

A Matter of Policy or Strategy? Promoting the Human Rights of Filipina Domestic Workers in Canada

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The model of universal human rights for all human beings contradicts the idea that all human beings, without exception, have a right to be human.

The very logic of rights in a liberal capitalist framework of the state and the law, while allowing for emancipatory struggles for the oppressed and impoverished, creates potential for the egoistical exercise of freedom of lawfully harming others.

— Upendra Baxi

From Human Rights to the Right to be Human. (1994)

Two recent developments could have raised hopes that highly questionable policies such as Canada's Live-in Caregiver Program (LCP) would be scrutinized and discarded for their clearly racialized and discriminatory character. This confluence of events could have provided opportunities for advocates to push for genuine and longlasting reforms. First, the Canadian government recently enacted a brand new Immigration and Refugee

Protection Act which took effect on 28 June 2002, and second, on a global level, the results of 2001's highly controversial "World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance" have come up for evaluation and review.

Unfortunately, Canada's new Immigration and Refugee Protection Act has made no specific mention of the LCP or changes to the program. The regulations included in the act, introduce certain token amendments but effectively retain all objectionable features. For its part, despite the many controversies which hounded the "World Conference Against Racism" which took place in late 2001 in Durban, South Africa, it was a major, albeit disappointing attempt, at reminding states worldwide of the very basic principles of nondiscrimination and tolerance which have shaped our present understanding of the human rights corpus.

As they are, human rights standards ring hollow for Filipina domestic workers in Canada who continue to

face multiple levels of disadvantage. On the first level, their specific human rights, namely the equality and non-discrimination provisions enshrined in the Canadian Charter of Rights, as well as relevant international human rights instruments to which Canada is a party, including the International Bill of Human Rights, are often violated with impunity and even with the state's complicity.¹ Specific provisions on rights against slavery and other forms of servitude, adequate standard of living, fair labor conditions, and access to effective judicial and administrative remedies, are just some of the areas that are violated or become prone to violations.

On another and even more significant level, as it has been asserted by Makau Matua (2001):

The issue of power has been largely ignored in the human rights corpus. It is equally important that it also address deeply lopsided power relations among and within cultures, national economies, states, genders, religions, races and ethnic groups, and other societal cleavages.

As will be discussed further, this cannot be any more true than in the case of Filipina domestic workers in Canada. It would seem futile then, to measure the violations of specific human rights provisions without also scrutinizing the basis of their creation and eventual perpetuation.

In this paper, "human rights" is not confined to invoking specific provisions of the Canadian Charter of Human Rights or international human rights treaties. My aim is not to discount the potential of these human rights laws and treaties for effecting sociopolitical and economic reforms; however, the inherent biases and limitations that brought them into being must be recognized. As expressed in the Canadian context by Ontario Court of Appeals Justice Rosalie Silberman Abella (1998):

No one opposes equality of human rights. But their definition and application produce controversy of a fundamental kind.

A "DEHUMANIZING" PROGRAM

The program (LCP) systematically dehumanizes you. It systematically erodes your self-esteem.

Elsa, a domestic worker (in Arat-Koc and Villasin 2001, 71).

The various critiques of the LCP, the feminist debates about the undervaluing of paid and unpaid domestic work, and the historical and policy context in which the LCP is implemented, reveal a double standard at work in human rights promotion and protection. For while it cannot be denied that Canada is conscious of its responsibility in upholding international human rights standards, it is

becoming evident that it is unable to guarantee adequate protection for all, as exemplified by the experience of Filipina women immigrating to Canada under the LCP.²

The two main objectionable features of the LCP are: (1) the live-in requirement and, (2) the caregivers' precarious temporary immigration status (Sadoway et al. 2001; Saka and Stasiulis 1997a; Grandea 1996; Arat-koc and Villasin 2001, fn. 4). These features are deemed characteristic of Canada's exclusionary view of citizenship rights which leave foreign domestic workers with very little resources to avoid or to defend themselves from various forms of abuses (Bakan and Stasiulis, 1997a, 37 fn 6). While it has been argued that domestic workers have a form of "negotiated citizenship," Filipina domestic workers' lives reveal a disproportionate reality of oppression and disadvantage, more than the benefits that could be or might have been derived therefrom (Bakan and Stasiulis 1997b). Soysal's (1994) notion of a "post-national citizenship" based on the universality of human rights comes from a European Union perspective which unfortunately appears to be a mere idealized metaphor if viewed in the Canadian context.

Human rights contradictions lie in the very essence of domestic work as a highly gendered phenomenon.³ At one level, the work of Filipina live-in caregivers frees the Canadian woman citizen of the patriarchy-

imposed responsibility over domestic or household duties (the so-called private sphere) thus enabling her to work in the formal economy or the "public sphere." Although the female employer and domestic worker share the same gender, they are separated by class, ethnicity, and legal status (Macklin 1982). At another level, the Filipina live-in caregiver's work in the public sphere (i.e., "compensated work"), occurs within the private household where she then becomes extremely vulnerable to demeaning or inhumane treatment. This "live-in" component of domestic work has often proven to allow for the perpetration of sexual, physical, and emotional abuse against many live-in domestic workers, as well as labor code violations ranging from unpaid overtime work to extended/flexible hours, and the like (Arat-Koc 2001, fn 4). "Living-in" along with workers' lengthy separation from their families resulting from the LCP requirements shows how Canada treats them as mere "workers" rather than as human beings.⁴ Moreover, these conditions are not imposed on other workers who are readily admitted to Canada as permanent residents. Hence, the LCP offers a clear case of discrimination.

