

Domestic Workers at the Interface of Migration & Development: Action to Expand Good Practice

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Summary

This Background Paper is intended to inform and support the discussions of the GFMD workshop in Ghana on “Domestic Care Workers at the Interface of Migration & Development: Action to Expand Good Practice”. Analyses of migrant domestic work¹ as a global phenomenon have tended to focus on Asia, the Americas and Europe. The Accra workshop shines the spotlight on migrant domestic workers in and from the African continent. Recognizing that the global care industry may illustrate some of the most negative aspects of migration and development, but noting as well the tremendous international initiatives and national innovations to redress these problems,² this paper offers a framework of analysis for domestic workers at the interface of migration and development. The ability to ensure respect for migrant domestic workers’ rights is argued to be a central factor in assessing whether migrant domestic work can be considered development-enhancing. The principle of international solidarity flowing through the right to development is proposed as a basis on which to build action to expand good practice. The

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paper identifies critical measures – both in law and practice, involving state and non-state actors, nationally and internationally – that contribute to making migrant domestic work development-enhancing. This paper looks at strategies for international coherence, capacity and cooperation to foster and expand innovative approaches to care migration that is development-enhancing.

Part I: Domestic Work, Migration and Development: A Framework of Analysis

Migrant domestic work: Opportunities and Risk

Domestic work is not only one of the oldest occupations for women worldwide; it is also a global phenomenon of staggering significance. International estimates range widely from 51 – 100 million workers, due to methodological and conceptual challenges affecting what ‘counts’ as domestic work.³ Consider that there are 50 – 100 times more domestic workers than workers in the “world’s first genuinely global industry,”⁴ the maritime industry. Unlike that quintessentially male sector, domestic work globally is an overwhelmingly female-dominated field, although the male presence in the African continent must be taken into account.⁵

By conservative estimates, domestic work accounts for between 2 – 20% of women’s total domestic employment.⁶ Care work – paid or unpaid - serves an essential market-enabling function, yet it has been characterized by both Adam Smith and Karl Marx as ‘non-productive’ labour. Indeed, unpaid domestic work continues to fall outside the calculation of the GDP.⁷ Whereas the maritime industry has been the subject of over 60 separate international labour conventions and recommendations and now has its own consolidated Maritime Labour Convention, 2006, initiatives to ensure the rights of domestic workers – including migrant domestic workers – have culminated only this year in the historic Decent Work for Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011.

Virtually 50% of all migrant workers are women, and 80% of all female migrants are domestic workers.⁸ Included in the scope of “migrant workers” in Article 2, paragraph 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,⁹ they are also defined

as “domestic workers” in Article 1(a) and (b) of Convention No. 189 as any person engaged in work performed in or for a household or households within an ‘employment relationship’.¹⁰ With recognition as workers comes a heightened need to understand their contributions to both the care economy and to development requires close consideration. As the Committee on the Elimination of Discrimination against Women (CEDAW) has underscored in its General recommendation No. 26 on women migrant workers,

While migration presents new opportunities for women and may be a means for their economic empowerment through wider participation, it may also place their human rights and security at risk.¹¹

The migration may belie the fact that domestic workers cross international borders to live and work in private households. Live-in migrant domestic workers may rarely be out of the sight of their employers, and the practice of employers withholding the migrant domestic workers’ passports is prevalent.¹² They face heightened susceptibility to physical and sexual abuse, and may face deportation if they report abuse by the employer to which they are bound; live-out domestic workers with multiple employers may need to reconcile so many house cleaning and similar jobs to make a living that they have little time to formally report abusive employment practices. Entry through temporary schemes or as irregular migrants severely limits their employment options, and may be accompanied by practices that contravene new international labour standards preventing mandatory pregnancy or HIV/AIDS testing. The impact on health – including domestic workers’ stress levels, has been documented to a limited extent, perhaps no more poignantly than by Fatima Elayoubi, a Moroccan domestic worker in France who wrote a novel entitled *Prayer to the Moon* as a form of therapeutic recovery from nervous exhaustion suffered from overwork.¹³

Despite the high risk, it should be recalled that the countries contributing the most significant numbers of migrants globally tend not to be the poorest countries. Unemployment and underemployment are often factors motivating movement, and there are distinct patterns of movement by highly educated African women and men into domestic work in Europe, as in the case of Zimbabwean nationals in the United

Kingdom.¹⁴ It should be underscored that both intraregional and interregional domestic worker migration can be South-South, while interregional migration is also South-North.

The logic is typically to leave lower income, high unemployment or underemployment for higher income destinations, although political refugees undertaking domestic work may find themselves in lower income areas than their unstable home country. The decision to become a migrant domestic worker therefore must be understood in the broader geopolitical context, taking into account the impact of past structural adjustment policies, global wage inequality, and the markers of 'success' that are culturally written onto an image of globalization that associates it with the West, and with women's own expressions of autonomy¹⁵ despite limited life options. While migration to perform care work is not new, globalization facilitates it, economically, politically, technologically and culturally.

A note about trafficking:

Trafficking of migrants, including child domestic workers, is a serious, highly problematic sub-regional phenomenon¹⁶ that requires close monitoring and swift, coordinated action. Moreover, migration practices and abusive working conditions might turn out to be exploitative and require decisive redress. However, the framework of this paper proceeds on the understanding that it is crucial to avoid "infantilizing" adult women who decide to move across borders, by conflating migration with trafficking.¹⁷ 'Vulnerability' is not innate to women migrants, who should be understood as having exercised agency in the face of limited life options in deciding to travel. Rather, vulnerability to forced labour and other exploitative conditions is constructed, by the conditions of migrant domestic work, including immigration status, dependency on recruiters, measures tying domestic workers to a sponsor, and measures that reinforce rather than mediate the isolation of domestic workers.¹⁸ It is necessary to adopt and implement measures – both state and non-state, involving actors and institutions in both sending and receiving states as well as internationally - across the migration spectrum that enable migrant domestic workers to move and work in the knowledge that their human rights will be respected.

Remittances and Global Care Chains:

Although women domestic workers in the global economy migrate for many reasons, they overwhelmingly support a family financially in the sending country, often their own children but also younger siblings or siblings' dependants, and parents. Domestic workers are a significant source of remittance-based revenues for sending countries; the revenues are one of the principal reasons why some states encourage women to seek employment as domestic workers abroad, and negotiate specific bilateral migration schemes to facilitate overseas movement. While there is a scarcity of gender-disaggregated data, monetary remittances are chiefly considered to be a core development gain of migrant domestic work, and their impact as a percentage of GDP over time cannot be overlooked.

The Migration Policy Institute reports not only that officially recorded flows exceeded US\$280 billion worldwide in 2006, but that 75% went to developing countries.¹⁹ Those remittances represented 10 – 20% of GDP. For some countries in the African region, remittance inflows may exceed foreign direct investment.²⁰ Estimates of remittances typically reflect only the tip of the iceberg, given the heavy reliance on informal channels to transmit funds.²¹ The potential of remittances to contribute to the realization of the Millennium Development Goals on poverty reduction is non-negligible. Moreover, as Aderanti Adepaju has eloquently put it, “[f]or many families, remittances through formal and informal channels are the lifeline – the dominant source of sustenance ... [and] an enduring linkage between migrants and homeplace.”²² “Collective” remittance-based contributions – often facilitated by diasporas - may help build maternity clinics and hospitals, micro-enterprises and specialized post-secondary educational establishments. Remittances may also serve an informal ‘insurance’ function, notably in the event of health crises or funerals, and may engender ‘reverse’ remittances in the form of support networks to manage crises ‘back home’.²³

Safe remittance strategies building upon Article 32 of the International Convention on the Protection of the Rights of All Migrant workers and Members of their Families, 1990,²⁴ may include measures as diverse as regulating to reduce the transaction costs of international monetary transfers, ensuring rapid monitoring systems to ensure reliable data on migration and remittances during times of crisis, harnessing diaspora contributions through government bonds, and ensuring coordination to remove migrants from conflict situations. All are part of the migration-remittance-development equation.

The macroeconomic impacts of remittances have increasingly come under scrutiny. Positive balance of payment effects and the potential to stimulate savings and investment have been widely noted, in addition to poverty reduction potential when destined for low income families within the receiving country.²⁵ But remittances may be volatile in times of financial crisis, albeit potentially more stable than ODA and FDI flows to some countries.²⁶ And there are limits to the uses to which remittances to individual households may be put.²⁷ In contexts of extreme poverty, individual benefits to households – such as funding real estate purchases or paying to send a child to school - can hardly be minimized, and to these must be added the migrants' own ability to prepare their return, notably by building a house and establishing a small enterprise.

There is a paucity of macroeconomic data analysing remittance-based strategies in terms of the care deficits that migration may create. Sociological studies emphasize the dislocation created by migration policies that require domestic workers to leave their families behind. Troubling information suggesting that children from high migration areas are likely to migrate themselves before finishing school, despite the existence of the remittances paying for that schooling, require further research and policy attention.²⁸ Moreover, there may be differential gendered impacts for men who “may return to a stable family situation, whereas women may find disintegration of the family upon their return, with their absence from home regarded as the cause of such disintegration.”²⁹ Gender-disaggregated data are necessary.

To acknowledge limits to remittance-based development is to espouse a multi-pronged approach. First, the African Union's Executive Council has insisted that while significant, “remittances are privately earned transfers and should not be confused with official development aid.”³⁰ Second, a number of governments in the region, notably Mali and Senegal, have none the less tried to harness the potential of remittances, by relying on their foreign missions to promote investment opportunities to diasporas abroad, and others, notably Ghana, have promoted incentive-based development policies. These include establishing micro-enterprises and investing in irrigation agriculture.³¹ One question to be considered by this workshop is whether incentive-based initiatives might expressly be developed to harness the development of employment opportunities directed to women, including women's cooperatives to

promote local employment and greater access by women to credit. Contributions to these incentive-based initiatives might be directed not only at migrants themselves, but also at the destination countries, including employers of migrant domestic workers.

Beyond a Remittance-Based Analysis of the Development Impact of Migrant Domestic Work: Global Care Chains and the Rights of Care Workers

It would be a mistake, however, to focus a development analysis on economic remittances (or even social remittances)³² alone, and in the process to insist upon a narrow, unidirectional definition of development, and its relationship to migration. Development has both economic and social dimensions, and the social dimensions include the conditions under which migration takes place.

