

Global Women: Exploring New Perspectives of Human Rights Issues in Female Migration

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"Labor of love, Labor of sorrow"

"The family is a place of enduring bonds and fragile relationships, of the deepest love and the most intractable conflicts, of the most intense passions and the routine tedium"

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of everyday life. It is a shelter from the workings of a harsh economy, and it is battered by forces beyond its control."

- Arlene Skolnick (1991)

I. INTRODUCTION

Washington, D.C. — In the basement bedroom of her employer's home, Rowena Bautista keeps four pictures on her dresser: two of her own children back in Camiling, a Philippine farming village, and two of children she has cared for as a nanny in the United States. The pictures of her own children, Clinton and Princesa, are from five years ago. As she recently told *Wall Street Journal* reporter Robert Frank, the recent photos "remind me of how much I've missed." She has missed the last two Christmases, and on her last visit home, her son Clinton, now eight, refused to touch his mother. "Why," he asked, "did you come back?"

The daughter of a teacher and an engineer, Rowena Bautista worked three years toward an engineering degree before she quit and went abroad for work and adventure. A few years later, during her travels, she fell in love with a Ghanaian construction worker, had two children with him, and returned to the Philippines with them. Unable to find a job in the Philippines, the father of her children went to Korea in search of work and, over time, he faded from his children's lives.

Rowena again traveled north, joining the growing ranks of Third World mothers who work abroad for long periods of time because they cannot make ends meet at home. She left her children with her mother, hired a nanny to help out at home, and flew to Washington, D.C., where she took a job as a nanny for the same pay that a small-town doctor would make in the Philippines. Of the 792,000 legal household workers in the United States, 40 percent were born abroad, like Rowena. Of Filipino migrants, 70 percent, like Rowena, are women.

Rowena's children live in a four-bedroom house with her parents and twelve other family members—eight of them children, some of whom also have mothers who work abroad. The central figure in the children's lives—the person they call "Mama"—is Grandma, Rowena's mother. But Grandma works surprisingly long hours as a teacher—from 7.00 a.m. to 9.00 p.m. As Rowena tells her story to Frank, she says little about her father, the children's grandfather. [Men are discouraged from participating in child rearing in the Philippines]. And Rowena's father is not much involved with

his grandchildren. So, she has hired Anna dela Cruz,¹ who arrives daily at 8.00 [A.M.] to cook, clean, and care for the children.

[In the United States], Rowena calls Noa, the American child she tends, "my baby." One of Noa's first words was "Ena," short for Rowena. And Noa has started babbling in Tagalog, the language Rowena spoke in the Philippines. Rowena lifts Noa from her crib mornings at 7.00 [A.M.], takes her to the library, pushes her on the swing at the playground, and curls up with her for naps. As Rowena explained to Frank, "I give Noa what I can't give to my children." In turn, the American child gives Rowena what she doesn't get at home. As Rowena puts it, "she makes me feel like a mother." [What Rowena neglects to mention is the fact that the child also gives her employment and opportunities that she will neither get back home.]²

As one reads the deeply moving narrative about the life of Rowena Bautista, and of many other mothers like her, one realizes that it may now be necessary to re-examine and re-understand migration by moving away from the "bounded thinking" of sociology or political science, and raise inevitable issues, among others, about justice, migrant workers' rights, gender equality, child's rights, and the human costs of development and globalization. Indeed, the story of Rowena Bautista "reflects an important and growing global trend: the importation of care and love from poor countries to rich ones."³ It is noted that while two women (Rowena and Noa's career-mother) working for pay is not a bad idea, the effects on the third-world women are disproportionately causing problems and suffering for them and their children.⁴ In the end, they are but small players in a larger economic game whose rules they have not written.⁵

This article does not attempt to resolve an intractable problem that will probably evade resolution in the next decade or so; it simply explores the fundamental issues that straddle what would seem to be an interface between human rights and economic development, in regard to female migration.

1. Arlie Hochschild, *Love and Gold*, in GLOBAL WOMAN 15, 16-18 (Barbara Ehrenreich and Arlie Hochschild, eds., 2002). Anna dela Cruz is an entirely different—but equally important—story in the comprehensive narrative that is female migration. Because Anna dela Cruz, for example, also has a teenage son who she has to leave in turn in the care of her eighty-year old mother-in-law when she reports to work for Rowena's household. And of the \$50 that Rowena sends to Anna every month as her salary, a part of the money also goes to the mother-in-law and the teenage son of Anna.

2. *Id.*

3. *Id.* at 17.

4. *Id.* at 20.

5. *Id.*

Neither does the article condemn the policies of governments in both developed and developing countries; rather, it only intends to raise collective consciousness about the implications of globalization on some of the most fundamental rights that evolved in the most recent century.

This article focuses on female migration in the field of care giving and explores new perspectives on human rights issues that arise from the inevitable interaction between the process and objective of female migration as an instrument of development. It shall try to highlight the human rights implications of a development model in which an essential feature is the overseas deployment of women most of whom are engaged in domestic work. It shall likewise attempt to explore how these human rights implications change our perspective on female migration as an element of the current development strategy of nations and the international community.

II. INTERNATIONAL HUMAN RIGHTS TOWARDS IMPLEMENTING CHANGE

The idea of human rights is a very powerful instrument in the hands of those who seek social and political change. It is easily endorsed by people of even the most different cultural and ideological backgrounds, in support of even more different social or political causes.⁶ As Jim Ife reminds us:

In a world of economic globalization, where individualism, greed and becoming rich are seen as the most important things in life, and where at the same time the formerly secure moral positions for judging our actions seem to be declining into a morass of postmodern relativism, the idea of human rights provides an alternative reference point for those who would seek to reaffirm the values of humanity.⁷

As a matter of fact, the international human rights regime has already responded to the needs of migrant workers. The United Nations (UN) has a special representative for migrant workers rights and a UN convention has entered into force as of 1 July 2003.⁸ There are also numerous conventions and international instruments that deal with women and their protection.⁹

6. JIM IFE, HUMAN RIGHTS AND SOCIAL WORK 1 (2001).

7. *Id.* at viii.

8. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 47/110, 47 U.N. GAOR Supp. (No. 49) at 192, U.N. Doc. A/47/49 (1992).

9. See generally, Universal Declaration on Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXVI), 21 U.N. GAOR Supp.

But most of the discourse and measures are concentrated on old, hard-core issues like physical violence and abuse perpetrated either against women or migrant workers and their families, but not in the critical intersection of other human rights issues that affect women who are also migrants. And while international human rights codes provide some protection to the rights of transnational citizens, the welfare of domestic workers is often only dependent on the host society.¹⁰

III. GLOBALIZATION AND FEMALE MIGRATION

A world in which people in rich countries have few children and the poor have many is one in which pressures for migration can grow. It is also probably a world in which the rich are likely to want immigrants to do many of the jobs that they or their children refuse to do. UN studies predict that the principal recipients of migration flows will be the United States, Germany, Canada, the United Kingdom, and Australia. It is to be noted, however, that recent trends do show that aside from the developed countries in the West, female migration is also moving towards more developed Asian countries like Hong Kong, Singapore, Malaysia, and Taiwan.¹¹ Meanwhile, the most important sources of foreign labor are China, Mexico, India, the Philippines, and Indonesia.

Hochschild argues that as rich nations become richer and poorer nations become poorer, there is a one-way flow of talent and training from the south to the north that further widens the gap between the two. This rising inequality and the lure of prosperity in the developed world is referred to as the "globalization of migration." With the denationalization of economies,

(No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3. See also Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (1979); Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993); Optional Protocol to the Convention on the Elimination of Discrimination Against Women, G.A. Res. 54/4, Annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/219 (Vol. 1) (2000); ILO Convention No. 97, On Migration for Employment (Revised) (1952); ILO Convention No 143, On Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1978).

10. RHACEL SALAZAR PARRENAS, *SERVANTS OF GLOBALIZATION: WOMEN, MIGRATION AND DOMESTIC WORK* 53 (2001) [hereinafter PARRENAS, *SERVANTS OF GLOBALIZATION*].