Another glaring feature of the LCP is the fact that nearly 80 percent of those admitted under the Live-in Caregiver Program are from the Philippines and others coming from Caribbean countries, raising the issue of racialization.⁵ It has been pointed out that

the recent decline in rights of foreign domestics, including the refusal to grant permanent resident status, has coincided with the entry of substantial number of women of color from developing countries (Bakan and Stasiulis 1997a, 32, 36). Hence, over time, the erosion of the legal status of domestic workers serves to confine migrant women of color to domestic servitude (Teo and Visnjic 1997).

FILLING CANADIAN FAMILIES' DEMAND FOR LIVE-IN DOMESTIC WORK

Formerly known as the Foreign Domestic Movement (FDM) Program, the Live-in Caregiver Program (LCP) modified the latter and came into force on 27 April 1992. This program was introduced in Canada's immigration program to fill the acute shortage of domestic workers and child care alternatives for Canadian families. A live-in caregiver is deemed to be "a person who resides in and provides child care, senior home support care, or care of the disabled without supervision in a private household in Canada where the person being cared for resides."⁶ Most of them, however, are also required by employers to perform various types of household chores such as cleaning, cooking, and the like. Successful applicants receive an employment authorization specifying the name of the employer and the period covered. If they complete two

years of employment, within three years of arrival in Canada, LCP participants can apply for permanent resident status.

To qualify under the LCP, the applicant must satisfy three basic requirements: education, training and experience, and language skills. The educational level required is that equivalent to successful completion of Canadian secondary school, which is meant to allow the applicant to be competitive in the general labor market once the caregiving period is over.⁷ However, doubts have been raised as to whether this requirement fulfills its avowed objective, as foreign educational attainments are hardly recognized in the Canadian job market (Ng and Estable 1987, in Macklin 1992). This is proven by many caregivers who are forced to continue performing domestic work even after they have become landed immigrants.

The training/experience requirement on the other hand, expects applicants to have completed "six months of full-time training in a classroom setting"⁸ or "completion of one year of full-time paid employment, including at least six months of continuous employment with one employer, in that field or occupation within the three years immediately prior to the day on which they submit an application for a work permit."⁹ It must be noted that the option of "one year full-time paid employment" in lieu of the six months full-time training was only introduced a year after LCP was

created, and only after domestic workers' organizations like INTERCEDE lobbied for it.¹⁰

The language requirement is such that the applicant is expected to speak, read, and write in either English or French "at a level sufficient to communicate effectively in an unsupervised setting," to enable them to contact doctors, firemen, or police in emergency situations.

Once admitted, the Filipina domestic worker and the employer sign an employment agreement outlining the general terms and conditions of employment. However, monitoring of the employer's compliance with the terms of the agreement is lacking, if not inexistent. "Usually they (the CIC) just advise us to look for another employer," says one Filipina who is a former domestic worker. On the other hand, if a domestic worker is the one deemed violating any of the terms of the contract or the LCP conditions, the threat of deportation immediately looms large and is executed without delay by the Citizenship and Immigration Canada (CIC). Some of the well-publicized cases of domestic workers who would have met this fate if not for the intervention of NGOs and advocacy groups include Leticia Cables¹¹ and Melcah Salvador.¹²

Notably, while this employment agreement is administered by the Federal government, labor standards are regulated by the provincial governments, varying from one province to another. This highly confusing and complex web of legal rules and

regulations often lead to the practical absence of effective means for workers to enforce rights.

DIASPORIC TRENDS OR INSTITUTIONAL RACIALIZATION?

The fact that Filipinas have disproportionately comprised a great majority of those coming in under this program, conjures images of racism and/or racialized treatment.¹³ Justifications range from adequate knowledge of English to employer's prior experiences or hearsay evidence on the supposed strengths of Filipina domestic workers as being "naturally domesticated, good with children, born housekeepers and subservient (Macklin in Arat-Koc and Giles 1997)." Whether or not these stereotypes have adequate basis, they nonetheless imply that the Filipinas voluntarily perform domestic work because of their natural inclination to do so. Employers and recruiters rarely express any concern regarding the structural forces such as severe economic need and lack of adequate jobs in the Philippines, which leave these women with very little choice other than to perform jobs which Canadians themselves will most likely avoid.

PROMOTING FILIPINA LABOR AS EXPORT COMMODITY

Despite the widely perceived existence of the Philippine government's Labor Export Policy, there is a continuing refusal by the state to

formally acknowledge it. For instance, the Philippine labor attache in Toronto explained: "There is no explicit Labor Export Policy. We believe that it is more of a migration phenomenon where people go out voluntarily, seeking greener pastures. And since it (the right to travel) is guaranteed by our Constitution, we cannot prevent a Filipino citizen from going anywhere."¹⁴

From a historical vantage point, the Philippine government's Labor Export Policy (LEP) began in 1974 when the Labor Code of the Philippines was enacted and then Pres. Ferdinand Marcos wanted to take full advantage of the growing and lucrative labor export market. In 1978, a directive (Presidential Letter of Instruction 852) announced the government's new "corporate export strategy" designed to encourage groupings of overseas employment contracts and grant incentives to contractors participating in the scheme. In 1980, another law (Presidential Decree 1691) was issued requiring government-to-government arrangements for recruitment of workers. And in 1982, the Philippine Overseas Employment Agency was created which granted it comprehensive authority over migrant contract workers.