First, a focus on migrant domestic work emphasizes an important finding of the Global Commission on International Migration: it is necessary to acknowledge the benefits of migration to the development of destination countries. Receiving countries – including industrialized market economies – are enabled to sustain and expand their markets on the basis of the care work that comes their way chiefly³³ from countries of the South. One of the starkest trends under globalization is that industrialized market economies have categorized the ‘tertiary’ sector as a major growth area for employment in the global economy, and have sought to channel migrants (including women under family reconciliation schemes)³⁴ into the delivery of personal services to dual income nuclear families with childcare responsibilities, as well as to the elderly and to persons with disabilities. A variety of structures have been encouraged to develop alongside direct service provision, from social economy enterprises operating on a not-for-profit basis, to organizing the offer and supply of care through increasingly transnational employment agencies, to more traditional forms of personal network referral and direct service delivery by the migrant domestic worker herself to the employing household.³⁵

As is the case of migrant workers generally, care workers arrive in the receiving country after the workers’ social reproduction was subsidized by the sending state: the receiving state does not need to raise or render market-ready the productive worker who it receives. This is coupled with the fact that

the growth of the tertiary sector has come alongside a retreat of the state from the direct provision of services categorized as 'ancillary'.³⁶

Unlike many other migrant workers, domestic workers contribute to and sustain the receiving country's economy by undertaking the work of social reproduction necessary to sustain labour market participation by the receiving country's citizens, women and men, without challenging existing gender roles. The challenge is particularly acute when the state retreat observable in some industrialized countries is juxtaposed with the fact that sending countries have rarely been able to develop robust social security systems to support care across a broad, inclusive spectrum of their population,³⁷ and may inherit the care crisis created by the departure of their own nursing professionals who have migrated out.³⁸ Domestic workers' departure strains the provision both of care work in the sectors from which the migrants may leave, notably nursing care, as well as the social reproduction by family members left behind.³⁹

While the African Union considers that a positive development aspect of migration is the creation of diasporas in the destination country,⁴⁰ this benefit is significantly qualified when domestic workers are not admitted with permanent residency or provided the opportunity to acquire permanent residency in a short period of time. Family reunification for domestic workers themselves is also a critical dimension of the viability of diasporas over time. Practices have varied over time: Canada's initial foreign domestic workers' scheme granted permanent residency on migration; it was subsequently modified to make it possible to apply for permanent residency after two years.

To this relative development dilemma is added the financial undervaluation of the skill required to perform domestic work, as the Council of Europe recently acknowledged.⁴¹ Domestic workers' wages are often poverty wages, both in sending and destination countries,⁴² and "[i]mporting labour from abroad helps keep wages from rising, as they would in a situation of scarce labour supply."⁴³ The wage inequality that encourages cross-border migration runs the risk of reinforcing those same inequalities.⁴⁴ Economic austerity measures and further funding cuts may compound negative long term impacts on the employment of migrant domestic workers.⁴⁵ More troubling still, and as discussed below, care work

performed by 'others' tends to follow a path dependency, in which racialized hierarchies for the performance of 'dirty work' are reproduced. Women from the African continent are particularly exposed to occupational segmentation on the basis of race and national origin in the market for domestic care services.⁴⁶

Second, migration policy has a significant impact on whether development is or can be realized. Experiences in both industrialized and developing countries point to the same paradox: restrictive immigration laws and practices tend not to prevent the movement of persons to work. Migrant domestic workers cross borders anyhow. What changes are the precarious conditions under which they move, and their perpetual marginalization from the means to enforce their internationally recognized human rights, including labour rights.⁴⁷ In this regard, CEDAW has insisted that

While States are entitled to control their borders and regulate migration, they must do so in full compliance with their obligations as parties to the human rights treaties they have ratified or acceded to. That includes the promotion of safe migration procedures and the obligation to respect, protect and fulfil the human rights of women throughout the migration cycle. Those obligations must be undertaken in recognition of the social and economic contributions of women migrant workers to their own countries and countries of destination, including through caregiving and domestic work.⁴⁸

Third and finally, it is crucial to recall that development is itself a human right. Focusing on the right to development brings forward a broad range of considerations by which to assess the development impact of migrant domestic work. A distinctly African contribution to human rights discourse, proposed by Keba M'Baye in 1972, the right to development was retained formally in the African Charter of Human and Peoples' Rights, and was adopted 25 years ago in the Declaration on the Right to Development of the UN General Assembly.⁴⁹ According to Art. 2 of that Declaration, "all human rights, economic, social and cultural as well as civil and political are interdependent and inseparable elements of the right to development." Art. 3 confirms the Declaration's application across governance levels, "community, local, national, regional and global." Migration is considered to be one of the elements of the principle of

international solidarity that is complementary to and mutually reinforcing of the right to development.⁵⁰ International solidarity is a principle of cooperation to ensure that “global challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice, and that those who suffer, or who benefit least, deserve help from those who benefit most.”⁵¹

An assessment of care work at the interface of migration and development must concern itself with whether the vision of development reinforced by migrant domestic work is respectful of domestic workers’ human rights. This paper proposes that the ability to ensure respect for migrant domestic workers’ human rights through the coherent expansion of good practice is a central factor for assessing whether migrant domestic work is development-enhancing, or not. As the next section will emphasize, this international solidarity is particularly important for African migrant domestic workers, who face not only discrimination because of their occupation, but also hierarchies based on national origin and racial status. Good practices need to foster international solidarity across regions, through measures that are coherent, promote capacity, and are well coordinated across regions, at the international level.

Part II: Centering African Migrant Domestic Workers: Migratory Trends, International Regulatory Developments and Good Practices for Implementation

1. Survey of Intra-regional and Inter-regional Migrant Domestic Work Trends:

In 2005, 9% of the world’s migrants, and 25% of migrants from the developing world, were from the African continent.⁵² In 2010, percentages of women amongst international migrants within the region hovered around 40% in Ghana and South Africa, between 45 - 50% in countries such as Benin, Burkina Faso, Côte d’Ivoire, Egypt, Ethiopia, Kenya, Lesotho, Mali, Nigeria, Senegal, Togo and Tunisia, and were as high as 63% in Mauritius.

Data on domestic workers in Africa as a whole suffer from the same conceptual and measurement challenges facing attempts in other regions, but recent statistics in the region range from 0.2% of the

total workforce in Egypt, to 9.4% of the workforce in South Africa, as highlighted in Table 1. According to the 2001 census in South Africa, at 88 000, domestic work in private households was the largest source of employment for black women in Johannesburg, the largest South African city with the highest concentration of migrants – internal and international.⁵³ It is important to note in particular that although domestic workers in Africa are overwhelmingly women, official statistics from Egypt suggest that male domestic workers outnumber women.⁵⁴

Table 1:

State	Total Number of Domestic Workers	Men	Women	Percentage of Total Employment	Women domestic workers as a percentage of female employment
Ethiopia (2005)	246 600	23 100	225 500	0.8%	1.5%
Mali (2004)	103 900	18 800	85 100	4.4%	8.7%
Mauritius (2008)	19 100	2 200	16 900	3.7%	9.5%
South Africa (2007)	1 244 000	180 000	945 000	9.4%	16.7%
Tanzania (2006)	701 500	138 200	563 300	3.9%	6.1%
Uganda (2003)	111 100	39 500	71 600	1.2%	1.5%

Source: Aishah Namukasa, "Africa", in Helen Schwenken & Lisa-Marie Heimeshoff, eds., *Domestic Workers Count: Global Data on an Often Invisible Sector* 16 at 17 (Kassel University Press, 2011), based on ILO LABORSTA.

In many countries in the region, domestic work is ubiquitous: households, no matter how modest, tend to employ at least one domestic worker. Many are internal migrants, whose movement patterns may be rural–urban or rural-rural. Workers in low-income households are particularly likely to be children from enlarged or extended rural family networks.⁵⁵ In certain countries, practices historically relied upon as forms of familial mutual aid in a region where the notion of family is by definition an extended one,⁵⁶ are in the contemporary economy particularly susceptible to being conveniently distorted, facilitating the trafficking, exploitation and servitude of young migrant domestic workers.⁵⁷

In circumstances such as those experienced by the *vidomégon* in Bénin, the troubled metaphor, ‘like one of the family’ takes on a particular, abusive hue to which targeted interventions must be alive. Yet even sub-regional patterns vary, and more arms length models coexist. In Côte d’Ivoire, for example, young domestic workers increasingly have no familial ties with their employer.⁵⁸ In Ghana, young domestic workers may be confided by their family to an intermediary who the family knows somewhat, to work in the household of a stranger.⁵⁹ And in various regions, including in Tanzania, there is a racialization of domestic work in which certain ethnic groups (notably the Wahehe) tend to be overrepresented in particular forms of domestic work.⁶⁰

Migrant domestic workers in Africa are at the intersection of both the postcolonial and the global phenomenon. As a postcolonial phenomenon, paid care is a laden social status, imprinted with the legacy of gendered servitude that incorporated racialized women and men in the social reproduction of the colonial class. Moreover, despite some social mobility since the removal of political systems like apartheid in South Africa, significant portions of the working population remain structurally dependent for employment in domestic work for their survival, particularly in urban areas. Their ranks are further swelled by migration undertaken by land, to neighbouring countries, in patterns of exchange often mirroring the historical and geopolitical relationship between the sending and receiving country, and reflecting historically-fostered ‘circular’ migration patterns of continuous, long term movement within what may be thought of as an interlinked economic space.⁶¹ Indeed, the framework of large-scale forced

migration during the colonial era is said to have paved the way for post-independence migratory patterns in the region⁶²

Women's migration – once assimilated with strategies of family reunification – is increasingly analysed as a distinct phenomenon.⁶³ The migration of women from Lesotho and Zimbabwe to South Africa is one example of the specificities of international migration in the region: migration across state borders within Africa accounts for 70% of all international migration.⁶⁴ It is important to recall that the migrant workers' movement might be subject to the terms of regional integration agreements, which may formally address the freedom of movement of persons, as in the Economic Community of West African States (ECOWAS).⁶⁵ Although less significant in number, it is worth noting the migration for domestic work by the staff of embassies and international organizations within the region, under which distinct conditions of entry and status within receiving countries apply. In most cases, however, to cross an intraregional border is to assume some level of irregularity, consistently or over selected periods in the migrant workers' life cycle.