11. Maruja M.B. Asis, *Asian Women Migrants: Going the Distance, But Not Far Enough*, in Migration Information Source, at <http://www.migrationinformation.org> (last accessed Mar. 14, 2003).

labor migration has sprouted in significant numbers.¹² In 1980, for instance, UN estimated that around 78 million people resided in countries other than their countries of birth and/or nationality.¹³ By late 1990s, this figure had grown to 120 million, excluding a fair amount of undocumented immigrants.¹⁴

The primary feature, however, of these new sets of global estimates and projections in regard to migration is that women and girls have constituted a very high proportion of all global migrants for a long time.¹⁵ As far back as 1960, female migrants composed 47% of all migrants living outside their countries of birth.¹⁶ Henceforth, the percentage of female migrants in global migration trends has been steady, with a slight increase to 49% by the year 2000.¹⁷ For more than 40 years, therefore, there seems to have been almost as many female migrants around the world as male migrants, and female migration has been a key constituent of global migration in the 20th century.¹⁸

For the Philippines alone, the outflow of Filipinas into domestic service in more than 130 countries represents one of the largest flows of contemporary female migration.¹⁹ According to non-governmental organizations working with migrant workers in the Philippines, there are approximately 6.5 million Filipino migrants (the Foreign Ministry puts the number at 8 million), and since the early '90s, more than half of that number are women, two-thirds of whom are in the domestic service.²⁰

12. PARRENAS, *SERVANTS OF GLOBALIZATION*, *supra* note 10, at 51.

13. *Id.*

14. *Id.*

15. Hania Zlotnik, *The Global Dimensions of Female Migration*, in Migration Information Source, at <http://www.migrationinformation.org> (last accessed Mar. 14, 2003). ("Until recently, a comprehensive set of global estimates pertaining to the extent of migration was not available. The first such estimates for the period covering 1965-1990 was released by the United Nations Population Division in 1998. In 2002, the United Nations extended the estimates to 2000, setting the stage for a similar extension of the estimates by sex. As a result, it is now possible to trace the evolution of the number of female migrants from 1960 to 2000.")

16. *Id.*

17. *Id.*

18. *Id.*

19. PARRENAS, *SERVANTS OF GLOBALIZATION*, *supra* note 10, at 1.

20. *Id.* ("By definition, domestic workers are employees paid by individuals or families to provide elderly care, childcare and/or housecleaning in private homes.")

As such, there is clearly growing migration both in volume and in all major regions of the world. But clearly, it is not that easy to accurately peg how many migrants there are all over the world. Government and UN statistics are normally unable to account for undocumented workers who leave their countries of origin with temporary non-immigrant visas.²¹ As noted by one scholar, "there are many more of them than the official records report."²² Also, because many of the undocumented migrants live in receiving countries where women are proportionately more numerous than men migrants, the actual number of domestic workers will most likely exceed official government statistics.²³

What is more disconcerting, however, is the parallel and wrenching trend of the women who normally care for the young, the old and the sick in their own poor countries and those who are moving to rich countries to care for its young, old and sick, either as maids or nannies or as day-care or nursing home aides. This pattern has been commonly referred to as a "care drain." And while the movement of care workers from the south to the north is not a new phenomenon, what is unprecedented is the scope and speed of women's migration to these jobs. Indeed, women are playing more and more roles in all types of migration.

An important aspect of female migration is the increasing global trend of "love and care" being imported from poor countries to rich ones. Unfortunately, many of these women are forced to leave behind their own children in the care of grandmothers, aunts, and fathers — roughly in that order. For Filipinos alone, around 30% of children—some 8 million—live in households where at least one parent is overseas. The majority of female migrants, therefore, create what is now being described in migration literature as transnational households.²⁴ And clearly the formation of transnational households is not exclusive to Filipino labor migrants.²⁵ It is to

21. *Id.* at 39.

22. *Id.*

23. *Id.* (Parrenas believes this to be the case in countries like Italy, Spain, and Japan and perhaps, the United States.)

24. *See id.* at 2-3. ("As such, they share the pain of family separation. Many of them also perform domestic work with a college degree in hand. From this they share the experience of contradictory class mobility or an inconsistent social status in the labor market. Finally, they encounter both social exclusion and feelings of non-belonging in the formation of the migrant community. Still, they face alienation from other migrants. From this perspective, the experience of migration is embodied in dislocations.")

25. *Id.* at 80-81. ("Various studies have documented their formation among contemporary immigrants from the traditional sending countries of Haiti and Mexico. From some of these studies we have learned that the macroprocesses of

be noted, however, that these elements of international migration today are not particular to contemporary global capitalism.²⁶

Instead, they are old practices—long-standing realities—which are only being redeployed with greater speed and force with the advent of globalization. As such, transnational families are not particular to present-day migrants. They have historically been a common form of household maintenance for temporary labor migrants in various regions of the world. Yet differences do exist between transnational households of the present and the past. While split-households in earlier migrant communities were homogenous and composed primarily of a male income-producer living apart from the female and young dependents in the sending country, contemporary split-households also involve income-producing women migrants.²⁷

Indeed, the most common form of household maintenance that may be found among domestic workers today is the one-parent-abroad transnational household, a unit where there is one migrant parent—usually the mother—working outside the country for a prolonged period of separation from her or his family.²⁸ The arrangements for the care of children will vary between them living with their father, or residing under the care of other relatives like grandmothers or aunts.²⁹ But whatever arrangements these mothers leave behind, there is guilt and remorse in having to resort to such a separation; and the children left behind will normally be sickly, prone to expressing anger, confusion and apathy, as well as performing poorly in

globalization prompt the formation of transnational households. Migrants created transnational households to maximize resources and opportunities in the global economy. They mediate unequal levels of economic development between sending and receiving nations, legal barriers that restrict their full incorporation into the host society and polity, and the rise of anti-immigrant sentiments.")

26. *Id.*

27. *Id.*

28. *Id.* at 85.

29. *Id.* at 135, 118. ("This is an important character of the Filipino transnational household. While the emotional insecurities engendered by geographical distance can be eased by the efforts of mothers to communicate and visit their children regularly, they can also be tempered by the support provided by extended kin. The extended family provides tremendous support to transnational families. And these extended kin are to a certain extent also still able to instill strong moral values and traditions in children of transnational households. It is not clear, however, to what extent extended families are able to provide the same level and effectiveness of emotional support to children of transnational households in other sending countries, particularly in those where the cultural and religious realities are different from the Philippines" (emphasis supplied)).

school.³⁰ Inevitably, "mothering from a distance has painful emotional ramifications both for mothers who leave and children who are sent back or left behind. The pain of family separation creates various feelings, including helplessness, regret and guilt for mothers, and loneliness, vulnerability and insecurity for children."³¹

There are three possible central conflicts that normally mark the mother-child relationship in transnational households. One is that the child may resent the "commodification" of love and affection, and reject material goods as effective substitutes of parental love.³² Another is that the child may not accept his mother's claim that she understands the sacrifice that he has to make for the successful maintenance of the transnational family.³³ Finally, the child may question the extent of the mother's efforts to establish and maintain links of love, care and affection.³⁴

The Secretary General of the United Nations seems to have captured the essence of the problem when he declared in 1999 that "the combination of underdevelopment, globalization and rapid change poses particular challenges to the international human rights regime.... [T]he pursuit of development, the engagement with globalization, and the management of change must all yield to human right imperatives rather than the reverse."³⁵ The

30. Hochschild, *supra* note 1, at 22. See also Rhacel Salazar Parrenas, *Care Crisis in the Philippines*, in GLOBAL WOMAN 39, 52 (Barbara Ehrenreich and Arlie Hochschild, eds., 2002) [hereinafter Parrenas, *Care Crisis*].

31. PARRENAS, SERVANTS OF GLOBALIZATION, *supra* note 10, at 116.

32. *Id.* at 131. ("It is important to note some fundamental contradictions in this regard. Many of these children in transnational households do not wish for their parents to stop working abroad. However, in contrast to their mothers, they are less convinced that the material security that their families have achieved has alleviated the emotional costs of separation. For many children, 'staying behind' and 'keeping the family whole' are worth much more than achieving material security. However, children can make such sweeping claims more easily, because the material security provided by migrant parents afford them the luxury of demanding greater emotional security; it is highly unlikely that impoverished children would make similar demands.") *Id.* at 132.

33. *Id.* at 132. ("A child is quoted: 'Hey, please don't forget that your kids also have lots of sacrifices to give, aside from growing up without a parent. Specifically, for those who thought that sending money is enough and they've already done their responsibilities; well, think again, because there are more than this. Your children need your love, support, attention and affection.'") Junelyn Gonzaga, *Listen to Our Small Voices*, in TINIG FILIPINO 13 (Dec. 1995).

34. *Id.*

35. U.N. Doc. A/54/1 (1999), ¶ 275.

phenomenon that has now come to surround female migration is one such challenge to the international human rights regime.