After much clamor, however, a law entitled, Migrant Workers and Overseas Filipinos Act of 1995 was passed.¹⁵ It states, among others, that it shall "afford full protection to labor, local and overseas, organized and unorganized, and promote full employ-

ment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers," thereafter providing various mechanisms by which this can be realized (ibid., 5.2 [b]).

Nonetheless, numerous tales of abuse and exploitation are being continuously reported and documented in media putting into doubt whether this law is having any positive effect at all.¹⁶ "Moreover, with the Philippine socioeconomic trends not getting any better, the law's stated objectives indeed appear to be very slow in catching up with reality."¹⁷

Hence, there is a general perception, and also a unanimous view among the organizations interviewed for this paper, that while originally meant to be a temporary answer to the country's poverty, unemployment and serious balance of payments problems, the export of labor has become an institutionalized and pervasive aspect of the Philippine political economy. A documentary film on the LCP¹⁸ reiterates this fact by stating that "people are the country's most profitable export and the government's main source of foreign currency, sending \$2 billion every year, about half of which is used by the government to pay off foreign debts." Official government data state that remittances of overseas Filipino workers reached a peak of US\$5.7B in 1997 and \$4.9B in 1998.¹⁹

IDENTIFYING THE ACTORS AND INSTITUTIONS

Leading scholars on foreign domestic workers in Canada have carefully analyzed the flaws of the LCP program and suggested reforms in this regard. Despite these well-intentioned trailblazing efforts, the program remains substantially what it is: a highly racialized tool for exploiting a rich supply of cheap domestic labor to appease a clamor for greater government subsidies for child and elderly care. Consequently, these women are primarily treated as a seemingly endless supply of "labor goods" from Third World countries such as the Philippines.

How Filipina live-in caregivers' human rights are pursued will be discussed through the identification of the organizational campaigns and activities. In this regard, actors and institutions play a major and indispensable role not only in formulating policy but more importantly, in ensuring that their intended benefits are realized in the implementation process.

Although the organizations discussed here are primarily Toronto-based, their issues and concerns are applicable throughout the country. At the grassroots level, these include INTERCEDE, the Philippine Women Center of Ontario, the Migrant Women's Collective (formerly known as the Coalition for the Defence of Migrant Worker's Rights), and church

organizations such as the Our Lady of Lourdes Social Action Group.

At the governmental level, I looked into the role being played by the Philippine labor attaché based in Toronto, as the representative of the Philippine government here in Canada. Observations were also made during a newcomers' orientation session sponsored by the Philippine Consulate in Toronto, the Philippine Labor Attache and the Catholic Community Services of York Region. For the Canadian or receiving government side, I have mainly relied on secondary data and on data posted on the websites of two departments, the Citizenship and Immigration Canada (CIC) and the Department of Foreign Affairs and International Trade (DFAIT).

At the international level, I looked into the role of the Special Rapporteur on the Human Rights of Migrants during her visit to Canada in September 2000. There will also be a brief analysis of the Migrant Workers Convention and Canada's continuing refusal to ratify it.

Although the international context is much broader than can be discussed here, this choice was made due to the fact that the Special Rapporteur's 2000 visit to Canada gave her the chance to directly interact with relevant actors in the Canadian context thus avoiding the usual generalities and high abstractions of which the international human rights organizations are often accused.

A CLOSER LOOK AT NGOs

Among the many NGOs (non-governmental organizations) advocating for the rights of foreign domestic workers, INTERCEDE seems to be a strong and influential presence. The organization started as a lobby group for domestic workers (INTERCEDE stands for "International Coalition to End Domestic's Exploitation") but later expanded to be known as "INTERCEDE for the Rights of Domestic Workers, Caregivers and Newcomers." Due to its origins, a great majority of its clients continue to be live-in caregivers, domestic workers and/or members of their families.

INTERCEDE offers client services, conducts education and training as well as organizing and advocacy campaigns. While the organization is open to people of any gender, ethnicity, class, or legal status, 87 percent of its clients are from the Philippines.²⁰ Of this number, about 85 percent have temporary status (Diaz 2000). The services rendered include immigration-related matters, i.e., extending workers' temporary work permits, applications for permanent residence, and sponsoring family members; labor-related problems, i.e., wages and wage calculation, tax and other deductions, vacation and overtime pay, and finding a new employer; and social service-related issues such as housing, health and OHIP coverage, education and upgrading (INTERCEDE 2000).

Through its education and training component, INTERCEDE holds regular monthly meetings and workshops on various issues relating to domestic workers' situation (e.g., child care skills, financial management, violence against women, human rights, family reunification, immigration and citizenship laws, etc.). Likewise, INTERCEDE continuously networks with other organizations and government agencies to lobby for human rights, immigration (including the scrapping of the live-in requirement and the admission of caregivers as immigrants at the outset), labor, and other issues.

Through the years, INTERCEDE counsellors have developed some expertise on issues commonly raised by the live-in caregivers advising them or referring them to proper agencies or volunteer lawyers if legal representation or advice is called for. INTERCEDE has also directly advocated for live-in caregivers whose immigrant application may have been denied, either for reconsideration or reapplication, based on humanitarian and compassionate grounds (Diaz 2000).

Pura Velasco, a former domestic worker and the first Filipina president of INTERCEDE in the early 1990s, is now actively involved in an organization called Migrante (Filipino word for "migrant") Women's Collective (MWC). Formerly known as the Coalition for the Defense of Migrant Workers' Rights, this organization evolved from a group of organizations such as the United Filipino Mothers,

Caregivers' Cooperative, Katipunan ng Manggagawang Kababaihan (Coalition of Female Workers), and others. Since it was deemed difficult to sustain a coalition of organizations, with varying objectives, Velasco and her colleagues decided to form Migrante Women's Collective into an organization of individuals.