The global character of paid domestic work in Africa is increasingly observable in migration outside the continent, which also follows distinct regional patterns. This migration is both South-South, and South-North, and may reflect former colonial patterns, linguistic ties, and the existence of diasporic, friendship or familial niche networks previously established. The landscape is dynamic, and diversification of migration patterns is growing, particularly as restrictive immigration and asylum policies divert migrants in ways that convert former transit countries, such as in North Africa to countries of destination.⁶⁶ Recent political change associated with the so-called 'Arab Spring' has resulted in further recharacterization, with an exodus of migrants from the region. In short, sending, transiting and receiving country characterizations are often fluid.

Some patterns are nonetheless observable: women from the horn of Africa tend to migrate to the Middle East and Gulf region, alongside women from a number of Asian countries. In the case of migrants to Lebanon, women from Ethiopia arrive specifically to perform domestic work. In Yemen, women from Somalia may arrive as refugees, or may seek reunification with migrant worker spouses, and may

subsequently take up domestic work.⁶⁷ In Saudi Arabia, it has been reported that 80% of the domestic worker population hails from Kenya and Ethiopia, replacing women from the Philippines and Indonesia, who have recently faced bans and in the latter case imposed a moratorium.⁶⁸

Women from a number of North and West African countries are migrants to countries in the European Union, including Italy, France and the United Kingdom, as well as to Canada and the United States. In the absence of formal migration schemes, many African domestic workers in Europe and the United States endure irregular migration status for periods of time, including by overstaying visitor or student visas or failed asylum attempts.⁶⁹ The few existing regular temporary migration schemes that target workers from the African continent tend not to list domestic work as one of the categories for migration.⁷⁰

The Role of Agencies:

Private agencies may range from multinational enterprises to a person with a cellular phone. Yet they play an increasingly significant role in structuring the supply of temporary workers, and through in-community networks care workers learn “which agencies do not ask questions” about immigration status, or require evidence of work permits, experience in the destination country, or even proof of address.⁷¹ The risk of exploitative and in some cases forced or bonded labour practices linked largely to the deduction of exorbitant fees from the workers’ pay, is well documented.⁷²

The colonial history of the labour hire system in Africa has led to significant political and judicial debate, notably in Namibia, on whether private employment agencies should be permitted at all.⁷³ Regional data are limited, but research from Mali and Senegal suggests that there is a risk that some organizations established for the defence of domestic workers’ rights may also double as placement agencies, taking significant parts of the typically young domestic workers’ wages as profits, without the knowledge of the workers.⁷⁴ The risk extends to overseas diasporas: some agencies may be run by members of the same diaspora as the workers, and by benefitting from initially greater trust and access to migrants from their communities, may be able to persuade migrant domestic workers to accept exploitative conditions because they are seen as standard practice, and the risks to the worker of denouncing them are seen as particularly great.⁷⁵

These negative experiences are contrasted with other regional studies suggesting that properly licensed and monitored agencies may institutionalize good practices such as signing and respecting formal employment contracts, promoting regularization through tax and social security payments, clarifying workers' duties and assigning wages in relation to skills and responsibilities, promoting opportunities for training and health and safety protection, reducing recourse to child labour.⁷⁶ One of the challenges in South Africa is to ensure that the jurisdiction of robust dispute resolution mechanisms available to domestic workers actually include agency relationships.⁷⁷

The Hierarchy of Discrimination faced by African Migrant Domestic Workers:

A particular challenge for African migrant domestic workers relates to discrimination on the basis of race and national origin. The ILO has focused on gender-based discrimination in domestic work, for example in relation to wages.⁷⁸ Yet xenophobia is a threat to many migrant populations, including domestic workers. In addition, domestic work is itself a laden social status, onto which historical, racialized patterns are written.

There is disturbing consistency in the contemporary studies that have identified hierarchies of domestic workers based on race and national origin. Women migrant domestic workers from some African countries have tended to be considered 'less desirable' than migrant workers from some Asian countries. Migrant domestic workers – particularly when they are irregular – may have a harder time finding jobs, and the jobs which they obtain are physically more demanding and less socially valued. They are paid less and required to work more. Moreover, they are subjected to forms of verbal and physical abuse that take on a racialized character. The practices of employment agencies may contribute to this hierarchization.⁷⁹ African migrant domestic workers require careful application of non-discrimination measures in receiving countries, and national human rights bodies compliant with the Paris Principles have a significant role to play.⁸⁰

More is necessary, however: as will be discussed in the section below on international law, law reform and good migration practices, close attention by sending governments is necessary to manage the conditions under which they migrate, vis-à-vis workers from other regions.

2. Impact of International Developments: Law Reform and Good Migration Practice

The international community has taken decisive steps to reaffirm that international human rights apply to migrant domestic workers, and to set out a specific regulatory framework to ensure the effective realization of those rights. CEDAW's General Recommendation No. 26 on women migrant workers insists upon the responsibilities of countries of origin, countries of transit, and destination countries in ensuring the human rights of women migrant workers. The Committee on Migrant Workers' General Comment No. 1 on migrant domestic workers contains recommendations to state parties to redress both the legal and the practical gap in the respect of migrant domestic workers' human rights. And most recently, ILO Convention No. 189 and its accompanying Recommendation No. 201 reflect the tripartite commitment of governments, employers' representatives and workers' representatives to domestic workers' labour rights as human rights.

A key development in Convention No. 189 is that all of the provisions of that international treaty apply to migrant domestic workers; Members agree in Article 8, paragraph 3, to "take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers." From the panoply of general and relevant specific human rights norms and labour standards emerges a robust set of legal protections throughout the migration cycle. Good legislative and migration policy practices are also emerging, accompanied by a consensus on the need for action., flowing through sources such as the Council of Europe's recent Resolution 1811 of 2011, and the African Union Executive Council's Africa Common Position on Migration and Development on the need for regularized, transparent and comprehensive labour migration policies, legislative structures, and labour standards.

Before departure, it is necessary both, to ensure state oversight and knowledge by all involved of the human rights of migrant domestic workers and measures in place to ensure their respect.

Preventing the migration of girls as domestic workers:

Special efforts should be taken to inform parents of the problems faced by **child migrant domestic workers**. While detailed initiatives are beyond the scope of this background paper, in addition to affirming the need to establish minimum age standards and to prevent the worst forms of child labour, Article 3 of Convention No. 189 requires members to take measures to prevent interference with further educational or vocational training opportunities for young domestic workers.⁸¹ A broad panoply of development measures, including the promotion and the funding of women's cooperatives in localities, need to be to help to stem the flow of internal and international migration by children into domestic work, and in particular to curtail the risk of trafficking. While these measures take place in the sending country, there is significant space for broader support by migrant receiving countries for these more proactive development measures.

Planning migration – the role of the state:

Centralizing migration functions: Measures to establish a Labour Migration Unit – as in Kenya – are proactive, and can be facilitated by international organizations; in the Kenyan case, the International Organization on Migration helped the country to create a “one stop shop”.⁸² One of the core functions of such a unit would be to register and regulate agencies, to curtail abusive practices that create forced labour conditions in migrant domestic work. While the regulation of agencies will be a responsibility for both sending and destination countries, Article 15 of Convention No. 189 contemplates both, and identifies broad responsibilities to set conditions of operation, ensure adequate machinery and procedures to investigate complaints and alleged abuse and fraudulent practices, to establish respective obligations of the agencies and the household, and to prevent the deduction of fees from domestic workers' remuneration. States should also provide a comprehensive panoply of services to migrant domestic workers on their return, to facilitate their reintegration.⁸³ The provision foresees a role for bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

Negotiating agreements: A prevalent and important practice is to negotiate bilateral agreements or memoranda of understanding establishing the terms of migration by domestic workers. Selected bilateral

agreements –often negotiated on the assumption that they are non-binding – nonetheless stipulate basic employment conditions in conformity with labour laws in the destination country. This is the case in the Agreement between the Philippines and Qatar, which also regulates the employment contract providing that any changes introduced subsequently by the employer are null unless they improve the workers' conditions of employment. The Agreement on Migration between Argentina and Peru expressly includes a non-discrimination clause, providing for equal treatment between nationals of the host country and 'immigrants' from the sending country.⁸⁴ Most agreements, however, focus primarily on the management of migration, without addressing workers' rights, and in this regard, they are not a panacea. They may reflect rather than redress the power imbalances between some sending and receiving countries.

Some countries combine an active strategy of negotiating bilateral agreements with a range of other regulatory options. For example, the Philippines has been particularly proactive in establishing its own legislation framing the conditions under which a bilateral agreement may be concluded. In Article 3 of the Migrant Workers and Overseas Filipinos Act of 1995 as amended, the Philippines government requires that the receiving country must have existing labor and social laws protecting the rights of workers, including migrant workers; be signatory to/have ratified multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; have concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino workers; and be taking "positive, concrete measures to protect the rights of migrant workers."⁸⁵

The Philippines' approach has not come without cost. Although workers from the Philippines have been able to position themselves in relative terms in select labour markets, in anticipation of a ban, and in response to a moratorium in Indonesia, Saudi Arabia banned migrant domestic workers from these two Asian countries, and sought to diversify with workers from Kenya and Ethiopia.⁸⁶ However, some of the same serious concerns of flagrant human rights abuses have persisted for workers from these African countries.⁸⁷ The creation of a 'hierarchy of abuse' in which African domestic workers are at the bottom is under way, and the need to ensure coordinated regulatory strategies is significant.

Regional agreements that address migration dimensions – and that might specifically contemplate migrant domestic workers – may offer a partial response. However, the ‘regional’ strategy may need to be ‘inter-regional’ in the sense that concerned states that may not be neighbours act in a concerted manner, to prevent a form of ‘race to the bottom’ of standards that domestic workers from some countries are forced to accept, making it difficult for domestic workers from other countries to resist. These strategies must also go beyond the regional, to claim scope for multilateral action facilitated by the international level. This concerted action can be enabled through the networks enabled by the GFMD.