IV. FEMALE MIGRATION AND THE RIGHT TO DEVELOPMENT

The Declaration on the Right to Development, adopted by the United Nations General Assembly in 1996, describes development as a comprehensive economic, social, cultural and political process, aimed at improving the well-being of the entire population and all individuals on the basis of free and meaningful participation and the fair distribution of benefits resulting therefrom.³⁶

Female migration may, therefore, be an important right to development issue. As described by the United Nations, the plight of women in the world today bespeaks of suffering and impoverishment as evidenced by the alarming statistics on the economic and social gaps between men and women.³⁷

Women are the majority of the world's poor and the number of women living in rural poverty has increased by 50 percent since 1975. Women are the majority of the world's illiterate; the number rose from 543 million to 597 million between 1970 and 1985. Women in Asia and Africa work 13 hours a week more than men and are mostly unpaid. Worldwide, women earn 30 to 40 percent less than men doing equal work. Women hold between 10 and 20 percent of managerial and administrative jobs worldwide and less than 20 percent of jobs in manufacturing. Women make up less than 5 percent of the world's heads of State. Women's unpaid housework and family labor, if counted as productive output in national accounts, would increase measures of global output by 25 to 30 percent.³⁸

Indeed, female migration for better employment has fundamental implications for the development of poor countries and of women themselves as individuals. Despite developments in the international human rights law regime, women have remained subordinate in the home, the family, political processes, socio-sexual relations, enjoyment of property rights, matters of employment, and the marketplace.³⁹ Nevertheless, there is no question that employment—whether at home or abroad—has the ability

36. United Nations Center for Human Rights, *Realization of the Right to Development*, HR/PUB/91/2 (1991).

37. United Nations, *Discrimination Against Women: The Convention and the Committee I* (Human Rights Factsheet No. 22).

38. United Nations, *The World's Women 1970-1990: Trends and Statistics* (Sales No. E.90.XVII.3).

39. LOUIS HENKIN, ET AL., HUMAN RIGHTS 359 (1999).

of empowering women, thereby making them more independent and in control of their personal and family lives. The fact that they are moving across borders in search of employment, rather than as part of family migration in the context of a migrant husband, suggests that women are increasingly enjoying greater freedom and personal choice.⁴⁰

Globalization and the mobility that it makes possible have definitely affected the trends of migration in recent years. As we have seen, there has been a significant increase in female migrants particularly from developing countries in the last ten years or so. And in the end, many of these migrant women do not necessarily make overseas employment temporary for fear that they will lose the freedom and independence that migration allows them.⁴¹ Therefore, rather than return to the more familiar environments of their home countries, they will normally apply for permanent residency, if not citizenship, in their host countries or elsewhere if only to have more opportunities to better their lives and that of their families.

But the emotional suffering of mothers and children also puts in perspective the UN's declaration that "the human person is the central subject of development."⁴² Professor Antony Allott criticizes as the worship of false gods any development process that sacrifices the "intangibles which go to make up life in society" in favor of obtaining rapid economic growth.⁴³ There is, he points out, a confusion of means and ends, whereby there is a focus on structural changes rather than individual development.⁴⁴ The United Nations has also consistently argued that development is "much more than continuous increases in the leading economic indicators."⁴⁵ In the same manner, the "development" of women must be viewed from within

40. Asis, *supra* note 11.

41. PARRENAS, *SERVANTS OF GLOBALIZATION*, *supra* note 10, at 56.

42. United Nations Declaration on the Right to Development, G.A. Res. 41/1218, Annex, 41 U.N. GAOR Supp. (No. 53) at 156, U.N. Doc. A/41/53 (1986), art. 2(1).

43. Antony Allott, *Development for What? False Gods and Holy Writ*, in *HUMAN RIGHTS AND DEVELOPMENT 1-2* (Symposium of the International Third World Legal Studies Association, 1984). Allott further argues that "too often and unthinkingly, development is defined as economic development or an expansion or growth in resources. While it is true that many items in the programme of changing life for the better require resources, and often additional resources, such resources are mere means to defined goals or ends, and not ends in themselves." *Id.* at 2-3.

44. *Id.* at 3.

45. United Nations Center for Human Rights, *Realization of the Right to Development* 9, HR/PUB/91/2 (1991).

the framework of growth not only in personal incomes and individual advancement, but also "in all aspects of her basic rights—be they economic, social or cultural or civil and political."⁴⁶ This is, after all, the spirit of the United Nations Charter's preambular declaration of "promoting better standards of life in larger freedoms."⁴⁷

Perhaps we can say that the female migration phenomenon allows many developing countries to meet the 16th century developmental ambition expressed by King Henry IV of France in the statement: "I want there to be no peasant in my kingdom so poor that he cannot have a chicken in his pot every Sunday."⁴⁸ And yet, what little we know also of the lives of female migrants, which is the multiplication of many other stories like that of Rowena's, reinforce the observation that economic goods are merely tools for a better life, but not necessarily sufficient in themselves for a happy existence.⁴⁹ For in reality, the domestic work in which many female migrants are engaged is both a "labor of love" and a "labor of sorrow."⁵⁰

The experience of transnational mothers is usually punctuated by a deep sense of personal loss. They miss out on the growing years of their children and are overwhelmed by the loss of intimacy in transnational families.⁵¹ And regrettably, "the absence of daily interactions denies familiarity and becomes an irreparable gap defining parent-child relations," even after reunification.⁵²

Consequently, the development realities of female migration cast a serious doubt on the claim that the increased opportunities of women in regard to finding employment overseas is consistent with the aspirations and objectives of what we now conceive and maintain as the human right to development. It would appear, therefore, that in the area of female migration, particularly those involving caregivers belonging to transnational families, development itself may have become a source of violation of human rights of women and children as much as it is a source for the promotion of women's equality.⁵³ This question ties in with an assertion that "it is not

46. *Id.*

47. U.N. CHARTER, preamble.

48. See Allott, *supra* note 43, at 3.

49. *Id.*

50. See JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK AND THE FAMILY, FROM SLAVERY TO THE PRESENT* (1985).

51. PARRENAS, *SERVANTS OF GLOBALIZATION*, *supra* note 10, at 120.

52. *Id.* at 121.

53. United Nations Center for Human Rights, *Realization of the Right to Development* 31, HR/PUB/91/2 (1991).

underdevelopment that sends migrants to the First World, but development itself."⁵⁴

Some scholars, for example, argue that the world is divided into core areas that dominate and profit from the division of labor in the international economy, and periphery areas whose production is expropriated and people subordinated within the system.⁵⁵ And according to these "world systems theorists," this division of labor is characterized by new levels of capital penetration in developing countries, the development of export processing as a principal economic strategy of capital, and the increased migration of third-world peoples to centers of business and capital.⁵⁶ Also, when there is a high percentage of women employed in local manufacturing, studies have shown that there is a great chance that any one woman will become a migrant worker.⁵⁷ It is also possible that their horizons broaden, or they meet other workers who had been abroad and they realize that they want better jobs and more goods.⁵⁸ But whatever the reason for becoming migrants, it is clear that "the more people in one's community migrate, the more likely one is to migrate too."⁵⁹

But as political economist Saskia Sassen notes, "international migrations are produced, they are patterned, and they are embedded in specific historical phases."⁶⁰ It may be argued, therefore, that the contemporary outmigration of women from developing countries and their entrance into domestic work is a product of globalization; it is patterned under the role of many developing countries as an export-based economy in globalization; and

it is imbedded in the specific historical phase of global restructuring.⁶¹ And the global economy seems to be the stage that female migrants from developing countries have chosen as they enter the pursuit of the accumulation of capital.⁶²

What is interesting to note, however, is the fact that many of these migrant workers tend to blame the governments of their own nation-state. They do not situate the economic problems of their countries in the global context as they "neither reach the level of the interstate system nor consider structural inequalities between developing and advanced capitalist countries."⁶³ And this seems to be unfortunate because transnationalism is inextricably linked to globalization.

The formation of transnational households corresponds with the opposite turns of nationalism in globalization. Receiving societies most likely support the formation of transnational households because such households guarantee them the low-wage labor of migrants without the responsibility for their reproduction. By containing the costs of reproduction in sending countries, wages of migrant workers can be kept to a minimum. While receiving countries need the low-wage labor of migrants, they want neither the responsibilities nor costs of reproduction of these workers. Thus, the formation of transnational households, through a strategy of resistance in globalization, maintains the inequalities of globalization, receiving countries benefit from the minimized wage demands of a substantial proportion of their workforce. Such economic benefits translate to increased production activities, rendering growth and profits for the higher-tier workers of receiving countries.

Without doubt, the formation of transnational households reinforces the limited integration of low-wage migrant workers. The separation of the migrant family stunts the incorporation of the migrant into the host country with the absence of children whose greater ability to acculturate usually paves the way for integration in settlement.

Transnational households signify segregation. They form because of the segregation of the families of migrant workers in sending countries. Thus, they result from the successful implementation of border control, which makes families unable to reunite. Family separation is consequently prolonged and may even extend to a span of a life cycle.⁶⁴

61. PARRENAS, *SERVANTS OF GLOBALIZATION*, *supra* note 10, at 11.

62. *Id.*

63. *Id.* at 58.

64. *Id.* at 107-08.