Unlike INTERCEDE, which obtains most of its funding from the Immigrant Settlement Assistance Program (ISAP) of CIC, MWC relies purely on the volunteer services of its members and occasional logistical support from a worldwide organization of Filipino migrant workers called Migrante International. The mandate of MWC is to defend the rights and welfare of Filipino migrant workers and those from other ethnic groups or nationalities. However, 99 percent of its membership remains Filipina. Among its LCP-related campaigns are the removal of the \$975 landing fee for domestic workers, the scrapping of the live-in requirement and the admission of all caregivers/domestic workers as permanent residents. A number of the individual cases they assist also include domestic workers who are already permanent residents but who continue to be victimized by various forms of exploitation and abuse.²¹

While the LCP campaigns form an important priority for MWC, the organization also regularly conducts education, training, and advocacy campaigns on other related issues such as women's rights and often

juxtapose migrants' situation in Canada with the historical, social, political and economic conditions in the Philippines. These transnational linkages (Glick-Schiller et al. 1994) have evolved from the fact that most members of the organization were anti-Marcos activists sometime during the former Philippine president's twenty-year dictatorial rule and are thus bound by a more or less common ideological paradigm.

Gene Lara, also formerly with INTERCEDE, is active with the Our Lady of Lourdes Parish Social Ministry, where she acts as a community outreach worker. The ministry was created in late 1999 to take care of social justice issues within the parish community, particularly St. James Town, which deemed to be the most densely populated area in Toronto,²² if not in the entire North America.²³ Since this is a parish community outreach program open to all regardless of gender, religion, age, ethnicity, or legal status, Lara's interaction is not limited to domestic workers nor to Filipinas. Nonetheless, she maintains that a great majority of their clients are Filipino immigrant families, with a number of those who came into Canada through the LCP. Although the parish also conducts advocacy campaigns and provides individual services, they try to inculcate a spiritual dimension in their services, as the unique feature of their work. Most of the depression arising from family separation and the live-in requirement "is aggravated by the lack

of a spiritual anchor so we try to help them also in that aspect" (ibid.).

Of the organizations interviewed, the Philippine Women's Center of Ontario (PWC Ontario), is the newest, having been formalized only in October 2000 although it is closely affiliated with the Philippine Women's Center in British Columbia (B.C.) which was conceptualized in 1986 and formally launched in 1990.²⁴ Joy Sioson, who was a long time member of PWC in B.C., had been one of the active proponents of the PWC Ontario's programs and activities. Among the initial activities is a series of film showing and discussion sessions on the plight of Filipina domestic workers in Canada. Another major activity was the joint launching of the Purple Rose Campaign and the PWC publication entitled, *Canada: The New Frontier for Filipino Mail-Order Brides* (Philippine Women's Center, B.C., 2000). The former is an international campaign to end all forms of trafficking of Filipino women, including the mail-order bride phenomenon spreading increasingly throughout Canada.

While PWC Ontario intentionally limits its mandate to Filipina women and their various concerns, there is an open recognition that these issues are vitally linked to historical antecedents and present global developments. Nonetheless, they wish to highlight the collective reality of Filipinas in Canada in an attempt to change the situation whereby despite being considered to be among the

most highly educated and highly skilled immigrants to Canada, Filipinas are still among the lowest paid, and often left to do the "dirty, dangerous and difficult jobs."²⁵ Sioson especially points out the "deskilling" of Filipinas resulting from being confined to domestic work, coupled with the institutional prejudice against foreign credentials, which leaves the Filipina caregivers with very little social capital to utilize in moving on to other types of jobs.

THE FILIPINA LIVE-IN CAREGIVERS AND INTERNATIONAL HUMAN RIGHTS: DO THEY STAND A CHANCE?

As they are, international human rights guarantees appear meaningless to migrant domestic workers who routinely endure violations of their basic rights in exchange for the promise of superficial economic upliftment for themselves and their families. Whether in the context of national sovereignty or of increasing globalization, migrant workers face formidable barriers in having their human rights fully recognized and upheld. In the specific case of Filipina live-in caregivers in Canada, there is a prevailing sentiment that international campaigns seem very taxing yet futile as progress is slow and concrete individual cases are often not fought, much less won, at the international level.

Of the many relevant international organizations, I have chosen to deal

with some of the relevant work of the special rapporteur on the rights of migrants as illustrative of the efforts being exerted at the international level, instead of attempting to do an exhaustive discussion of all the existing institutions and fora.²⁶ She came to visit Canada on 17–30 September 2000, and subsequently wrote a report outlining the observations gathered and recommendations given to the Canadian government. During her visit, made upon the invitation of the Canadian government, the Special Rapporteur not only met with government officials, but also took some time to discuss various issues with NGOs and migrant workers themselves.

In her report (Rodriguez 2000), the special rapporteur documented some of the complaints of live-in caregivers such as the employers' abuses concerning hours of work, living conditions, wages, as well as their inability to invoke their rights for fear of being unable to find another employer or losing their chance at becoming permanent residents in Canada. In her conclusions, the special rapporteur "commended" the Canadian government for the LCP, which, she says, "clearly sets out the rights of persons concerned." She added however, that despite the clarity of the program, unexpected situations occur which are not covered and which leave beneficiaries in a vulnerable position with respect to employers who do not abide by the rules, thus recommending "a well-

targetted information campaign on the rights of these workers." Lastly, the special rapporteur urged the Canadian government to ratify the Migrant Workers Convention.