Regulating Agencies: At the source of much of the documented abuse, as noted by the Committee on Migrant Workers,⁸⁸ agencies also have significant potential as a source of change. The Council of Europe – in Resolution 1534 of 2007 on the situation of migrant workers in temporary employment agencies has called for member states to establish international cooperation between labour inspectors, police and border guards. In the same direction as the Committee on Migrant Workers’ General Comment No. 1 on migrant domestic workers,⁸⁹ Article 15 of Convention No. 189 requires states to “effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices.” Both international texts foresee a significant role for specific criteria to be established, in consultation with domestic workers’ organizations and workers’ and employers’ organizations; the Committee on Migrant Workers’ General Comment also specifies that only those agencies observing the criteria and codes should continue to operate.⁹⁰

National practice varies considerably. The Philippines has one of the strongest models, based on its own Philippines Overseas Employment Agency, linked to the Department of Labour, and responsible for licensing private employment agencies. Agencies licensed may be natural or juridical persons, including those acting on behalf of foreign principals. Under the Republic Act No. 9422 of 2006, the Migrant Workers and Overseas Filipinos Act of 1995 as amended provides for regulation of “private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system’ as well as a “system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and domestic manpower requirements.” The

POEA also has pre-employment service office and an adjudication office that hears cases of violations by agencies and overseas employers as well as workers themselves.

In destination countries, notably in the Gulf region, there is a growing tendency to transfer responsibility over standard unified employment contract administration to private employment agencies, and thereby to assume responsibility in the event of non-payment of wages, as well as in the event that the domestic worker becomes ill or pregnant, as in the Jordanian contract. The private employment agency becomes the mediator of disputes, problematically supplanting access to standard labour dispute resolution mechanisms.⁹¹ Easily surmountable problems as simple as translating the contracts into a language that the worker understands persist, although this issue was addressed in the new Convention No. 189. Similarly, jurisdiction may need to be interpreted broadly, to cover not only the standard employment employee relationship, as under the South African Commission for Conciliation, Mediation and Arbitration, but also clients in triangular agency relationships.⁹²

Regulatory initiatives such as the Gangmaster Licensing Authority model applied in the United Kingdom to regulate agencies that supply or use workers – typically migrant workers - in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging need to be studied further from both an historical and a contemporary perspective, to determine whether and to what extent they enhance existing inspection and labour standards mechanisms.⁹³ Moreover, even robust nation-based regulatory initiatives can be circumvented through the recruitment of nationals in third parties.⁹⁴ What is clear is that the regulation of agencies in the field of migrant domestic work will require significant coordination between sending and receiving countries; African states in particular may fare best in multilateral arrangements that prevent spill-over effects from other regions. Regional initiatives may also constitute important responses, in their own right or as bases upon which to build international consensus.

Communicating Information, including legal information:

Prior to departure, it is cardinal to communicate accurate, complete information about what domestic workers can expect.⁹⁵ This is one of the functions of the one-stop-shop migration units, which seek to provide an easily identifiable, comprehensive and effective system of information communication. Some

of that information sharing must entail reliable access to legal services on migration and labour law in destination countries. Non-official information provision may otherwise be erratic and misleading, yet knowledge of migration and labour rights before departure may be crucial to enabling domestic workers to avoid, anticipate or respond to potential abuse.⁹⁶ CEDAW's General Recommendation No. 26 stresses that the information needs to be comprehensive, gender-sensitive and rights based,

Recent international developments clarify that domestic workers who are recruited in one country for domestic work in another must receive a written job offer, or contract of employment enforceable in the country in which the work is to be performed. The contract must contain a detailed list of terms and conditions of employment. (Convention No. 189, Articles 7 & 8).⁹⁷ Article 6 of the Recommendation seeks to ensure that domestic workers are assisted to understand those terms and conditions. It also specifies more matters that might be included, notably the job description. The possibility of establishing a model contract is also recommended. The international standard builds on existing practice in South Africa, in which Sectoral Determination No. 7 requires a list of particulars to be provided.

A number of countries outside the region, such as Hong Kong (China) and Quebec (Canada) have adopted a model contract system, in which both living and working conditions need to be communicated. Although the trend by some labour-receiving governments to institute standard or uniform employment contracts may be seen as an attempt to address abuse, the existence of a contract itself is a stand-alone mechanism; contracts must be entered into under existing labour law. Some contracts apply explicitly and exclusively to non-nationals in live-in domestic work, and contain provisions that are not only below international norms and norms applicable to local workers but are also so basic that they underscore the limited degree of protection actually available to domestic workers.⁹⁸

For example, Article 14 of the 2009 Lebanese contract specifies that domestic workers must be permitted to communicate with their families; the risk of a provision of that nature is that it suggests that other forms of sequestration may be 'tolerated', thereby facilitating forced labour conditions leading to contemporary forms of slavery and servitude. By contrast, model contracts, when employed proactively, may be an educational device. For example, in Quebec,

the model contract of April 2011 states the legal provisions applicable to workers generally then asks the parties to fill in the conditions that apply to domestic workers. These stipulated conditions must be equal or more favourable than the provisions in existing law. This kind of model contract informs the employer and the worker of the applicable law, and frames the relationship as an employment relationship.

Visa Requirements and sponsorship programs:

There is an overarching responsibility to ensure that domestic workers' conditions do not lead to forced labour, slavery or servitude⁹⁹. While this requires 'practical and effective' criminal legislation,¹⁰⁰ it also requires close attention to immigration and labour laws.

Destination countries including Member States of the Council of Europe have acknowledged the need to "increase legal migration opportunities for women and adopt immigration policies based on human rights that are gender sensitive and empowering, and which prevent irregular migration, exploitation and trafficking."¹⁰¹ Not only does this include aspiring to attain labour migration agreements, but to provide greater legal employment opportunities for migrant women in different sectors.

Unlike the historical domestic workers' scheme in Canada referenced above, contemporary migrant domestic work schemes are temporary migration schemes. Sponsorship –based programs that tie domestic workers to their employers or sponsors – including the *khafala* system in place in a number of Gulf states, are rife with potential abuse, and a number of international bodies have expressed concern about their potential to lead to forced labour conditions. Under Convention No. 189, states are required to take measures to ensure that domestic workers may decide whether to reside in their employer's household, and to address the widely reported problem of employers holding domestic workers' travel documents (Article 9(a)& (c)). Good practices are developing, including legislative or judicial repeals of systems that bind migrant domestic workers to a particular employer.¹⁰² Initiatives in Saudi Arabia to transfer sponsorship away from individual employers toward a selected three or four large recruitment agencies have languished for over a decade.¹⁰³

An intermediate solution adopted by some countries is to provide ‘bridge’ extensions of visas so that migrant domestic workers do not lose their right to stay in a country when they change employer.¹⁰⁴

Further proactive measures include fostering registration by migrant domestic workers at embassies and consulates in receiving countries, and following up to ensure that domestic workers are able to avail themselves of consular services and safe houses in the event that they need to leave an employer urgently.¹⁰⁵ Dedicated training to diplomatic and consular staff can assist them to better fulfil their responsibilities to protect migrant domestic workers’ rights abroad.¹⁰⁶ Mechanisms as simple and accessible as SMS based SOS services through which a domestic worker can signal that she is in danger may prove to be invaluable to domestic workers, all the while indicating how dire some circumstances remain under systems that do not progressively facilitate a live-out option for migrant domestic workers, as discussed in the next section.

Labour Law and Social Protection:

Destination countries are called upon to treat domestic work like any other form of work, in the sense that a non-discriminatory labour law framework must apply, in keeping with Article 25 of the Convention on Migrant Workers. Convention No. 189 and its accompanying Recommendation No. 201 not only constitute a minimum standard;¹⁰⁷ they are also a comprehensive standard, seeking to remedy historical exclusions of domestic work from much of labour law by adapting a broad gamut of labour rights and social protections specifically to domestic work. In particular, international labour standards on decent work for domestic workers apply a specific regulatory model to ensure that features of the domestic work relationship that are different from many other workplace contexts are acknowledged and regulated in an equality-enhancing manner, rather than overlooked.¹⁰⁸ It is important to add that they build on positive examples from national practice in a number of regions – including many developing countries – to establish a framework to regulate the domestic workers’ conditions of employment, including when they migrate internationally. They complement the core human rights protections in the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (entry into force 1981) and the 2008 CEDAW General Recommendation No. 26 on Women Migrant Workers, as well as

Convention on Migrant Workers and the 2010 CMW General Comment No. 1 on Migrant Domestic Workers (2010).

Living conditions. A good example relates to domestic workers' living conditions, which must "respect their privacy" (Art. 6). Convention No. 189 takes pains to specify that domestic workers who reside in the household where they work are not obliged to remain there, or with household members, during periods of daily and weekly rest or annual leave (Convention No. 189, Article 9(b), 10). It calls on states to take measures to ensure that domestic workers have effective protection against all forms of abuse, harassment and violence (Art. 5). With a nod to prevalent practices that lend themselves to abuse in the sense that they overlook domestic workers' own autonomy, Article 13 of Recommendation No. 201 provides that "[t]ime spent by domestic workers accompanying the household members on holiday should not be counted as part of their paid annual leave." Article 17 of the Recommendation provides specific guidance on the nature of the living conditions and quality and quantity of food, with due regard to national conditions and prevailing conditions within the household.

Article 13 of the Convention speaks more generally to the safety and health of the working environment, albeit allowing for progressive implementation.¹⁰⁹ These provisions show a recognition of the potential for misunderstanding and abuse in live-in arrangements,¹¹⁰ and draw on the data from all regions that suggest most domestic workers 'self-regulate' by trying hard to avoid them as a means to preserve some autonomy.¹¹¹ The expectation of a live-in relationship is interwoven, however, into most migrant domestic work schemes – arguably at least implicitly was the expectation of perpetual availability. Strikingly despite the complexity of crossed jurisdiction, the 'customary' or pluralist law of the home workplace,¹¹² expectations tend to be that migrant live-in domestic workers will essentially replace the female members of the family, by working from morning until night. They might even be woken in the night to care for young children or sick adults. The instruments provide a basis to rethink carefully the former, and directly prevent the latter. For UN Women, state responsibility for ensuring compliance with human rights extends to all justice practices, including non-state or pluralist ones.¹¹³

Working Time and Minimum Wage Fixing. One of the singular accomplishments in the new standards is to challenge the ‘boundarilessness’ of domestic workers’ time, in which constant availability – in some cases legislatively 7 days per week as in Singapore – is expected.¹¹⁴ Convention No. 189 calls for working time to be regulated in keeping with the principle of equal treatment. This includes establishing normal working hours, and daily and weekly rest periods, and ensuring that wages are paid at regular intervals and by legally recognized means. It strictly limits the payment of wages in kind, which can be an important source of abuse (Art. 12). Domestic workers are to be covered by minimum wage laws where they exist, and that coverage should be without discrimination (Convention No. 189, Article 11, Convention on the Elimination of All forms of Discrimination Against Women, Article 11, paragraph d).