54. Hochschild, *supra* note 1, at 28.

55. LINDA BASCH, ET AL., *NATIONS UNBOUND II* (1994).

56. *Id.* These theorists argue that when we join a global level of analysis with a scrutiny of particular histories of people we can better understand the movements of labor at specific points in time. We are able to link the wave of migration into the advanced capitalist countries in the last twenty-five years to new forms of capital concentration and global investment. They argue, however that ("world systems theorists have tended to reduce migration to labor migration and immigrants to workers, eliminating all discussion of the many different racial, ethnic or national identities which shape people's actions and consciousness. Migrants are indeed providers of labor power for capitalist production in a world economy, but they are at the same time political and social actors.") *Id.* at 12.

57. Hochschild, *supra* note 1, at 28.

58. *Id.*

59. *Id.*

60. Saskia Sassen, *The Impact of Economic Internationalization of Migration: Comparing the United States and Japan*, in 31 *INTERNATIONAL MIGRATION* 73, 97 (1993).

These social ramifications of the emergence of the so-called transnational family is hardly a consequence that the world community wants to envision as the appropriate sum of the migration and globalization equation. The physical, mental, emotional, and psychological impacts of family separations, regardless of the economic returns, seem to be inconsistent with the view that the human person should be the paramount concern of all development processes. And as human beings are the central subjects of development, the promotion of individual human welfare must be the paramount concern of genuine development instead of making them mere objects that are reduced to statistics and numerical data, or worse yet, commodities to be traded in the global market place.⁶⁵ The former UN High Commissioner for Human Rights has argued that "this approach would place the human person at the center of the development paradigm. The basis for this approach would be an emphasis on the human rights objectives of development."⁶⁶

True, there is a controversial debate in international legal literature on whether the right to development is an individuated claim or a collective entitlement. But that debate is not of direct concern here. For the more appropriate interpretation of the issue here is to attempt a proper appreciation of how the entire structure of development in an era of globalization affects the beneficiaries of the right to development, whether as individuals or as a group of people.

Finally, the UN Declaration on the Right to Development calls on "all human beings" to exercise their responsibilities for development by promoting and protecting "an appropriate... social and economic order for development."⁶⁷ It is important, therefore, to recognize the need for viewing female migration from the perspective of putting in place the "appropriate social and economic order for development."

The yawning gap between rich and poor countries is a relevant right to development concern as it is, in itself, a potent form of coercion.⁶⁸ Third world mothers decide to leave their children and go to the developed countries because of economic pressures that sometimes all but coerce them to go abroad.⁶⁹ In this sense, feminist writers argue that migration, through a

65. United Nations Center for Human Rights, *Realization of the Right to Development* 45, HR/PUB/91/2 (1991).

66. Mary Robinson, *Constructing an International Financial, Trade and Development Architecture: The Human Rights Dimensions*, at www.unhcr.org (last accessed July 1, 1999).

67. United Nations Declaration on the Right to Development, art. 2(2).

68. Hochschild, *supra* note 1, at 27.

69. *Id.*

series of invisible links, become a dark child's burden.⁷⁰ In this context, the appropriate socio-economic regime for development may need to consider the implications of globalization realities on every man, woman and child. The mobility and economic opportunity provided by migration in a global world cannot be taken in isolation from the realities that it creates on families and communities. And where required by the situation, special measures should be put in place to protect the rights and interests of the particularly vulnerable, such as women and children, and families.

On one hand, some would argue that in the development discourse, there is a need to revisit the very premises of the social and economic order promoted by current development models or strategies. The book *Nations Unbound*, for example, labels "the conception of labor-exporting states as autonomous nations, whose citizenries may be incorporated elsewhere but who are still separate and equal partners in a world of individual nation-states [as obscuring] the domination of global capital and core capitalist states in the economies and political affairs of these countries."⁷¹ In the name of building up the sending country, Basch and her co-authors write, immigrants are in fact "pulled into development schemes that actually make the home country even more subordinate to global capital."⁷²

On the other hand, it has been questioned whether global capitalism is in fact forging the creation of links among distinct systems of gender inequality.⁷³ In the article *Economy Menders*, Linda Layosa points out that "women have partially been liberated from the anguish of their day-to-day existence with their families and from economic problems... only to be enslaved again in the confines of another home... to mend others' torn clothes at the same time mend our tattered economy."⁷⁴ As such, it may be imperative to reexamine global development strategies that do address economic growth but not social justice; and restore the primacy of the individual, families and communities in the whole notion of development in the social and economic life.

V. FEMALE MIGRATION AND GENDER EQUALITY

Ironically, even in this period of history that some observers have declared as the century of women, current discourse on female migration continues to

70. *Id.*

71. BASCH, ET AL., *supra* note 55, at 277.

72. *Id.*

73. PARRENAS, SERVANTS OF GLOBALIZATION, *supra* note 10, at 72.

74. Linda Layosa, *Economy Menders*, in TINIG FILIPINO, at 7 (1995).

be intimately linked with the age-old question of gender inequality. Instead of recognizing the special needs of transnational families and devising female migration strategies that take into account their concerns and rights, many leaders from developing countries around the world are not beyond opposing the overseas employment of women if only to prevent possible social instability by the creation of unpredictable transnational families. In the Philippines, for instance, government leaders and even the media have denounced migrating mothers for causing the deterioration of the Filipino family and creating a care crisis in the country.⁷⁵ In May 1995, former President Fidel Ramos declared that the government was not "against overseas employment of Filipino women. *We are against overseas employment at the cost of family solidarity.*"⁷⁶

Media reports also tend to vilify these mothers who "abandon" young children in favor of employment overseas. The Philippine media, for example, reinforces this by consistently publishing sensationalized reports about the suffering of children from transnational households.⁷⁷

These reports tend to vilify migrant mothers, suggesting that their children face more profound problems than do those of migrant fathers; and despite the fact that most of the children in question are left with relatives, journalists tend to refer to them as having been "abandoned." One article reports, "A child's sense of loss appears to be greater when it is the mother who leave to work abroad." Others link the emigration of mothers to the inadequate childcare and unstable family life that eventually lead such children to "drugs, gambling and drinking."⁷⁸

Even the Scalabrini Migration Center, based in the Philippines, has recommended that mothers be kept from migrating.⁷⁹ This recommendation is based on the findings of a study conducted by the center that concluded that "children of migrant mothers suffer more than those of migrant fathers because child rearing is a role women are more adept at, are better prepared for, and pay more attention to."⁸⁰

Often, the implication of these statements and reports is that the migration of women is morally acceptable only when they are not married

and/or without children.⁸¹ Such a position betrays not only a lack of proper appreciation for the contributions of female migrants to the economic development of nations, as will be discussed later, but it also underscores the inequities in the prevailing gender ideology.⁸² Because how can you otherwise explain the loss of self-respect and dignity that many men feel when their wives become the breadwinners of the family?⁸³ Human society, regrettably, continues to operate pretty much on the assumption that "a woman's rightful place is in the home, and the households of migrant mothers present a challenge to this view."⁸⁴ It is no surprise, therefore, that some national policies tend to undermine the welfare of women rather than improve it because social leaders are normally men acting upon preconceived notions and expectations about the traditional roles of women in social life and decision-making.

The human rights of women are inalienable and are integral parts of universal human rights.⁸⁵ And it is recognized that it is important for women to be able to fully and equally participate in the political, civil, economic, social and cultural life, at the national, regional and international levels.⁸⁶ Equality is the foundation of democratic societies and is the cornerstone of systems that aim for social justice and human rights.⁸⁷ But in most societies,

81. *Id.* at 40.

82. *Id.* at 39. Hochschild and Machung refer to a stalled revolution in which the economic contributions of women to the family welfare have not been met with the corresponding increase in male responsibility for household work. As such, the local gender ideology in many countries lag behind the economic realities of women heads in transnational families. Consequently, there is a far greater degree of anxiety that accompanies the quality of family life for the dependents of migrant mothers than for those of migrant fathers. *Id.*

83. Michelle Gamburd, *Breadwinner No More*, in GLOBAL WOMAN 190, 190 (Barbara Ehrenreich and Arlie Hochschild eds., 2002).

84. Parrenas, *Care Crisis*, *supra* note 30, at 40; see also CARLA RISEEUW, GENDER TRANSFORMATION, POWER, AND RESISTANCE AMONG WOMEN IN SRI LANKA: THE FISH DON'T TALK ABOUT THE WATER 271 (1991). In Sri Lanka, for example, Carla Risseuw has written that "men cannot 'stoop down' in the widest sense, without experiencing emotional stress... The principle that he is 'higher' than a woman, and more specifically his wife, permeates the actions, thoughts and emotions of both men and women."

85. Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), part I, ¶ 18.