The first recommendation is consistent with an NGO lament that the Canadian government "is not proactive in providing the domestic workers with all the information they will need, letting it fall on the latter's responsibility to find out for themselves" (Velasco 2000).

On the other hand, there are serious doubts as to whether the second recommendation will be heeded. Among Canada's objections to the convention include the following: "Canada will be examined by a treaty committee and shortcomings could be a source of international embarrassment," and that "many of the problems are not problems for Canada."²⁷ On the surface, these objections are clearly not viable arguments against ratification as an international human rights instrument is meant to protect long-suffering migrant workers worldwide. The subtext of these objections is that Canada is not only overly conscious of its international image, but that it also continues to turn a blind eye on the many problems facing its migrant workers in general and those specifically immigrating to Canada under the LCP. I also had the chance to ask a foreign affairs official working with the Canadian Human Rights, Humanitarian Affairs and International Women's Equality Division during a forum in

Ottawa on whether the special rapporteur's visit has made Canada reconsider its position regarding the ratification of the Migrant Worker's Convention.²⁸ The answer was an unequivocal "no" although it was later added that the matter is still being discussed at the provincial level. The official then ended by saying that, "it is not a priority."

It is indeed very disappointing that the Canadian government continues to refuse to perform even the symbolic act of ratifying an international instrument as the Migrant Workers' Convention. While it is well-known that these human rights treaties "may not be implemented where they are ratified, and above all, are ignored by the countries where abuses are worst," the more disturbing aspect is Canada's act only reinforces instead of alleviates the "strong trends towards exclusionary nationalism and racism in many places."²⁹

This seeming act of antipathy likewise feeds the perception that:

The anomalous features of the foreign domestic program do not mean that it is a racist and sexist policy in contrast to other Canadian policy areas that are impartial, fair and universal. Rather, it is anomalous only in the degree of its transparency, revealing ideological and institutionalized processes that are normally hidden (Balkan and Stasiulis 1997a).

Right now, the Migrant Workers' Convention has been ratified by nineteen states, needing only one more ratification to enter into force, more than ten years after its adoption by the United Nations General Assembly on 18 December 1990.²⁹ It needs at least twenty ratifications to enter into force and notably, none of the "receiving" countries had done so as most, if not all of the ratifying states are primarily "sending" countries. Meanwhile, international NGOs led by December 18³⁰ (an online organization named after the official UN International Migrants' Day), and Migrants Rights International are campaigning hard not only for the Migrant Workers' Convention's to come into force, but also for the receiving countries to ratify it thus allowing its provisions to have meaning in practice. Even this seemingly useful piece of international legislation, however, is not devoid of criticisms such as those that view it as "a compromise between guaranteeing migrants' international human rights and acknowledging state sovereignty" (Nanda 1993). Nanda further claims that while the convention creates new rights, it "also limits the existing rights of migrant workers granted by the other international human rights instruments, in addition to language ambiguities which may suffer from varying interpretations." But since this convention has yet to enter in force, there is no effective way to test this assertion.

Although the Philippines deserves commendation for being one of the first signatories to this convention, it is nonetheless morally obliged to do so if only to protect its seven million migrant workers deployed in 182 countries worldwide (Alcuitas-Imperial 1999). However, whether it has any power to influence the governments of these receiving countries is another matter.

GAPS IN THE PROTECTION OF FILIPINA LIVE-IN CAREGIVERS IN CANADA

From interviews and interactions with nongovernment organizations, a perusal of documents and reports they have prepared for various fora, and analysis of official government and secondary data, the existing gaps in the protection of Filipina caregivers' lives may be divided into the following main areas:

Commodification and Devaluing of Domestic Work

It is ironic that while the Philippines' Labor Export Policy results in the commodified treatment of Filipino women as valuable sources of export dollars, the institutional prejudice of Canada as the receiving country demeans the value of domestic work despite its admittedly high demand in Canadian society (Beach et al. 1998).³¹ This is further proven by the fact that, unlike other

skilled workers who are granted landed status upon admission to Canada, live-in caregivers are initially admitted on a temporary basis, with the promise of being allowed to apply for permanent residence (but not guaranteed landing!) only after certain conditions are fulfilled.

This diametrically opposed treatment may leave the Filipina domestic workers in some form of limbo, but they nonetheless have the same result: a denial of their true worth as human beings.

Gender Equality

While the earlier clamor for equality rights has resulted in more Canadian women being empowered to compete with men in the "public sphere" thus veering them away from household or domestic duties, a class-based irony has sadly resulted. That is, the burden of domestic work was passed on to women of lower status, in this case, women of color from poor, developing nations filling the "void" left behind by their upper class women employers.

Moreover, Canada's failure to provide adequate childcare facilities and its continued exploitation of women from developing countries to satisfy the demand for childcare, does not only perpetuate the highly gendered view of domestic work, but also reveals an utter lack of sensitivity to the fundamental human rights of women (ibid.). In fact, this lack of gender sensitivity has caused Canada

to be the subject of unprecedented criticism from United Nations human rights bodies "for neglecting issues of poverty and social and economic rights, particularly among women" (Jackman and Poster 1995, 45). Foremost of these issues is violence against women, notably domestic workers, many instances of which occur in the context of their live-in requirement.