Pre-existing regulatory norms in many countries supported this focus on regulating time; African regulators have been at the forefront in adopting specific laws (Zimbabwe, South Africa) or collective agreements (e.g. Mali, Sénégal), as well as general laws that technically include all workers (e.g. Ghana). Some of the strongest attempts to curtail the use of in-kind allowances in place of wage payments for time worked come from the African continent (e.g. Côte d’Ivoire, South Africa); these standards significantly informed and in some cases surpassed the adopted protections in Convention No. 189. Innovation also abounds, as in the recognition and restriction on ‘on call’ time found in South Africa’s Sectoral Determination No. 7. Regulation of on call time is also found in the French National Collective Agreement. South Africa’s focus on providing a specific day off (Sunday) serves an important visibility function as well, as it could readily be presumed that a household in which a domestic worker is seen to be working on a Sunday would not be respecting the law. Yet minimum wages for domestic workers remain low, and tend to be lower still for migrant workers.¹¹⁵

Regulations on working time - particularly as applied to live-in domestic workers - therefore constitute one of the areas in which international standards and contemporary national laws diverge the most from the ‘customary’ or pluralist law of the home workplace. They signal the transition to a labour law framework in which hours are counted and remunerated and in which the domestic worker’ own autonomy – including their own family life – is to be respected.

Effective, Accessible Compliance and Enforcement Mechanism: Law reform is far from sufficient to deliver the actual, practical transition to a labour law framework in most fields, no less domestic work in individual households across transnational borders. Part of the response is in the quality of the compliance mechanisms. As with Articles 18, paragraph 1 and 83 of the Convention on Migrant Workers, Article 17 of Convention No. 189 underscores the need for “effective and accessible” complaint mechanisms and means to ensure compliance with national laws and regulations for the protection of domestic workers, as well as measures for labour inspection (including access to household premises with due respect for privacy), enforcement and penalties.

South Africa through its CCMA offers one of the most robust examples of a simplified, accessible enforcement mechanism on the continent.¹¹⁶ Studies of the CCMA show that there is a high degree of awareness of employment rights among domestic workers in South Africa, and significant use of the CCMA. There is also judicial recognition of the enforceability of migrant domestic workers’ labour rights in South Africa. Moreover, inspection services apply to the domestic work sector, subject to consent of the home owner or authorization by the Labour Court, although practical challenges to enforcement abound.¹¹⁷

However, another part of the response focuses on the actors themselves. In particular, recent research on migrant domestic workers from Lesotho living in South Africa¹¹⁸ forces us to be alive to ‘outsiders’ relationship to the law: the workers are unlikely to avail themselves of their rights and may seem to prefer privately negotiated ‘solutions’ unless they receive earnest state messages that their rights will in fact be promoted and respected. In this sense, there is a significant role for receiving countries to inform both domestic workers and employing households of their responsibilities, to let them know that enforcement measures will actually apply to households and be taken, and perhaps most importantly to ensure that employers know they are indeed employers responsible for respecting workers’ rights, including migrant workers’ rights.

State responsibility goes further: according to the Committee on Migrant Workers, so that “migrant domestic workers may gain access to courts and other justice mechanisms without fear of being

deported”¹¹⁹. It calls amongst other solutions for time-bound or expedited legal proceedings. In an attempt to overcome the problem of jurisdiction faced by irregular migrant workers, a few jurisdictions in Canada and the United States have adopted “don’t ask, don’t tell’ approaches to the legal status of migrant workers when inspecting workplaces and enforcing labour rights violations, to ensure that immigration rules do not impede respect of labour rights.¹²⁰ Some important examples of labour inspection and registration practices exist in Ecuador and Uruguay, and of a specialized domestic service tribunal in Buenos Aires, Argentina. All point to the creative use of a mix of regulatory responsibility and proactive measures to reach the public – such as holding a widely publicized day of registration of domestic workers in public parks and other spaces, to encourage domestic workers and employers of domestic workers to register for social protection. This registration also facilitates the work of the labour administration services to control respect of applicable laws. These measures may be accompanied by simplified payment measures through the form of service cheques – as in Brazil, France and a number of cantons in Switzerland– which facilitate formalization. In Switzerland in particular, the service cheque system has tended to be contracted out to a social economy enterprise, which are apparently not charged with looking into whether the migrant’s status is regularized. Fiscal incentives may or may not apply.¹²¹

Collective bargaining rights. Researchers who are realistic about the limits of state regulation – and the asymmetry of regulating across the migration/development divide – challenge the assumption that the paternalistic state should simply step in and impose norms from on high.¹²² One of the most important features of domestic workers’ human rights is their right to self-organize, including as some have done through workers’ cooperatives. Although not numerous, examples of domestic workers claiming their status as employees and exercising their right to organize collectively are found in all regions.¹²³ This freedom is expressly reaffirmed in Article 26 of the Convention on Migrant Workers, as well as Article 3 of Convention No. 189, which calls on states to protect the rights both of domestic workers and employers of domestic workers to establish subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing. Article 2 of Recommendation No. 201 complements the Convention, by calling on members to identify and eliminate any legislative or

administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers' organizations of their own choosing. Respect of their freedom of association and right to bargain collectively requires creative, proactive measures – and under existing models some level of legislative extension of standards.

Ensuring that migrant domestic workers enjoy a context in which they can exercise their freedom of association without fear of expulsion as a reprisal is one of the most vexing but crucial challenges remaining in regard to respect of migrant domestic workers' human rights. Good practices include providing domestic workers with information about existing workers' representatives before departure or on arrival in the host country. In addition, some judicial developments pave the way to ensure that migrant workers can exercise unionization rights effectively, as in a recent Quebec (Canada) decision on migrant agricultural workers.¹²⁴

Social protection needs are cardinal for domestic workers and their families across global care chains, and are foreseen under Articles 27 & 28 of the Convention on Migrant Workers, as well as Art. 14 of Convention No. 189. Cooperation is contemplated both in Convention No. 189 and in Recommendation No. 201. Beyond the region in the Philippines, an emergency repatriation fund is available, alongside insurance measures covering work-related injury, illness or disability, as well as medical insurance during overseas employment.¹²⁵ In Quebec (Canada), the employer of a migrant domestic worker is required to take out medical coverage for the domestic worker equivalent to that available under the provincial health scheme.¹²⁶ However, legislation on access by migrant domestic workers to occupational safety and health measures is still being studied by the government. Social protection coverage may also be addressed in some memoranda of understanding.

In the region, initiatives are needed at a number of governance levels. In the absence of formal mechanisms, some migrant domestic workers have taken initiatives to establish social solidarity funds based on links of mutual trust; in the case of Ivoirian domestic workers in Tunisia, this has taken the form of a 'tontine'; contributions are used to defray the costs of members who might face a medical emergency or to help out during a sudden job loss. SADC, in its Charter of Fundamental Social Rights of 5

August 2003 proposes to harmonize and extend social protection throughout the region. Article 10 focuses on workers and vulnerable groups, including the unemployed, as follows:

1. SADC member states shall create an enabling environment that every worker shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits.
2. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be able to receive sufficient resources and social assistance.¹²⁷

Responsibility for implementation under the Charter lies both with national tripartite bodies, and with regional bodies. A 2008 report notes that although extensive reforms are underway in countries such as Namibia, Tanzania and Zambia, concrete results are needed in most SADC member states.¹²⁸ Other regional mechanisms have also been put in place to coordinate social protection, notably ECOWAS, which has engaged in technical cooperation with UN entities including the ILO to draft the General Convention on Social Security adopted in March 1993 to promote equality of treatment in social security between nationals and non-nationals; measures for review were underway in 2010.¹²⁹ The Inter-African Conference for Social Security, C.I.P.RE.S., was established in 1993 by Members of the CFA franc zone. Ministers responsible for social security in the zone work to harmonize legislation and regulation related to social security institutions. C.I.P.RE.S. has acknowledged the impact of the free movement of persons on workers in the region, and the need to ensure that a supranational structure is created to harmonize legislation and provide suitable training.¹³⁰

A concerted policy effort is needed to ensure that information on social security entitlements is widely disseminated, that there are incentives for employers to register rather than to avoid coverage, and that there is follow up to ensure payment of contributions.¹³¹ Simplification mechanisms experimented with in a number of Latin American and European countries and referenced above ensure ease of calculation and payment of social security contributions. They may be the precursors of coordinated regional and multilateral mechanisms to promote portable social protection. This kind of coherent capacity building and cooperation might be a subject for concentration through this workshop and other GFMD initiatives.

International Organizations

International organizations benefit from diplomatic privileges and immunities under the Vienna Convention, although those privileges and immunities are limited. While a full discussion of this is beyond the scope of this paper, it is important to emphasize that international organizations play a leadership role, and should take initiatives to ensure that their own codes of staff conduct include specific regulatory guidelines on respect of domestic workers' human rights, including their labour rights. The new Recommendation No. 201 provides that

[i]n the context of diplomatic immunity, Members should consider:

- (a) adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers' rights; and
- (b) cooperating with each other at bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers.

At a minimum, information about local labour law should be made easily available to employees, along with information about procedures for registration of domestic workers under existing social security schemes, as appropriate, with due regard for eligibility. International organizations should also be urged to make health insurance protection available to the domestic workers of international officials, and make enrolment and payment of contributions by those officials hiring a domestic worker mandatory. International organizations might also make their ombudsperson's office or other another dedicated advisory service available to domestic workers to assist them with specific concerns.

Part III: Conclusions: Recommendations, and the Future of Migrant Domestic Work at the Interface of Migration and Development

Four core general recommendations flow from the specific recommendations in the previous part:

1. Ensure the collection of comprehensive data on the situation of domestic workers, including migrant domestic workers, in and from the African continent.

Effective data collection is called for by the Committee on Migrant Workers,¹³² and CEDAW¹³³; it is necessary to ensure that policies formulated are evidence-based. International organizations including UN Women, the ILO and IOM may collaborate closely with a range of regional institutions, including the African Union, the statistical capacity building activities of the African Development Bank and in particular its African Development Institute, and dedicated research institutes throughout the continent.

2. Provide technical support to governments to develop and implement labour and social protections that promote, support and protect the rights of domestic workers.