86. *Id.*

87. United Nations, *Discrimination Against Women: The Convention and the Committee* 1 (Human Rights Factsheet No. 22).

75. Parrenas, *Care Crisis*, *supra* note 30, at 40.

76. Agence France Press, *Ramos: Overseas Employment a Threat to Filipino Families*, PHILIPPINE DAILY INQUIRER, May 26, 1995, at 11 (emphasis supplied).

77. Parrenas, *Care Crisis*, *supra* note 30, at 40.

78. *Id.*

79. *Id.* at 52.

80. *Id.* Rhacel Parrenas criticizes this as implicitly accepting the gender inequities in the family, even as it ignores the economic pressures generated by globalization.

women continue to be discriminated against in the family, in the national community, and primarily in the workplace.⁸⁸

Despite developments in the international human rights law regime, women have remained subordinate in the home, family, political processes, socio-sexual relations, enjoyment of property rights, matters of employment, and the marketplace.⁸⁹ This discrimination is normally perpetuated by the continued existence of stereotypes and traditional cultural and religious practices or beliefs that are detrimental to the interests of women.⁹⁰ In some countries, these are manifested in national legislation; in others, they are found in the social, cultural, and political resistance to legally mandated equality of men and women.⁹¹

Paramount among these stereotypes is the one that is already quite apparent in the statements mentioned above. It is the social belief, mistaken and misplaced at best, about a rigid understanding of the role of women in the household. Professor Tadiar observes that, in the Philippines, for example, transnational households are considered to be embodiments of the decline and disintegration of family values and consequently, the destruction of the Philippine social moral fabric.⁹² The transnational division of labor in the family is, therefore, considered inconsistent with "the social expectations for women to perform their domestic chores" and with the traditional practices of socialization where mothers "provide direct supervision to their children."⁹³ It is deemed to be, in itself, an attack on the social gender prescriptions because by migrating they are reconstituting the traditional

88. United Nations Center for Human Rights, *Realization of the Right to Development* 31, HR/PUB/91/2 (1991). ("Despite the recognition of equal rights for women in international instruments, they are often undermined by culturally sanctioned inequalities between men and women or through actions involving short-term gains at the expense of long-term freedom and equity. It has become obvious that development projects that disregard, threaten, or undermine women rather than contribute to their advancement violate their human rights.")

89. HENKIN, *supra* note 39, at 359; see also UN Secretary General Kofi Annan, Address to the UN General Assembly Special Session on Gender Equality, Development and Peace in the 21st Century (June 5, 2000) ("The gender divide continues to widen. Women earn less, are more often unemployed, and generally are poorer than men. Women's work is still largely part time, informal, unregulated and unstable. The fact they have productive as well as reproductive roles is still all too rarely recognized.")

90. Discrimination Against Women, *supra* note 87, at 1.

91. HENKIN, *supra* note 39, at 359.

92. PARRENAS, SERVANTS OF GLOBALIZATION, *supra* note 10, at 109.

93. *Id.*

gender division of labor in the family as they take on the role of income provider.⁹⁴

Because the formation of female-headed transnational households leads to the reconfiguration of gender relations in the family, such households are generally considered "broken" and "abnormal," even in migrant communities. This is regardless of the fact that the family now can and does hire domestic workers and, more often than not, rely on other female relatives to reproduce the family.⁹⁵

Lost in such discourses is any proper appreciation for the underlying reasons for women's decision to migrate, namely: to provide for their families and to empower themselves. These are the same reasons that men resort to migration. However, social expectations about women shape the social response to their choices. But more glaringly, such discourse implicitly accepts the gender inequities in the family since it omits recognition of the fact that men can, and should be, caregivers too. As a matter of fact, this stereotyping has even "led to a lower status of male workers as fathers and to an insufficient encouragement for men to reconcile professional and family responsibilities."⁹⁶ Thus, it has been suggested that masculinity and motherhood should be redefined by more gender egalitarian views, as society must question the biologically based assumption that only women have the aptitude to provide the needed child care.⁹⁷ There is a compelling need for such a redefinition because traditionally assigned gender roles have very significant implications for limiting the choices of women in regard to having careers or employment of their own since they are saddled with the great burden of household responsibilities.⁹⁸

These realities are wholly inconsistent with the state of international human rights law today. The Vienna World Conference on Human Rights

94. *Id.* at 63-64.

95. *Id.* at 145.

96. Excerpt from Resolutions Proposed by the Ad Hoc Committee of the Whole of the Twenty-Third Special Session of the UN General Assembly, *Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action*, U.N. GAOR Supp. (No. 3), U.N. Doc. A/S-23/10/Rev.1, ¶ 21 (June 10, 2002) [hereinafter *Actions to Implement the Beijing Declaration*].

97. Parrenas, *Care Crisis*, *supra* note 30, at 54. The United Nations General Assembly noted that "the combination of remunerated work and caregiving within families, households and communities still leads to a disproportionate burden for women as long as there is insufficient sharing of tasks and responsibilities by men. It is still also women who perform the larger part of unremunerated work." (*Actions to Implement the Beijing Declaration*, *supra* note 96, ¶ 21).

98. *Actions to Implement the Beijing Declaration*, *supra* note 96, ¶ 23.

has fully integrated the rights of women into the mainstream of international human rights law. It recognized the human rights of women as inalienable and integral parts of universal human rights.⁹⁹ There was, and is, an expectation that women will be fully integrated into the world development process, and be able to participate therein in an effective manner. As a matter of fact, the final document at Vienna expressly criticized cultural practices that tends to limit the rights of women. It stressed the importance of eradicating any conflict between the rights of women and the "harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism."¹⁰⁰

If one is to take a human rights approach to appreciating the decision of women to seek employment abroad, for the better future of their children and their empowerment, one must be able to derive migration policies from a recognition of their right to make such choices. To paraphrase a comment by Joan Dunlop, President of the International Women's Health Coalition, in the context of reproductive rights, the human rights approach roots migration policies in justice and not just sociological language or targets.¹⁰¹ For only in recognizing women's freedom to join the global labor market will societies and governments be able to treat them as legitimate and equal subjects of national migration policies, rather than as objects of economic policies in a globalized age and/or of social policies in cultural settings incongruent with modern realities. And a human rights perspective will "provide concepts and strategies, formal and informal, that women can shape, in light of ... diverse needs and contexts, to challenge abuses, promote positive programs, and... to empower women."¹⁰²

It would seem, therefore, from the human rights perspective that there is an urgent need to distance ourselves and our social systems from the "social prejudice...and traditions of a patriarchal society...that deny women a proper role in society."¹⁰³ And if there is probably a message that cries out

99. Vienna Declaration and Programme of Action, *supra* note 85, part I, ¶ 18.

100. *Id.* part II, ¶ 38.

101. See Felice D. Gaer, *And Never the Twain Shall Meet? The Struggle to Establish Women's Rights as International Human Rights*, in THE INTERNATIONAL HUMAN RIGHTS OF WOMEN: INSTRUMENTS OF CHANGE 4, 38 (Carol Lockwood, et al. eds., 1998).

102. SEXUAL AND REPRODUCTIVE RIGHTS AND HEALTH AS HUMAN RIGHTS: CONCEPTS AND STRATEGIES I (Rhonda Copelon and Berta E. Hernandez eds., 1994) (emphasis supplied).

103. Report of the Fourth World Conference on Women, U.N. Doc. A/CONF.177/20/Add.1 (1995) (Statement of Benazir Bhutto, Prime Minister of Pakistan).

from the World Conference on Women and all the recent positive developments in the gender equality crusade, it is that "human rights are women's rights.... And women's rights are human rights."¹⁰⁴ For indeed, women's equality is an indispensable requirement for development.¹⁰⁵

And in this context, the two outstanding principles in international human rights law that demand serious reflection are the universality of human rights and the importance of the right to equality. The realities of the national and global structures continue to be incongruent with the international consensus embodied in various international human rights instruments that recognize the common entitlement to human rights of both men and women, and that gender should not be a basis for any discrimination whether in the political, social or economic arenas.

After Beijing, during the special session of the United Nations General Assembly in the year 2000, United States Secretary of State Madeleine Albright declared:

It is no longer possible, after Beijing, to deny that women's rights are human rights, and are indivisible from the universal rights of every human being.

It is no longer possible, after Beijing, to conceive of development separate from the advancement of women, because no society can move ahead if half its population is held back.

It is no longer possible, after Beijing, to argue that abuses against women are merely cultural and that there is nothing any of us can do about them. Because when a woman is raped, beaten, or mutilated, it is not cultural; it is criminal.¹⁰⁶

The state of the international human rights framework, therefore, brings into sharp focus the often very chauvinistic perspectives that many governments and societies seem to have adopted in trying to square the realities of female migration with the needs of the family. If for anything, the Platform for Action from the Beijing World Conference on Women in 1995, stands for "further progress towards the achievement of gender equality, development and peace in the twenty first century."¹⁰⁷

104. Hillary Rodham Clinton, Address at the Fourth World Conference on Women in Beijing, China (Sept. 5, 1995).

105. See Address of U.N. Secretary General Kofi Annan, *supra* note 89.

106. Madeleine Albright, Address to the UN General Assembly Special Session on Gender Equality, Development and Peace in the 21st Century (June 8, 2000).