Citizenship Rights and Temporary Status

The temporary status of foreign domestic workers or Filipina live-in caregivers in Canada is the main vehicle through which citizenship rights are denied. Although this pertains to the denial of formal citizenship rights in the traditional sense, the effects on the social, economic, and political status of these women are wide-ranging and the implications enormous. Hence, there is a need to recast conceptions of citizenship as a dynamic and not a static concept (Bakan and Stasiulis 1993, 1997b). An adherence to static notions based on Canada's sovereignty over its subjects and territory only creates a subordinate status for domestic workers and reveals a double-standard for these women and members of their families.

Access to certain crucial socio-economic benefits is a main concern. For instance, among those benefits effectively denied these women are

employment insurance and pension benefits for which they are nonetheless required to make contributions. But since entitlements to these benefits are tied to citizenship, their membership arising from their contributions is purely one-sided (in favor of the Canadian government) and illusory.

Moreover, another layer of injustice arises in the case of Canadian-born children of these Filipina live-in caregivers (e.g., Melcah Salvador) who are denied basic medical and other benefits normally granted to Canadian born citizens, mainly because of the status of their mothers. While this may be differently dealt with in other provinces where health insurance laws and entitlements are different, it is still a matter worth looking deeper into as it clearly results in a denial of one's equality rights guaranteed under the Canadian Charter of Rights. The Supreme Court in the case of *Baker v. Canada* (1999 S.C.J. 39) has established that the interpretation and application of administrative law (including immigration law) should be consistent with international human rights treaties ratified by Canada. The International Convention on the Rights of the Child (UN Doc A/RES/44/25, 1999) was ratified by Canada hence ought to inform all of its decision and policy making (Jackman and Porter 1999, 57).

Racialized Scheme

It has been shown that the denial of permanent residence status coincided with the entry of people of color, mostly women from developing nations such as the Caribbean countries and the Philippines (Daenzer 1997). Prior to this, domestic workers from Europe were granted landed status right away, welcomed with open arms, and were deemed part of Canada's nation-building project. The disproportionate influx of women from the Philippines has also raised sentiments that "they are taking advantage of our desperation," as one Filipina domestic worker herself put it.

Not quite accidentally, this phenomenon was precipitated by globalized structures allowing for the exploitation of the economic need of people from poor, developing nations by highly developed countries. In fact, the ideology of "charity" or "foreign aid" was even used to portray the LCP (Arat-Koc 1992).

Live-in Situation

Extremely woeful and poignant tales of physical, emotional, psychological and sexual abuse, isolation and noncompliance with labor standards, and contractual provisions arising from the live-in situation have been reported in newspaper articles, video documentaries, and research studies. The most recent, large-scale, and systematic of these studies is the book, *Caregivers*

Break the Silence: A Participatory Action Research on the Abuse and Violence, including the Impact of Family Separation Experienced by Women in the Live-in Caregiver Program (Arat-Koc 2001). This book confirms that many cases of abuse arise from the live-in situation. These cases, as handled by the organizations interviewed, formed the basis of their unanimous advocacy for, at the very least, the removal of this requirement from the LCP. Even the Canadian government has acknowledged the existence of abuse but seems to have done little to solve the problem.³²

Ineffectual Legal and Formal Remedies

Their precarious immigration status as well as the "institutional asymmetry" between caregiver and employer and between caregiver and the receiving state, are but some of the daunting limitations faced by Filipina live-in caregivers in Canada (Bakan and Stasiulis 1997b). Fearing the loss of their only chance to become landed immigrants, very few even attempt to file complaints or vindicate their rights using the formal judicial and administrative processes. Further, the lack of an effective monitoring system of the live-in caregivers' working conditions is a deplorable void in this program. Moreover, the lack of effective communication of crucial information in this regard is clear.

On the part of the Philippines as the sending state, remedies offered

range from the orientation seminars for newcomers to Canada to various forms of assistance such as mediation proceedings, referrals, and moral support. It is admitted, however, that employers do not always cooperate with such forms of intervention and are not bound to abide by the labor attaché's recommendations. Thus, the caregiver is often simply advised to change employers, return to the Philippines, or file the appropriate case in court (Young 2001).

Another consequence of long delays and other administrative problems, observers speculate, is an increasing number of Canadian employers who are hiring about 30,000 undocumented domestic workers in Toronto alone (Mitchell 1993). The undocumented status of these workers makes them all the more vulnerable to various forms of abuse to which documented live-in caregivers are already exposed.

Family Separation and Reunification

"Why are we, Third World women, leaving our children to take care of other people's children?" laments a former domestic worker.³³ Perhaps the most glaring illustration of the Canadian government's lack of sensitivity and concern for the caregivers as human beings is its refusal to allow them to bring their families to Canada. Because of conditions, such as the live-in requirement, the two-year work period and the minimum income requirement to sponsor

family members, the Filipina caregivers and their spouses and children endure lengthy separations. As a result, family breakdowns, alienation, emotional stress and all forms of family problems imaginable are among the most serious and long-term consequences faced by the caregivers even after they are able to sponsor their families to come to Canada (Arat-Koc 2001; *When Strangers Reunite* 1999).

Equality and Labor Rights

Although closely related with the other areas discussed, this deserves special mention considering a few factors. First, caregivers are the only group of workers allowed conditionally before being given permanent residence status. This is already a clear violation of the equality provisions in the Canadian Charter of Rights. Second, this conditional status effectively prevents them from exercising basic labor rights such as the right to unionize and bargain collectively. Although for a short time included by the NDP government in the Labor Relations Act, this nonetheless proved ineffective in the situation of domestic workers even as the Conservative government that took over soon rescinded it (Fudge 1997). Hence, these very basic omissions in the caregivers' rights only aggravate their already disadvantaged status for denying them the means by which to negotiate for better conditions. Lastly, the disparity of

labor rights is further entrenched by the fact that this form of labor effectively privileges a particular class, namely those with financial means usually derived from multinational employment linkages.