International technical cooperation should be reinforced to promote as appropriate the ratification and implementation of ILO Convention No. 189 and Recommendation No. 201, of the Convention on the Elimination of All Forms of Discrimination against Women and CEDAW's General Recommendation No. 26 on Women Migrant Workers (2008); and the International Convention on the Protection of the Rights of All Migrant workers and Members of their Families, and the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families' General Comment No. 1 on Migrant Domestic Workers (2010). Assistance in drafting laws and ongoing knowledge sharing about good practices as they continue to emerge is necessary. Specific regional institutions that recognize the free movement of persons should be supported in their initiatives to extend social security mechanisms to non-nationals and promote harmonization and portability. They should receive targeted support to ensure that measures of general application apply and are available in practice to domestic workers.

3. Support the establishment of a regional network of domestic worker organizations, women's and migrant worker support groups and institutions, and trade unions, to advocate for domestic workers' human rights. A special focus should be placed on migrant domestic workers in and from the African continent.

There is an important capacity-building role, which should be addressed to the particular challenge of freedom of association for domestic workers generally and migrant domestic workers in particular. That

capacity building should assist the ratification and implementation of the Migrant Workers Convention and the new Decent Work for Domestic Workers Convention. It will also ensure that the kind of genuine consultations sought by the Committee on Migrant Workers will be possible, to ensure that reforms to laws and practices are well suited to the context, and are responsive to the needs of domestic workers.

4. **Promote the development of multilateral dialogue and cooperation that seeks to support international solidarity and avoid regional disadvantage when migrant domestic work is regulated strongly in one country in one region, but circumvented by looser migrant domestic work regulation in another.**

The equitable regulation of domestic work at the interface of migration and development must move beyond bilateral, contractual solutions, toward creative, solidaristic multilateral agreements facilitated by international technical cooperation. Certainly, some bilateral schemes show signs of innovation, including with alternative compensation arrangements including forms of social financing from destination to sending countries.¹³⁴ But as Adepoju reasons:

Migration issues can no longer be handled only bilaterally; what is needed is a comprehensive approach through global harmonization of migration policies... Global networks are used for trafficking and irregular migration, and a global approach is needed to curtail them, with the support of international organizations and governments...¹³⁵

Arguably, the experience of migrant domestic workers from the African continent interacting in somewhat 'regularized' labour regimes illustrates the particular disadvantage faced when internalized, racialized occupational segmentation is coupled with uneven regulatory initiatives by labour sending countries, as in the case of women from Kenya in Saudi Arabia. Rather than increasing labour conditions for domestic workers from a range of regions, there is a risk that national initiatives by sending countries and bilateral arrangements will be circumvented, allowing the proliferation of low labour conditions for women from 'other' countries. Measures are needed to pre-empt a normative race-to-the-bottom, and that encourage cooperation if not competition for higher standards, and the greater reputational pull that ensues.

ILO Recommendation No. 201 offers a starting point. It reflects an international commitment to “enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programs, and universal education.” (Art. 26).

Dialogue by key stakeholders, which takes the form of a community of learning – structured through a global network involving dialogue among GFMD members – is one constructive potential outcome to be fostered. Intra-regional dialogue as in this workshop, marks a crucial starting point, to identify features of commonality and difference, and to identify policies and best practices. Over time, it will also need to cover a plurality of sending regions, to develop strategies that are mutually enhancing for extra-regional migrations.

Beyond rendering migration to perform domestic work ‘decent’, there is a need to rethink the underlying causes for international migration into domestic work. Yet the goal should not be a closed border strategy: migration is here to stay, and from an open, cosmopolitan perspective should be encouraged as potentially beneficial for the migrant, the receiving country and the sending country. Migrant workers make hard decisions to move on the basis of real life circumstances over which they exercise agency.

In addition, it is important to face the implications of the insight that migration in the care economy is potentially development-enhancing, if not for the sending-country, at least for the receiving country. Migrant domestic work is market-enabling in receiving-country markets, while relieving pressure to rethink gender relations, processes of accumulation, and the role of the state in providing care.¹³⁶ ‘Care work extraction’ from developing countries creates care deficits.¹³⁷ Concretely, domestic workers’ own international human right to protection of their family by society and the State as recognized in Article 16(3) of the Universal Declaration of Human Rights and Article 44 of the Convention on Migrant Workers need to be considered.

Increasingly, international and regional resolutions, declarations, comments, general observations, and now conventions and recommendations point in the direction of regularizing migration, and illustrate concern about distributive implications across borders.

For this reason, the fourth recommendation is overarching: it calls for the migration of domestic workers to be undertaken from the perspective of international solidarity, which flows through the call for capacity, coherency and coordination. International solidarity on the challenge of migrant domestic work may be reinforced through the fairness of the terms that are negotiated for domestic workers' migration – based on the new international labour standards. It may be emphasized in an approach that ensures that migration for domestic work is an informed decision, structured by fair migration policies and effectively regulated and monitored actors in the migration process. It flows through the respect for domestic workers' rights, including their labour rights, throughout the migration cycle, alongside practical support mechanisms that ensure remittance practices are safe and fair, and that ensures that domestic workers can benefit from portable forms of social protection. Migration in the care economy entails looking at migrant domestic workers not only as workers, and not only as migrants, but also as human beings with care responsibilities of their own.

ENDNOTES

¹ Throughout this paper, ‘care work’ and ‘domestic work’ are used interchangeably, in a conscious attempt to avoid racial and class hierarchies that tend to surround the terms. See Dorothy E. Roberts, ‘Spiritual and Menial Housework’ (1997) 9 *Yale Journal of Law and Feminism* 51 at 51; Shahra Razavi & Silke Staab, « Underpaid and overworked : A cross-national perspective on care workers » (2010) 149 *International Labour Review* 407 at 410.

² GFMD, Concept Paper : Taking Action on Migration and Development – Coherence, Capacity and Cooperation, 4 March 2011, at page 5.

³ See Martha Alter Chen, « Recognizing Domestic Workers, Regulating Domestic Work : Conceptual, Measurement, and Regulatory Challenges » (2011) 23 *Canadian Journal of Women and the Law* 167.

⁴ Cleopatra Doumbia-Henry, « The Consolidated Maritime Labour Convention : A Marriage of the traditional and the new » in Jean-Claude Javillier & Bernard Gernigon, eds., *Les normes internationales du travail : un patrimoine pour l’avenir : Mélanges en l’honneur de Nicolas Valticos* (Geneva : ILO, 2004) at 320.

⁵ ILO, Decent Work for Domestic Workers, Report IV(1), 2009, at 6. It is crucial not to overlook the role played particularly by racialized men, and the experiences of marginalization or ‘double humiliation’ that they may feel by performing work that is both socially undervalued as ‘dirty work’ and gendered as ‘women’s work’. See JoAnn McGregor, « Joining the BBC (British Bottom Cleaners)’ : Zimbabwean Migrants and the UK Care Industry » (2007) 33 *Journal of Ethnic and Migration Studies* 801 at 802.

⁶ ILO Law and Practice Report, op. cit.

⁷ Debbie Budlender, “What Do Time Use Studies Tell Us about Unpaid Care Work? Evidence from Seven Countries” in Budlender, ed., *Time Use Studies and Unpaid Care Work 2* (Routledge, 2010).

⁸ Department of Economic and Social Affairs, *United Nations Population Facts*, November 2010.

⁹ Article 2, paragraph 2 states. See Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General Comment No. 1 on migrant domestic workers.

¹⁰ Time will tell whether the use of the terminology, « employment relationship » (in the equally authoritative French version, « relation du travail ») will have a limiting impact on the workers actually covered by the convention. Domestic work is a sector in which it is remarkably easy to change contractual form. However, the ILO’s Employment Relationship Recommendation (No. 198), 2006 seeks to combat ‘disguised employment.’

¹¹ CEDAW General Recommendation No. 26, paragraph 2.

¹² For example, the Council of Europe's Committee on Migration, Refugees and Population cites a 2011 UK study, in which 65% of migrant domestic workers had their passports withheld by their employer. Op. cit. at paragraph 54.

¹³ *Prière à la lune*, Bachari, 2006.

¹⁴ See McGregor, op. cit.. This phenomenon is widely studied with respect to the Philippines. See in particular Rhacel Salazar Parrenas, *Children of Global Migration : Transnational Families and Gendered Woes* (Stanford : Stanford University Press, 2005) at 21.

¹⁵ See e.g. Marie Lesclingand, « Nouvelles stratégies migratoires des jeunes femmes rurales au Mali : de la valorisation individuelle à une reconnaissance sociale » (2004) 55 *Sociétés contemporaines* 21.

¹⁶ See e.g. Human Rights Watch, *Bottom of the Ladder : Exploitation and Abuse of Girl Domestic Workers in Guinea*, June 2007 at 25-26, noting routes from Benin and Togo to Gabon, and from Burkina Faso and Mali to Côte d'Ivoire, as well as significant efforts to combat this trafficking.

¹⁷ See Ratna Kapur, « Travel Plans : Border Crossings and the Rights of Transnational Migrants » (2005) 18 *Harvard Human Rights Journal* 107.

¹⁸ Bridget Anderson & Ben Rogaly, *Forced Labour and Migration to the UK* (Oxford : COMPAS & TUC, 2005) at 43.

Available at

http://www.compas.ox.ac.uk/fileadmin/files/pdfs/Non_WP_pdfs/Reports_and_Other_Publications/Forced%20Labour%20TUC%20Report.pdf.

¹⁹ Sanket Mohapatra, Dilip Ratha and Ani Silwal, *Outlook for Remittance Flows No. 2011-13 World Bank Migration and Development Brief*, 23 May 2011.

²⁰ World Bank, *World Bank Development Indicators*, available at <http://data.worldbank.org/indicator>. For example, while FDI inflows to Ethiopia was 221 million in 2009, the amount of remittances was 261 million.

²¹ E.K.Y. Addison, « The Macroeconomic Impact of Remittances » (2005) Takyiwaa Manuh, ed., *At home in the world ? International migration and development in contemporary Ghana and West Africa* (Accra : Sub-Saharan Publishers, 2005) 118 at 119.

²² Aderanti Adepoju, *Migration in Sub-Saharan Africa : A background paper commissioned by the Nordic Africa Institute for the Swedish Government White Paper on Africa*. Lagos, 14 September 2007. Available at <http://www.sweden.gov.se/content/1/c6/08/88/66/730473a9.pdf> at 44.

²³ Valentina Mazzucato, "Informal Insurance Arrangements in Ghanaian Migrants' Transnational Networks: The Role of Reverse Remittances and Geographic Proximity" (2008) 37 *World Development* 1105.