107. *Actions to Implement the Beijing Declaration*, *supra* note 96, ¶ 2 (emphasis supplied).

Gender equality is of specific importance for the eradication of poverty particularly in the context of the feminization of poverty.¹⁰⁸ And it requires not only promoting women's education and health care or providing micro-credit and other financial aid, but a policy environment that allows women empowerment by enhancing their employment opportunities taking into consideration their relevant needs and interests. Unfortunately, it would seem that such a policy environment is not possible if decision-makers and social forces continue to adhere to traditional notions of family and social structure that discourage female migration. As the United Nations General Assembly has noted, gender inequalities, disparities in economic power-sharing, unequal distribution of unremunerated work between women and men, as well as harmful, traditional and customary practices, "have constrained women's economic empowerment and exacerbated the feminization of poverty."¹⁰⁹

What probably makes the situation seem more unjust is that the traditional and unequal perspectives in many societies about overseas employment do not only condemn women for responding to their economic needs, but also completely ignore the economic contributions of the female migrants. Developing economies are likely benefiting from the deployment of workers through an easing in the pressures of high unemployment and underemployment rates, and in providing workers with additional skills training.¹¹⁰ But more importantly, overseas workers generate foreign currency from their regular remittances to family and friends.¹¹¹ In the Philippines alone, migration remittances in the year 2000 amounted to more than six billion dollars (\$6,000,000,000). And one can only imagine the level of their economic contributions considering Filipinas comprise around 60 to 80 percent of migrants that the Philippine government deploys every year.¹¹²

It is also important to remember that these remittances do not only provide up front hard currency for the economics of the sending developing country. At the micro level, these remittances send siblings, children and relatives to university, provide financial support to families, subsidize the living expenses of elderly parents, purchase properties, and/or capitalize a small business.¹¹³ Many countries do not seem to realize also that unlike male migration, which is subject to varying economic conditions, female

108. *Id.* ¶ 7.

109. *Id.* ¶ 8.

110. PARRENAS, SERVANTS OF GLOBALIZATION, *supra* note 10, at 51.

111. *Id.*

112. *Asis*, *supra* note 11.

113. PARRENAS, SERVANTS OF GLOBALIZATION, *supra* note 10, at 111.

migration by the nature of their employment are much more stable and resilient in the face of economic uncertainties.¹¹⁴

In fact, as a consequence of these economic gains from female migration, the Philippine government, for example, has hailed its mostly female overseas workers as the nation's "modern day heroes."¹¹⁵ While facilitating its entry into the global market economy as an export-oriented economy, this positive imagery of migrant workers promotes the process of emigration, "as such an iconic figure stabilizes the dependence of the Philippine economy on female out migration."¹¹⁶

Another human rights issue that is impacted on by female migration is the low value placed on caring work resulting from the cultural politics of inequality.¹¹⁷ Care should no longer be considered a "pass-on" job.¹¹⁸ While children are considered to be immeasurably valuable to their parents, the "labor of raising them does not earn much credit in the eyes of the world."¹¹⁹ Therefore, there is now probably a compelling need to examine how just as the market price of primary produce keeps the Third World low in the community of nations, so the low market value of care keeps the status of women who do it—and sometimes, ultimately all women—low.¹²⁰

For far too long, the contributions and concerns of women remain overlooked in economic structures and even in families and households.¹²¹ And an important step in the correct direction for the future, which is hardly taken by many governments, is to recognize the contributions of unremunerated work like care giving to development. This work is not normally reflected in economic analysis and statistics and is not accurately reported in cases where they are actually recorded. As such, the work is

114. *Asis*, *supra* note 11. ("When the economy falters, such as in the 1997 economic crisis in the region, countries of destination may decide to repatriate migrant workers, particularly in areas where male migrants are strong, to make way for local labor. For example, after the same 1997 crisis, there was a temporary decline in demand for migrant workers in the construction and manufacturing sectors; but the demand for foreign domestic workers was significantly unchanged.").

115. PARRENAS, SERVANTS OF GLOBALIZATION, *supra* note 10, at 53.

116. *Id.*

117. Hochschild, *supra* note 1, at 29.

118. *Id.* at 28-29.

119. *Id.* at 29.

120. *Id.*

121. See Beijing Declaration and Platform of Action, U.N. Docs. A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), ¶ 155.

often unmeasured in quantitative terms and seriously underestimated, resulting in limited social recognition.¹²² The Beijing Declaration asserts that "the full visibility of the type, extent and distribution of this unremunerated work will also contribute to a better sharing of responsibilities."¹²³

Some writers meanwhile lament the fact that the aura of middle-classness that dignified unpaid, full-time child-rearing in the past has given way to the abidingly low value of caring work that took place after raising a child became the paid work of child-care workers.¹²⁴ As Professor Parrenas so clearly describes in linking the international transfer of care-taking to the social, political and economic relationship between women in the global labor market:

This division of labor is a structural relationship based on class, race, gender, and (nation-based) citizenship. In this division of labor, there is a gradational decline in worth of reproductive labor. As Rothman poignantly describes, "When performed by mothers, we call this mothering... when performed by hired hands, we call it unskilled." Commodified reproductive labor is not only low-paid work but declines in market value as it gets passed down the international transfer of caretaking. As care is made into a commodity, women with greater resources in the global economy can afford the best-quality care for their family. Conversely, the care given to those with fewer resources is usually worth less.¹²⁵

One final point to make is in regard to the implication of a culture of gender inequality on the right to work. Article 6 of the Covenant on Economic, Social and Cultural Rights provides that everyone has the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.¹²⁶ This right is clearly

122. See *id.* ¶ 156.

123. See *id.*

124. Hochschild, *supra* note 1, at 29.

125. PARRENAS, *SERVANTS OF GLOBALIZATION*, *supra* note 10, at 73. ("It has been suggested that one way of raising the value of care is to involve fathers in it. If men shared the care of family members worldwide, care would spread laterally instead of being passed down a social class ladder. In Norway, for example, all employed men are eligible for a year's paternity leave at 90 percent pay. Some 80 percent of Norwegian men now take over a month of parental leave. In this way, Norway is a model to the world. For indeed, it is men who have for the most part stepped aside from caring work, and it is with them that the 'care drain' truly begins.") *Id.* at 20.

126. IECOSOC, art. 6.

deemed to be essential in preserving the dignity and self-respect of women.¹²⁷

But while women's share in the labor force continues to rise in the modern times, it does not appear that there is now "better sharing of responsibilities," as declared in Beijing. This is because there has been "no parallel lightening of responsibility for unremunerated work in the household and community."¹²⁸ And as previously discussed, the policy responses of governments as well as that of the community, to women's choice of becoming migrant workers (thus creating transnational households) have been far from hospitable to such decisions.

These cultural and social expectations about gender are, therefore, clear obstacles to an unfettered exercise of the right to work enshrined in international human rights law. It calls for a more just and fuller appreciation of the equal responsibilities of fathers—as care-givers and as partners in the reproductive process of the family—so as to de-stigmatize the important choices made by women with respect to female migration.

And in this regard, the Beijing Declaration and Platform of Action seems to provide a reasonable blueprint for going forward:

Taking into account the fact that continuing inequalities and noticeable progress coexist, rethinking employment policies is necessary in order to integrate the gender perspective and to draw attention to a wider range of opportunities as well as to address any negative gender implications of current patterns of work and employment. To realize fully equality between women and men in their contributions to the economy, active efforts are required for equal recognition and appreciation of the influence of that work, experience, knowledge, and values of both women and men in society.¹²⁹

Thus, the same document urges governments to develop social policies that will change attitudes that reinforce the traditional notions of division of labor, and promote the concept of shared family responsibility for work in the home, particularly in relation to the care of children.