“HUMAN RIGHTS” OR THE “RIGHT TO BE HUMAN”

Admittedly, there are some major omissions in this paper’s attempt at identifying the relevant actors advocating for the protection of Filipina caregivers’ human rights. Foremost of these omissions are the caregivers themselves. While there is no intention to ignore their importance, much research has been done on this issue and this paper draws from this earlier research and the organizations which have assisted them along the way.

Another omission is the role played by employers and recruiters or employment agencies, which undoubtedly play decisive roles as far as caregivers’ human rights are concerned. For one, the caregiver is dependent on the employer not only for employment but also for shelter, food, and immigration status. This creates unequal power relations and great potential for abuse, as has been clearly happening. The recruitment or employment agencies on the other hand, are mainly responsible for luring these women from poor countries into applying for the LCP without adequately informing them of the many consequences they may face while

working under this program, and after charging the workers exorbitant fees. These omissions are primarily based on the diametrically opposed interests they have vis-à-vis the caregivers. While we can ideally recommend “sensitization workshops” and the like to make employers and employment agencies empathize with the caregivers’ plight, this is just a quixotic dream. The long and arduous struggle for unionization in general and for domestic workers in particular had already proven this. Hence, the only way forward is to persist in the clamor for the grant of the right to bargain collectively.

Then again, however, this form of reliance on the State should not raise our hopes too high. A major lesson to be gathered here is that relevant actors cannot rely fully on the state in the protection and promotion of human rights. Empowerment begins with awareness and awareness can be achieved through information and education. Because domestic work can be a potentially isolating work or activity, there is, all the more, a need to provide avenues for countering this isolation. The work of nongovernmental organizations has proven to be very effective in countering this isolation as they provide the venues where grievances can be heard, experiences and resources shared, and struggles collectively advanced, hence assisting workers towards unshackling their fears, insecurities, and other obstacles to growth.

For instance, in view of Canada's refusal to ratify the Migrant Workers Convention, it may help to be reminded that it is also a party to other international human rights instruments, which are likewise applicable to migrant workers as provisions on nondiscrimination are deeply entrenched in these instruments. These international human rights instruments include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which, with active and persistent advocacy, can be used to achieve the same ends. Strong and cohesive solidarity with international and domestic organizations advocating similar struggles will be a big boost and will help increase their influence in pushing for effective reforms. This however, is not meant to discourage attempts at campaigning for ratification and effective implementation of the Migrant Workers' Convention, but simply to emphasize that the struggle for upholding human rights at the international level is never ending and allows much room for creativity and persistence.

We need to be reminded, however, that although the law may be a powerful tool to effect significant changes, it is often not enough. Often the law is but another instrument of the ruling class to preserve the status quo. Thus a well-grounded knowledge and awareness of the significance of other disciplines will be indispensable

tools in ensuring that the law works not for a few privileged members of society but for all, regardless of gender, class, ethnicity, legal and immigration status, or skin color.

For Canada, it is recommended that the LCP and other similar forms of indentured servitude be abolished and instead, domestic work should be given the appropriate dignity and recognition it deserves, commensurate to its enormous contribution to society. For if foreign domestic workers are to be treated as humans entitled to equal rights, immediate reforms must be put in place of these attitudinal and institutional barriers. The clear contradiction between Canada's avowed humanitarian objectives and the inferior status of a particular group of residents, as the Filipina domestic workers, does not augur well for the country and for the rest of the world which it seeks to lead in the human rights and humanitarian arena.

For the Philippines, it is recommended that there should be more active intervention and advocacy for the protection and promotion of its overseas workers in general and the Filipina domestic workers in Canada in particular. Instances of human rights violations should not be taken in isolation and swept under the rug but treated with humanity and viewed as a means to advance effective and meaningful reforms for its exiled population, euphemistically referred to as the country's "modern-day heroes."

At the international level, there is a need to create avenues for leveling the playing field among nations, in terms of protecting individuals across borders, with more emphasis on upholding human dignity and rights, more than the economic concerns that are currently being prioritized. International gatherings such as the recently concluded World Conference Against Racism would not only have been a most appropriate forum to raise these concerns, but more importantly, a powerful tool for states to join forces in combating all forms of racism, xenophobia, and other forms of intolerance. Canada, in particular, was faced with a rare chance of proving its worth, that is, if the new Immigration and Refugee Protection

Act mirrored the humanitarian principles it purports to espouse, including, but not limited to, addressing the many serious flaws of its Live-in Caregiver Program. Nevertheless, it is never too late. For instance, consistent with its avowed leadership in the human rights arena, it would be a critical historic move for Canada to be the first "receiving" and developed nation to ratify the Migrant Workers' Convention, as well as be the twentieth ratification needed for its entry into force. In the final analysis, more than institutional policies and organizational strategies, all it really takes to eradicate racism and other forms of discrimination is a full recognition of and sincere respect for everyone's human dignity.

NOTES

1. The International Bill of Human Rights consists of the Universal Declaration of Human Rights, U.N. Doc. A/810 (1948), International Convention on Civil and Political Rights, 999 U.N.T.S. 171 (1966), and the International Convention on Economic, Social and Cultural Rights, 993 U.N.T.S. 3 (1966). Both Conventions were ratified by Canada in 1976.