²⁴ Entry into Force on 1 July 2003.

²⁵ See e.g. *Harnessing the Development Potential of Kenyans Living in the United Kingdom*, International Organization for Migration, October 2010.

²⁶ See e.g. Addison, op cit. at 136.

²⁷ Hein de Haas, « International migration, remittances and development : Myths and facts » (2005) 29 *Third World Quarterly* 1305.

²⁸ For a discussion of the literature, see Levitt & Lamba-Nieves, op. cit. at 10.

²⁹ Committee on the Elimination of Discrimination against Women (CEDAW), General recommendation No. 26 on women migrant workers, 5 December 2008, CEDAW/C/2009/WP.1/R, paragraph 11.

³⁰ African Union Executive Council, African Common Position on Migration and Development, Banjul, adopted during the Ninth Ordinary Session, 25-29 June 2006, Decision DOC. EX.CL/277(IX).

³¹ See Aderanti Adepoju, *Migration in Sub-Saharan Africa : A background paper commissioned by the Nordic Africa Institute for the Swedish Government White Paper on Africa*. Lagos, 14 September 2007. Available at <http://www.sweden.gov.se/content/1/c6/08/88/66/730473a9.pdf>. at 45.

³² See Peggy Levitt & Deepak Lamba-Nieves, *Social Remittances Revisited*, available online at http://www.peggylevitt.org/pdfs/Levitt.Lamba-SR_Revisited.pdf.

³³ While this is chiefly the case, it is not exclusively so, as migration by Eastern European workers within, and to the European Union perform a variety of domestic services illustrates. See e.g. Bettina Haidinger, « Contingencies among Households : Gendered Division of Labour and Transnational Household Organization – the Case of Ukrainians in Austria » in Helma Lutz, ed., *Migration and Domestic Work : A European Perspective on a Global Theme* (Aldershot : Ashgate, 2008) 127 at 137.

³⁴ François-Xavier Devetter, Florence Jany-Catrice & Thierry Ribault, *Les services à la personne* (Paris : La Découverte, 2009) 3.

³⁵ The classifications and conditions may themselves differentiate between women and men, between women along categories of race and migrant status, and between categories of care providers. See Francie Lund, 'Hierarchies of care work in South Africa : Nurses, social workers and home-based care workers (2010) 149 *International Labour Review* 495 at 507.

³⁶ See Pat Armstrong, Hugh Armstrong & Krista Scott-Dixon, *Critical to Care : The Invisible Women in Health Services* (University of Toronto Press, 2009).

³⁷ See generally Ruth Pearson, Shahra Razavi & Caroline Denley, eds., *Globalization, Export-Oriented Employment and Social Policy : Gendered Connections* (Basingstoke : Palgrave Macmillan, 2004). The patterns in some Southern

European states may also have depended more on gendered family relations to provide the services that the welfare state provided in Northern European States. See Elizabetta Zontini, *Transnational Families, Migration and Gender : Moroccan and Filipino Women in Bologna and Barcelona* (New York : Berghahn Books, 2010) at 11.

³⁸ See Adepoju (2007) op. cit. ; Yeates, op. cit. at 428.

³⁹ Nicola Yeates, « The globalization of nurse migration : Policy issues and responses » (2010) 149 *International Labour Review* 423 at 427.

⁴⁰ African Union, Draft Strategic Framework for Migration Policies, available at www.africa-union.org.

⁴¹ Council of Europe : Parliamentary Assembly, Resolution 1811 (2011), Protecting migrant women in the labour market, adopted 15 April 2011.

⁴² See e.g. Debbie Budlender, *Industrial relations and collective bargaining: Trends and developments in South Africa*, Social Dialogue, Labour Law and Labour Administration Branch Working Paper No. 2 (Geneva: ILO, 2009) at 23 (adding that enforcement is another crucial challenge for domestic workers, many of whom were paid below the specified minimum); Razavi & Staab, op. cit. at 412.

⁴³ Yeates, op. cit. at 426.

⁴⁴ Ibid.

⁴⁵ Council of Europe Resolution 1811, op. cit.

⁴⁶ See Bina Fernandez, « Cheap and disposable ? The impact of the global economic crisis on the migration of Ethiopian women domestic workers to the Gulf » (July 2010) 18 *Gender & Development* 249 at 251.

⁴⁷ Adelle Blackett, 'Promoting Domestic Workers' Human Dignity through Specific Regulation' in Antoinette Fauve-Chamoux, ed., *Domestic Service and the Formation of European Identity : Understanding the Globalization of Domestic Work, 16th-21st Centuries* (Bern : Peter Lang, 2005) 247 at 247-248.

⁴⁸ Committee on the Elimination of Discrimination against Women (CEDAW), General recommendation No. 26 on women migrant workers, 5 December 2008, CEDAW/C/2009/WP.1/R, paragraph 3. This principle is reaffirmed in a Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation, Geneva, 30 September 2008, which lists fundamental rights of all persons, regardless of their migration status as including :

- The right to life, liberty and security of the person and to be free from arbitrary arrest or detention, and the right to seek and enjoy asylum from persecution;
- The right to be free from discrimination based on race, sex, language, religion, national or social origin, or other status;
- The right to be protected from abuse and exploitation, to be free from slavery, and from involuntary servitude,

and to be free from torture and from cruel, inhuman or degrading treatment or punishment;

- The right to a fair trial and to legal redress;
 - The right to protection of economic, social and cultural rights, including the right to health, an adequate standard of living, social security, adequate housing, education, and just and favorable conditions of work; and
- Other human rights as guaranteed by the international human rights instrument to which the State is party and by customary international law.

⁴⁹ UN General Assembly Resolution 41/128 of 4 December 1986.

⁵⁰ UN Human Rights Council, Report of the independent expert on human rights and international solidarity, Rudi Muhammad Rizki, UN General Assembly, 5 July 2010, A/HRC/15/32.

⁵¹ OHCHR, Human Rights Resolution 2005-55.

⁵² UN 2007. From Adepoju, *op. cit.*, 2007.

⁵³ See discussion in Natalya Dinat & Sally Peberdy, « Restless worlds of work, health and migration : domestic workers in Johannesburg (2007) 24 Development Southern Africa 187.

⁵⁴ In Egypt men accounted for 71% of the 51,500 officially registered domestic workers . The trend is true also for Algeria, where men reportedly accounted for 55% of 34,900 registered domestic workers. See ILO, *Decent Work for Domestic Workers*, Report IV (1), 2009 ; See also Aishah Namukasa, « Africa » in Helen Schwenken & Lisa-Marie Heimeshoff, eds., *Domestic Workers Count : Global Data on an Often Invisible Sector 16* (Kassel University Press, 2011) (noting the risk that women’s employment may be underreported).

⁵⁵ See e.g. Mélanie Jacquemin, « Travail domestique et travail des enfants, le cas d’Abidjan (Côte d’Ivoire) » (2002) *Revue Tiers Monde* 307-326. ; Kiaga, *op. cit.* at 90 (noting how this complicates accurately measuring domestic worker).

⁵⁶ Annemarie Kashajja Kiaga, *Blaming the Other Woman : Rural Housegirls and Urban Employers : On Identity, Labor and Migration in Tanzania*, Doctoral Thesis, University of Minnesota, September 2007 (noting growing spatial differentiation of households for external reasons, such as job opportunities, and internal reasons, such as changing assumptions in dual breadwinner households.)

⁵⁷ UNICEF 2003; Kiaga *op. cit.* at 93.

⁵⁸ Mélanie Jacquemin, « (In)visible young female migrant workers : ‘Little domestics’ in West Africa : Comparative Perspectives on Girls and Young Women’s Work (Centre for Migration Studies, University of Ghana, July 2009).

⁵⁹ Dzodzi Tsikata, « Employment Agencies and the Regulation of Domestic Workers in Ghana : Institutionalizing Informality ? » (2011) 23 *Canadian Journal of Women and the Law* 213.

⁶⁰ Kiaga, op cit. at 80.

⁶¹ See Adepoju, 2007, op. cit. (recalling in particular the significance of contractual labour laws fostering circular migration in Southern Africa.) See also Kathleen Newland et al, Learning by Doing : Experiences of Circular Migration, Migration Policy Institute Insights, September 2008.

⁶² Adepoju (2005) op. cit. at 27-29.

⁶³ See e.g. Mariama Awumbila, « Internal Migration, Vulnerability, and Female Porters in Accra, Ghana » (2007) Paper presented to the Population Association of America 2007 Annual Meeting, New York, NY, available online at <http://paa2007.princeton.edu/download.aspx?submissionId=70865> .

⁶⁴ Ratha et al., 2007, op. cit.

⁶⁵ Articles 2 & 27 of the ECOWAS Treaty provide for the removal of barriers to the free movement of persons. ECOWAS has adopted a number of Protocols on this topic, notably Protocol A/P.1/5/79.

⁶⁶ Adepoju, 2007, op cit. ; Chantal Thomas, « Migrant Domestic Workers in Egypt : A Case Study of the Economic Family in Global Context » (2010) 58 American Journal of Comparative Law 987.

⁶⁷ Marina de Regt, « Employing Migrant Domestic Workers in Urban Yemen : A New Form of Social Distinction » (2008) 6 Journal of Women of the Middle East and the Islamic World 154.

⁶⁸ Ramadhan Rajab, "Saudi need for Kenyan Maids Up", The Star, Nairobi, 10 August 2011, available at: <http://www.nairobistar.com/national/national/35415-kenyans-ethiopians-make-80-of-saudi-domestic-workers>; Saudi Arabia bars Indonesia and Philippines Workers, 30 June 2011, BBC News, available at: <http://www.bbc.co.uk/news/world-asia-pacific-13970689>.

⁶⁹ See e.g. McGregor, op. cit. at 803.

⁷⁰ Spain-Morocco; EU-Mali ; EU-Senegal ; EU-Mauritania. A recent survey of bilateral agreements on domestic workers identified no examples relating to the African continent. See Naj Ghoshesh, « Protecting the Housekeeper : Legal Agreements Applicable to International Migrant Domestic Workers » (2009) 25 International Journal of Comparative Labour Law and Industrial Relations 301.

⁷¹ See McGregor, op. cit. at 811.

⁷² McGregor, op. cit. at 811.

⁷³ See Paul Benjamin, « To Regulate or To Ban : Controversies over Temporary Employment Agencies in South Africa and Namibia » , Paper presented to the Regulating Decent Work Conference, Geneva, July 2011.