But to digress a little, even from the perspectives of child's rights, the issue of gender inequity provides some sharp contrasts to the state of international human rights. The position taken by those adhering to uninformed ideas about the role of men and women in society does not only ignore the economic contributions of the female migrants as has been earlier explained. It likewise diverts society's attention away from the special needs

127. United Nations, Fact Sheet on the Committee on Economic, Social and Cultural Rights (1996).

128. See Beijing Declaration and Platform of Action, *supra* note 121, ¶ 153.

129. See *id.* ¶ 163.

of the children who are left behind, and finally aggravating their difficulties by stigmatizing their family's choices.¹³⁰ It must not be forgotten that rather than impose more emotional burdens on the children of transnational families by such stigmatizing environments, the Universal Declaration on Human Rights fully expects States to provide special care and assistance to childhood.¹³¹ States Parties must, therefore, exert all efforts to discharge their obligation to "use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child;"¹³² and where the child is temporarily deprived of a good family environment, he should be provided with special protection and assistance by the State.¹³³

Vilifying migrant women as bad mothers [also] promotes the view that the return to the nuclear family is the only viable solution to the emotional difficulties of children in transnational families. In so doing, it directs attention away from the special needs of children in transnational families—for instance, the need for community projects that would improve communication among far flung family members, or for special school programs.... It's also a strategy that sidelines the agency and adaptability of the children themselves.¹³⁴

VI. AN EXTRACTION OF LOVE: THE CHILD'S RIGHTS

In the more developed societies not only in the Americas or Europe, but increasingly also in Asia, the "number of gainfully employed women has climbed dramatically in the last forty years."¹³⁵ In the United States, women represented 46.5 percent of gainfully employed workers in 1992, a considerable increase over 32.1 percent in 1960; while the downward trend in the labor force participation of Italian women from 1959 to 1972 has been effectively reversed.¹³⁶ This statistical development, however, could also well be the external manifestation of tectonic shifts in social structures that have created major upheavals in many developing countries. This arises because there is an intrinsically direct correlation between the ability of women in a society (mostly developed) to be integrated into the mainstream of the

130. Parrenas, *Care Crisis*, *supra* note 30, at 53.

131. See Convention on the Rights of the Child, G.A. Res. 44/25, Annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), preamble.

132. *Id.* art. 18, ¶ 1.

133. *Id.* art. 20, ¶ 1.

134. Parrenas, *Care Crisis*, *supra* note 30, at 53.

135. PARRENAS, *SERVANTS OF GLOBALIZATION*, *supra* note 10, at 69.

136. *Id.* at 69-70.

employed, and the entry of caregivers from mostly developing countries. And while there is no real integration of these domestic workers into their host societies, which to many employers is often a purely employer-employee relationship, these workers are unable to dehumanize their relationships with the first-world children.

Interviewed by Professor Rhacel Parrenas, a college-educated school teacher who left behind five children in her home country in order to become a child caregiver, confessed that "the only thing you can do is to give all your love to the child [in your care]. In my absence from my children, the most I could do with my situation was to give all my love to that child."¹³⁷ Taking part in what Parrenas describes as a "global heart transplant," the interviewee is inevitably unable to provide her own children with her love, care and affection as they progress through their fleeting moments of childhood and formative years, while her charge enjoys an overabundance of it.

There is no question that migration provides the workers and their families with a modicum of economic security and opportunity that is normally absent or inadequate had they stayed on and worked in their home countries. But usually hidden from the often contrived picture of successful transnational households are the substantial costs that are shouldered by the families who are left behind in the countries of origin.¹³⁸ Parrenas has observed that, as "servants of globalization," women migrants, in turn, have transferred their care giving responsibilities to other female family members or other less-privileged women in the countries of origin.¹³⁹ In the process, while migrant women contribute to making family life more comfortable and easier for their first world employers, they are separated from their own families, who are left to fend for themselves.¹⁴⁰

One of the central dislocations created by migration is the emergence of transnational households that impose the pain of family separation.¹⁴¹ And the painful consequences of such separation become readily apparent the moment the worker returns to her country of origin.

They often feel ill at ease in their home countries, where things have changed in their absence, and where they may feel that they no longer belong. When their families meet them at the airport, these women commonly do not recognize their own kin. They talk of the embarrassment

137. Hochschild, *supra* note 1, at 22.

138. Asis, *supra* note 11.

139. *Id.*

140. *Id.*

141. PARRENAS *GLOBALIZATION*, *supra* note 10, at 82.

of having sex with husbands who have become virtual strangers, and of reuniting with children who doubt their mothers' love. Often a woman's relatives will have died or moved away. It is thus scarcely surprising that women are very ambivalent when asked whether they would recommend migration to their daughters. Most migrants would prefer that their daughters did not have to make the choice between hunger and moving abroad.¹⁴²

Domestic work is not only about the physical demands of the woman, but the "excruciating loneliness heightened by the contradiction of caring for someone else's children while not caring for her own."¹⁴³ To overcome the emotional gaps in their families, women—mothers—are forced to commodify their love and compensate their children for their absence with material goods.¹⁴⁴ Intimacy between mother and child is reduced to regular phone calls.¹⁴⁵

The overseas domestic workers, particularly those hired as caregivers or nannies, are meanwhile required to provide their wards emotional care. A Dominican nanny was quoted as saying that "they [referring to her employers] say to me that I should give her love."¹⁴⁶ Indeed, most of the parents who hire nannies rather than send their children to day care centers do so because they anticipate the development of personal and emotional relationships between the hired work and their children.¹⁴⁷ These realities, therefore, make one wonder if the "emotional labor of care" has been effectively commodified in our more globalized world community. If so, it might parallel old practices in international trade of importing raw or natural materials from somewhere else where the production thereof is more efficient and competitive, harking back to the Adam Smith conception of comparative advantage. This is so because, while "the worker may carry out the physical work of care, entering into a sort of intimacy with the children, but her caring engenders *no mutual obligation*, no entry into a community, and [definitely] *no real human relationship*—just money."¹⁴⁸

142. Bridget Anderson, *Just Another Job? The Commodification of Domestic Labor, in GLOBAL WOMAN* 104, 110 (Barbara Ehrenreich and Arlie Hochschild, eds., 2002).

143. *Id.* at 87.

144. *Id.* at 88.

145. *Id.* at 94.

146. *Id.* at 111.

147. *Id.* at 111-12.

148. *Id.* at 112 (emphasis supplied). Anderson adds further: "A worker may care for a child over many years, spending many more hours with that child than the child's natural mother does, but should the employer decide to terminate the

In parenting, Professor Parnas identifies three main forms of care in the context of reproduction, namely: moral care, emotional care and material care.¹⁴⁹ While parenting and material care may easily be transferred to other relatives, it is doubtful that moral and emotional care provided by grandparents, for example, are interchangeable with that of a parent.¹⁵⁰

Faced with the above-realities, many feminist perspectives have arrived at the conclusion that there seems to be some injustice at work in the so-called international transfer of affection, linking the emotional deprivation of third-world children with the "surfeit of affection" that is enjoyed by their first-world counterparts.¹⁵¹ Sau-Ling Wong, in a study of native-born women of color who do domestic work, had argued that the time and energy that these workers are able to devote to the children of their employers are in reality—and very sadly—diverted from their own children.¹⁵²

And the argument has been made that there seems to be an unfair distribution of love as a resource extracted from one place (the Third World) and enjoyed somewhere else (normally in developed countries).¹⁵³ While recognizing that love does not have physical attributes that makes it exactly an equivalent to the material resources like gold and silver of the colonial era, Arlie Hochschild argues that love is still a resource because it has the ability to create more of itself (a renewable resource), and that the "more we love and are loved, the more deeply we can love."¹⁵⁴

relationship, the worker will have no further right to see the child. As far as the employer is concerned, money expresses the full extent of her obligation to the worker. To the worker, this view is deeply problematic; indeed, it denies the worker's humanity and the very depth of her feelings."

149. *Id.* at 117. ("Moral care refers to the provision of discipline and socialization to ensure that dependents are raised to be 'good' moral citizens of society; emotional care refers to the provision of emotional security through the expression of concern and feelings of warmth and affection; and material care, meaning the provision of physical needs of children.")

150. *Id.* at 118.

151. Hochschild, *supra* note 1, at 22.

152. *Id.*

153. *See id.* at 27.

154. *Id.* at 22-23. Hochschild notes, however, that if indeed love is a precious resource, it is not one simply extracted from the Third World; rather, it owes its very existence to a peculiar cultural alchemy that occurs in the land to which it is imported. Most domestic workers do not see their love as being merely imported into other shores, but a love that partly develops abroad, informed by foreign ideologies of mother-child bonding and fostered by intense loneliness

It also bears noting that the children's mothers cannot be in two places at once, and childhood is fleeting. In this sense, Hoschschild further argues, love could indeed appear to be scarce and limited, like a mineral extracted from the bowels of the earth. For while it may be a renewable resource that is probably infinite in one sense and limited only by the bounds of humanity's existence on earth, *love* has to be contextualized in the growing years of a mother's children. Its value is probably going to be at its prime when the children are just in the early stages of their childhood and adolescence. Its value is, therefore, lost on the children and deprived from them if their mothers are not able to provide the emotional and moral care in their formative years. And once childhood flows into the past, it is irretrievably lost as would be the opportunities for children to enjoy an "atmosphere of happiness, love and understanding,"¹⁵⁵ in their growing years.

