need for a Multi-dimensional Approach: The issue of domestic worker exploitation calls for a broad strategy that addresses the global scope and the multi-dimensional nature of the problem. Development and rights strategies must be brought together in these cases in order to ensure that responses are focused on the building of human capacities and the enhancing of both voice and choice for domestic workers.

Addressing the Socio-Cultural Aspects of Domestic Work: Perhaps the most nebulous and challenging aspect of domestic worker exploitation is the socio-cultural devaluation of migrants and immigrants and of domestic work, worldwide. While the issue of domestic work is indeed a

global phenomenon, this phenomenon plays out in the very small, local, intimate spaces of the household.

The issue of domestic work summons debates about inequality and globalization, but it also asks that individuals and households make a connection to the daily choices that they make for their families and a set of larger, global issues. When a family hires a nanny for their children, it is often a very practical and personal decision that is not necessarily seen as part of a larger global context or labor industry. Part of the work of these coalitions and networks of domestic worker advocates must be to make those invisible connections, visible to the public.

In addition, the domestic worker issue summons a set of critical and difficult questions in the U.S. about how we are organized as families and as a society, our changing gender roles, and the changing nature of the family or household in a rapidly globalizing economy. The current global crisis certainly revealed many of these connections between the local and the global. The crisis has made domestic workers more vulnerable to exploitation as employers cut wages, lessened or raised worker hours and fired domestic staff in response to economic cutbacks. Migrant workers also began to consider different country destinations in response to the retracting U.S. economy and job market.

While these reactions and negotiations take place inside the intimate spheres of the household, a rights-based approach can provide an overall framework to protect the interests of domestic workers inside those private spheres. In order for those rights and protections to have meaning and to be effective inside the households where domestic laborers come to work, human rights standards and norms must be animated and activated through the creative and strategic coordination of local, national and global efforts.

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