⁷⁴ See Jacquemin, 2009, op. cit. at 16-17.

⁷⁵ See McGregor, op. cit. at 812-813.

⁷⁶ See Tsikata, op. cit. at 227.

⁷⁷ See Benjamin, op. cit.

⁷⁸ The Office of the High Commission for Human Rights asked the ILO to adopt a more inclusive approach on forms of discrimination faced by domestic workers specifically on the issue of wages. See International Labour Conference, Decent work for domestic workers, Report IV(2A), 2011 at 23.

⁷⁹ See Sarah van Walsum, « Regulating Migrant Domestic Work in the Netherlands : Opportunities and Pitfalls » (2011) 23 Canadian Journal of Women and the Law 141, 147-155 (reporting racial segmentation between domestic workers of Dutch origin, from the Philippines and from Ghana) ; Jacqueline Andall, Gender, Migration, and Domestic Service : The Politics of Black Women in Italy (Ashgate, 2000) ; Zontini, op. cit. ; de Regt (2008), op. cit. at 167 (identifying a racial hierarchy in Yemen in which women from the Philippines and Indonesia are hired by the upper classes, Ethiopian women are hired by upper middle and middle class households, and Somali women are hired by middle-class families).

⁸⁰ See Adelle Blackett, "Development, the movement of persons and labour law: Reasonable labour market access and its decent work complement" in Tonia Novitz & Lisa Tortell, eds., *The Role of Labour Standards in Sustainable Development: Theory in Practice* (London, British Academy, forthcoming 2011).

⁸¹ Article 5 of Recommendation No. 201 offers specific guidance on regulating the working and living conditions of domestic workers who are under the age of 18 but above the minimum age of employment.

⁸² IOM, Turnover Ceremony of Kenya's Labour Migration Unit for the Ministry of Labour and Human Resource Development, 9 December 2010. Available at <http://www.iom.int/jahia/Jahia/events/eventAF/cache/offonce?entryId=28736>.

⁸³ CEDAW General Recommendation No. 26, paragraph 24(i).

⁸⁴ ILO, Law and Practice Report, op. cit.

⁸⁵ See also Domestic Helper Deployment Ban to Saudi Arabia Sought, Business World, Manila, 9 February 2011. Available at :

<http://www.bworldonline.com/content.php?title=Domestic%20helper%20deployment%20ban%20to%20Saudi%20Arabia%20sought&id=26069>.

⁸⁶ Reports indicate that approximately 3000 Kenyan migrant workers are registered with the Embassy in Riyadh but the actual numbers are likely much higher. See Joyce J. Wangui, Pursuit of Greener Pastures in Saudi Arabia Spells Doom for Kenyan Immigrants, 10 July 2011. Available at :

http://www.thewip.net/contributors/2011/07/pursuit_of_greener_pastures_in.html.

⁸⁷ Human Rights Watch, *As If I am Not Human*, 2010.

⁸⁸ CMW General Comment No. 1, paragraph 9.

⁸⁹ CMW General Comment No. 1, paragraph 34.

⁹⁰ CMW General Comment No. 1, paragraph 35.

⁹¹ See Human Rights Watch, *Slow Reform : Protection of Migrant Domestic Workers in Asia and the Middle East*, 2010.

⁹² Benjamin, 2011, *op. cit.*

⁹³ See Kendra Strauss, *The Gangmaster Licensing Authority as a model for the regulation of temporary agency work*, Regulating decent work conference paper, 2011.

⁹⁴ See Daniel Parrot's observation on the ability of agencies to avoid registering with the POEA by recruiting Filipina domestic workers from extra-jurisdictional locations, such as Hong Kong and Taiwan, as cited in Judy Fudge, « Global Care Chains, Employment Agencies, and the Conundrum of Jurisdiction : Decent Work for Domestic Workers in Canada » (2011) 23 *Canadian Journal of Women and the Law* 235 at 254.

⁹⁵ Articles 33 & 37, Convention on Migrant Workers, and General Recommendation No. 26, paragraph 24(b).

⁹⁶ See UNIFEM, *A Needs Assessment of Women Migrant Workers : Central Asia and Russia*, 2009.

⁹⁷ Article 7, paragraph 2 provides that « The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas. »

⁹⁸ See Nisha Varia, « 'Sweeping Changes ?' A Review of Recent Reforms on Protections for Migrant Domestic Workers in Asia and the Middle East » (2011) 23 *Canadian Journal of Women and the Law* 265 at 274-276.

⁹⁹ Slavery Convention, 1926 (in force 9 March 1927); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956 (in force 30 April 1957), ILO Forced Labour Convention, 1930 (No. 29)(in force 1 May 1933); Abolition of Forced Labour Convention, 1957 (No. 105) (in force 17 January 1959): Article 11, Convention on Migrant Workers.

¹⁰⁰ *Case of Siliadin v. France*, European Court of Human Rights, 26 July 2005.

¹⁰¹ Article 7, Council of Europe Resolution 1811, *op. cit.*

¹⁰² ILO Law and Practice Report, *op. cit.*

¹⁰³ See Varia, *op. cit.* at 279.

¹⁰⁴ ILO Law and Practice Report, *op. cit.* (Canada). In Kuwait, a similar reform applies to some migrant workers, but not to domestic workers. See Varia, *op. cit.* at 280.

¹⁰⁵ Article 23, Convention on Migrant Workers.

¹⁰⁶ CEDAW General Recommendation No. 26, paragraph 24(j).

¹⁰⁷ Article 19 clarifies, moreover, that the Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

¹⁰⁸ Adelle Blackett, *Making domestic work visible : The case for specific regulation (1998)* ILO Labour Law and Labour Relations Programme Working Paper No. 2.

¹⁰⁹ Moreover, Article 3 of Recommendation No. 201 seeks to eliminate discrimination in work-related medical testing and specifically seeks to ensure that no domestic worker is required to undertake HIV or testing, or to disclose their pregnancy or HIV status.

¹¹⁰ Shindondola-Mote, *op. cit.* at 65.

¹¹¹ See Ally, *op. cit.* ; see also Alana Erickson Coble, *Cleaning Up : The Transformation of Domestic Service in Twentieth Century New York City* (New York : Taylor and Francis, 2006) (« [n]o matter how desperate, domestics continued to reject live-in work. Independence was more important to them. »)

¹¹² Adelle Blackett & Dzodzi Tsikata, « Vulnerable Workers » in Frédéric Mégret et al , *Dignity : A Special Focus on Vulnerable Groups, Swiss Initiative to Commemorate the Sixtieth Anniversary of the Universal Declaration of Human Rights*, June 2009, at 59. Available at http://www.udhr60.ch/report/HumanDignity_Megret0609.pdf.

¹¹³ UN Women, *Progress of the World's Women : In Pursuit of Justice*, 2011 at 68.

¹¹⁴ ILO Law and Practice Report, *op. cit.* See also Dinat & Peberdy, *op. cit.* (noting that 20% of domestic workers in their study were required to work 7 days per week in Johannesburg, despite the Sectoral Determination restricting working hours and providing a day of rest on Sundays.

¹¹⁵ See e.g. Human Rights Watch, *Morocco : Inside the Home, Outside the Law : Abuse of Child Domestic Workers in Morocco* (December 2005) (documented wages actually paid to domestic workers were far below the lowest minimum wages specified by law).

¹¹⁶ Paul Benjamin, « Conciliation, Arbitration and Enforcement : the CCMA's Achievements and Challenges » (2009) 30 *Industrial Law Journal* (Juta) 26.

¹¹⁷ Basic Conditions of Employment Act, Section 65 ; University of Western Cape Social Law Project, « Enforcing the Unenforceable ? From Enforcement to Compliance », 2011.

¹¹⁸ See Laura Griffin, « Borderwork : 'Illegality', un-bounded labour and the lives of Basotho migrant domestic workers » Doctoral Thesis, Faculty of Arts/ Faculty of Law, University of Melbourne, December 2010.

¹¹⁹ General Comment No. 1, paragraph 50.

¹²⁰ Canadian Civil Liberties Association, “Who Belongs? Rights, Benefits, Obligations and Immigration Status: A Discussion Paper,” September 2010.

¹²¹ See ILO Law and Practice Report, op. cit. at 41-42.

¹²² See e.g. Shireen Ally, *From Servants to Workers : South African Domestic Workers and the Democratic State* (Ithaca : Cornell University Press, 2009).

¹²³ See Blackett & Tsikata, op. cit. ; ILO Law and Practice Report, op. cit.

¹²⁴ Travailleurs et travailleuses unis de l’alimentation et du commerce, Section locale 501 c. Johanne L’Écuyer & Pierre Locas, Commission des relations du travail (2010) QCCRT 0191, 16 April 2010.

¹²⁵ Dovelyn Rannviag Agunias & Neil G. Ruiz, *Protecting overseas workers : Lessons and cautions form the Philippines* (Migration Policy Institute, September 2007).

¹²⁶ See Quebec model contract of April 2011, available <http://www.immigration-quebec.gouv.qc.ca/en/forms/search-title/employment-contract.html> .

¹²⁷ ELS.MSP/2005/4.2.5, Dar es Salaam, 5 August 2003. Available at <http://www.sadc.int/index/browse/page/171>.

¹²⁹ See Adelle Blackett, Beyond Standard Setting: A Study of ILO Technical Cooperation on Regional Labor Law Reform in West and Central Africa (2011) 32 Comparative Labor Law and Policy Journal 443 at 469.

¹³⁰ See La Conférence interafricain de la prévoyance sociale, <http://www.lacipres.org>.

¹³¹ See Hilma Shindondola-Mote, *The plights of Namibia’s Domestic Workers* (Windhoek : Labour Resource and Research Institute, 2008). 68 – 69.

¹³² General Comment No. 1, at paragraph 66.

¹³³ General Recommendation No. 26, at paragraph 23

¹³⁴ See Yeates, op. cit. at 436.

¹³⁵ Adepoju, 2007, op. cit. at 47.

¹³⁶ Adelle Blackett, ‘Introduction : Regulating Decent Work for Domestic Workers’ (2011) 23 Canadian Journal of Women and the Law 1 ; Lourdes Beneria & Gita Sen, Class and Gender Inequalities and Women’s Role in Economic Development – Theoretical and Practical Implications (1982) 8 Feminist Studies 157.

¹³⁷ Parrenas, op. cit.