The brutality of that era's imperialism is not to be minimized, even as we compare the extraction of material resources from the Third World of that time to the extraction of emotional resources today. Today's [imperialists] do not extract love from the [developing countries] by force: no colonial officers in tan helmets, no invading armies, no ships bearing arms sailing off to the colonies. Instead, we see a benign scene of Third World women pushing baby carriages...or sitting beside them in First World parks.

Today, coercion operates differently. While the sex trade and some domestic work service is brutally enforced, in the main the new emotional imperialism does not issue from the barrel of a gun. Women choose to migrate for domestic work. But they choose it because economic pressures all but coerce them to. That yawning gap between rich and poor countries is itself a form of coercion, pushing Third World mothers to seek work in the First for lack of options closer to home. But given the prevailing free market ideology, migration is viewed as a "personal choice." Its consequences are seen as "personal problems." In this sense, migration creates not a white man's burden but, through a series of invisible links, a dark child's burden.

This, indeed, is globalization's pound of flesh.¹⁵⁶

But a big question in this regard is how to explain the serious implications of transnational households in the context of the assertion in the UN Declaration on the Rights of the Child—and reiterated in the preamble of the Convention of the Rights of the Child—that children have the right to grow up in an "atmosphere of happiness, love and understanding." If as

and longing for their own children. And their love also seems to be a product of the worker's freedom from the time pressure and anxiety parents feel in a culture that lacks a social safety net.

155. See United Nations Declaration on the Rights of the Child, art. 9 (1959).

156. Hochschild, *supra* note 1, at 26-27.

we have seen, the migration of mothers results in the diversion of their "care" to foster children and creates resentment among many of their own children, it becomes highly doubtful that the latter will grow up in a kind of formative environment envisioned to be their entitlement by the international human rights regime. Maslow had outlined five levels of human needs, the third of which (after only physiological and safety needs) being "needs for belongingness and love."¹⁵⁷ And as Ife argues, needs are strongly linked to human rights.¹⁵⁸

The burden imposed by transnationalization of many households on children also implicates one of the foremost universal and forward-looking principles enshrined in the Convention on the Rights of the Child. The protection and promotion of the *best interests of children* is a primary consideration and fundamental message that underlies the Convention as a primary challenge for States and governments.¹⁵⁹ But again the realities of transnational households put in serious doubt the assertion that a model of development that involuntarily separates children from a parent at very tender ages is to the former's best interests.

Finally, the psychological and emotional implications of growing up with one or both parents absent, as was discussed above, also creates some doubt on the relationship between transnational households and the right of the children to "the enjoyment of the highest attainable standard of physical and mental health."¹⁶⁰

VII. CONCLUSION

Globalization is not new, and neither is world economy. World trade has been an ancient feature of the human community, and "indeed some form of global economy predates the emergence of the nation state, which is now perceived as under threat from the forces of globalization."¹⁶¹ But the reality of the kind of globalization we are experiencing in the twenty-first century is somewhat different from that of other periods in human history. *First*, the world today seems to be trading more people than ever before. The mobility made possible by advances in air travel and the globalization of trade in services have witnessed an upsurge in the movement of people from one country to another. *Second*, more and more women are leaving their families

157. Ife, *supra* note 6, at 83.

158. *Id.*

159. See *e.g.*, Convention on the Rights of the Child, arts. 3 and 9 (1989).

160. *Id.* art. 24, ¶ 1.

161. Ife, *supra* note 6, at 15.

behind and integrating themselves into the mainstream of the world economy in the context of the international transfer of care-giving. *Third*, and perhaps more controversial, is the fact that globalization seems to be creating new patterns of inequality.¹⁶²

The reactions to these concerns vary. On one hand, some writers have demanded, for example, that host societies should be more accountable for the welfare of female migrants and for that of their families. They argue that the developed world cannot assume that "care" leaving developing countries is surplus care (surplus production or supply being the necessary impetus of international trade), since it is quite clear that the solution for rich nations has become a serious problem for poor economies. The question is raised, therefore, if it would be fair to say that most host countries have yet to sufficiently recognize the contributions of migrant care workers, ignoring the latter's rights and limiting their full incorporation into society.

On the other hand, it is urged that advocates for children in transnational families should focus their attention not on calling for a return to the nuclear family, but on trying to meet the special needs of these families. One of those needs is for a reconstituted gender ideology; another is for the elimination of legislation that penalizes migrant families in the nations where they work. There has also been identified as urgent the need to lobby for more inclusive politics and for employers to develop a sense of accountability for their worker's children. After all, migrant workers significantly help their employers to reduce their families' care deficit.

Interestingly, some of the children in transnational households seem to justify the status quo by saying that at least they mature early, and learn how to cope with the problems of the real world at a very young and tender age. This is a phenomenon that takes place prevalently in developing countries, regardless of whether they belong to transnational households. But "one has to ask whether early maturity should be celebrated or instead considered a tragic loss of childhood."¹⁶³

Ironically, many developing countries also promote a view of their nationals as objects of globalization.¹⁶⁴ As a result, migrant workers—particularly female migrants—become manufactured goods, placed in the same category as other exports.¹⁶⁵ "As a source of foreign currency, the commodified body of overseas workers is a central component of the gross national product of the Philippines. As unprotected nationals, migrant

162. See *id.* at 16.

163. PARRENAS, SERVANTS OF GLOBALIZATION, *supra* note 10, at 139.

164. *Id.* at 54. ("For example, the heroines of the Philippine economy!")

165. *Id.*

Filipina domestic workers experience a de-subjection in globalization. They are commodities of the state whose production generates surplus value for both sending and receiving nations at the cost of their abject vulnerability as nationless citizens. In globalization, the distinctions between the flows of labor and goods are consequently diminished in the hands of capital.¹⁶⁶ As such, for many Filipinas, for example, returning to the Philippines is returning home and being liberated from the physical confines of domestic work.¹⁶⁷ For them, it is where they are protected from the harsh conditions of domestic service and an end to their "reification in globalization."¹⁶⁸

And in the receiving countries, it does not appear that immigration rules are making it any easier for transnational households to be reunified in the near future. Immigration rules in receiving countries continue or are increasingly becoming restrictive.¹⁶⁹ In the United States, prior to September 11, lawmakers were already entertaining suggestions of eliminating certain preference categories for family reunification, including the preference categories for adult children and parents of United States citizens and permanent residents—the trend being to continue the labor provided by migrants, but to discontinue support for their reproduction.¹⁷⁰

The reality of female migration, therefore, seems to raise new questions and doubts about the interface of our current development strategies and the demands of international human rights. And in a world where there is no definite agreement on the juridical status of the right to development, and even broadly economic, social and cultural rights, this article does not address such a controversial area of international human rights law. What this article has attempted to do, therefore, is merely to highlight certain new perspectives on female migration that needs some exploration and re-thinking, namely: the possible inconsistency of present development models with the modern understanding of "development" under the United Nations' declaration on the right to development, the dynamics of gender inequality and migration policy, and the international transfer of reproductive services as some form of resource extraction that has implications for development and children's rights.

166. *Id.* at 54-55.

167. *Id.* at 55.

168. *Id.*

169. PARRENAS, SERVANTS OF GLOBALIZATION, *supra* note 10, at 107. It bears noting that no study has yet been conducted on the effect of September 11, 2001 on immigration policies involving temporary workers, whether in the United States or in other countries that host large numbers of such workers.

170. *Id.*

And it appears that these new perspectives could be re-thought and explored by using the language of human rights.

In 2000, addressing a special session of the United Nations General Assembly, U.S. State Secretary Madeleine Albright said that "we must also learn more about the positive and negative impacts of globalization and trade on the lives of women. Because we don't know as much as we should and, unless we learn more, we will not be doing as much as we should to ensure that trade works for all people."¹⁷¹

Indeed, for so long now, politicians—even diplomats—and governments have used the right to development, gender equality and children's rights as political slogans. And the challenge today is for governments and nations—as indicated to us by Secretary Albright—to be able to look beyond the politics and economics of female migration as a distinct Third-World development phenomenon, and really explore the possibility of integrating human rights discourse in, and human rights-based approaches, to development. There is a need to integrate economic efficiency, therefore, with broader social objectives and considerations.¹⁷² For only then can we truly claim that the development we have come to embrace is the type that fulfils the aspirations of developing nations to attain the greatest possible freedom and dignity as human beings.

Cyberattacks, Cyberterrorism and Cyber-use of Force: Countering the Unconventional under International Law

Aris L. Gulapa**

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171. Albright Address, *supra* note 106. Secretary Albright also quoted former First Lady Hillary Clinton that "when it comes to women, globalization should not mean marginalization." *Id.*

172. United Nations Center for Human Rights, *Realization of the Right to Development*, HR/PUB/91/2 (1991), at ¶ 67.