2. A brief and general statement on Human Rights and Canada's Foreign Policy can be found in <http://www.dfait-maeci.gc.ca/human-rights/forpol-e.asp>. It states, among others, that "Canada is recognized as a world leader in building international insti-

tutions for the advancement of human rights, and the government is committed to enhancing that leadership."

3. Approximately 97 percent of domestic workers are women, according to Canada Employment and Immigration Commission (Policy Branch), *Foreign Domestic Worker—Preliminary Statistical Highlight Report* (Ottawa: 1991), cited in Macklin, 1992, *infra*.

4. Often, fulfillment of the LCP requirements is not even enough to let them sponsor their families as they also have to satisfy income requirements, their family members have to pass the medical and security clear-

ances, leading to a gap of several years before family reunification is finally realized.

5. According to the 1995 statistics, 74.6 percent of those admitted on a temporary work permit under the LCP for that year lists the Philippines as the "source country." The term "source country" however, may either refer to the country of citizenship and/or the country of last permanent residence (CLPR). The importance of making this distinction should be carefully noted especially in the case of Filipinas, most of whom initially worked as domestic helpers in Hong Kong, Singapore, the Middle East and Europe, before coming to Canada, hence may list those places as their CLPR (in Grandea [1996]).

6. *Immigration and Refugee Protection Regulations*, s. 2

7. *Immigration and Refugee Protection Regulations*, s. 112 (b)

8. *Immigration and Refugee Protection Regulations*, s. 112 (c) (i)

9. *Immigration and Refugee Protection Regulations*, s. 112 (c) (ii)

10. All other proposed changes such as the removal of the live-in requirement, monitoring of employers' compliance with employment contracts, and equal treatment with other skilled immigrants to Canada, were largely ignored hence still the subject of continuous lobbying efforts.

11. News stories on Leticia Cables's case were published in national dailies such as the *Globe and Mail* and the *National Post*.

12. Melcah Salvador's story and campaign updates can be found in: <http://page.infinet.net/ugay/melcah.htm>

13. Recent data obtained from Brian Johnson of Citizenship and Immigration Canada showed the following rates of entrants into the Live-in Caregiver Program (employment authorization) originating from the Philippines: 1996 – 76.51%; 1997 – 77.82%; 1998 – 79.87%; 1999 – 79.35%; 2000 – 76.35%.

14. Romeo Young, Philippine Labor Attache, Interview on 22 February 2001, Toronto.

15. Republic Act 8042, signed into law on 7 June 1995 by former Pres. Fidel V. Ramos.

16. Many of the widely publicized cases were depicted in the video documentary, *Modern Heroes, Modern Slaves*, 1997.

17. According to the most recent official Philippine government statistics, the current (2001) unemployment rate is 11.4 percent and the underemployment rate is 16.9 percent. Meanwhile, the labor force participation rate is pegged at 65.5 percent. (<http://www.census.gov.ph>, 1 May 2001). Hence, unofficial estimates claim up to 40 percent effective unemployment rate (Esguerra 2001. *On Filipinos in Toronto, A Situationer*. Speech delivered before the Consultative Forum [Toronto, 24 February 2001]).

18. *Brown Women, Blonde Babies*, Montreal, Le Videographe, 1991.

19. Philippine Overseas and Employment Agency, 2000. Also available at <http://www.poea.org>.

20. INTERCEDE for the Rights of Domestic Workers, Caregivers and Newcomers. Report to Members at INTERCEDE Annual General Meeting covering the period April 1999 to March 2000 (Toronto, 2000).

21. Pura Velasco, Organizer, Migrant Women's Collective, Interview on 16 February 2001, Toronto.

22. A recent letter to the editor in the *Toronto Star* indicated that the eighteen high-rise buildings at St. James Town house from 30,000 to 35,000 people. ("St. James Town woefully neglected by city," 20 April 2001, by Frederic Dunleavy, co-ordinator, St. James Town Safety Committee, Toronto)

23. Gene Lara, Community Outreach Worker, *Our Lady of Lourdes Parish Social Ministry*, Interview on 13 February 2001, Toronto.

24. The organization's profile can be viewed at <http://pwc.bc.tripod.com/aboutpwc.htm>

25. Joy Sioson, Organizer, Philippine Women's Center Ontario, Interview on 17 February 2001, Toronto.

26. Special Rapporteur Gabriela Rodriguez Pizarro of Costa Rica was appointed by the United Nations Commission on Human Rights on 6 August 1999, pursuant to its Resolution 1999/44 passed at its fifty-fifth session.

27. Obtained by the Canada-Asia Working Group (CAWG) by using the

Freedom of Information Act, published in CAWG's undated newsletter entitled, "Campaign for the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families."

28. This was during the annual meeting of the Canadian Council on International Law in October 2000 in Ottawa.

29. As of February 2002, these 19 states are Azerbaijan, Belize, Bolivia, Bosnia-Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, Ghana, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka and Tajikistan, Uganda and Uruguay.

30. Its website may be found at <http://www.december18.net>.

31. This research study of the child-care workforce found that "regulated child-care is especially lacking for infants, school-age children, children with special needs, rural and isolated communities, and families needing part-time and non-standard hours of care. This is primarily attributed to Canada's lack of a national system of child care and even those administered by provincial governments are not mandatory hence planning and provision of services is usually done in an ad hoc manner."

32. CIC booklet for employers and live-in caregivers downloadable from http://www.cic.gc.ca/english/visit/caregi_e.html.

33. Jesuit Center for Social Faith and Justice, *The Moment*, Volume 5, Number 2 (Toronto, Ontario, 1991).

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